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H.P. 706

House of Representatives, March 9, 2021

**An Act To Require Reporting of Perfluoroalkyl and Polyfluoroalkyl
Substances, PFAS, in Products and of Discharges of Firefighting
Foam Containing PFAS**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered
printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAY of Raymond.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §417-B** is enacted to read:

3 **§417-B. Reporting discharges of aqueous film-forming foam**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Aqueous film-forming foam" or "AFFF" means a fire suppressant foam containing
7 fluorinated surfactants intended for extinguishing flammable liquid fires.

8 B. "Discharge" means a release by any means, including, but not limited to, spilling,
9 leaking, pumping, pouring, spraying, emitting, disposing, escaping, emptying or
10 dumping, whether intentional or unintentional.

11 C. "Person" means a natural person, firm, association, partnership, corporation or trust;
12 the State or any agency of the State; a governmental entity or quasi-governmental
13 entity; the United States or any agency of the United States; or any other legal entity.

14 **2. Reporting.** A person causing a discharge of AFFF into or upon any coastal waters,
15 estuaries, tidal flats, beaches and lands adjoining the seacoast of the State or into or upon
16 any lake, pond, river, stream, sewer, surface water drainage, groundwater or other waters
17 of the State or any public or private water supply or onto lands adjacent to, on or over such
18 waters of the State shall report the discharge to the department as soon as practicable, but
19 no later than 24 hours after the discharge occurs.

20 **Sec. 2. 38 MRSA §1310-B, sub-§2,** as amended by PL 2019, c. 291, Pt. B, §1, is
21 further amended to read:

22 **~~2. Hazardous waste information and information on mercury-added products~~**
23 **~~and electronic devices; chemicals; recyclables~~ Information designated as confidential.**

24 Information relating to hazardous waste submitted to the department under this subchapter,
25 information relating to mercury-added products submitted to the department under chapter
26 16-B, information relating to electronic devices submitted to the department under section
27 1610, subsection 6-A, information related to products containing PFAS, as defined in
28 section 1612, subsection 1, paragraph D, submitted to the department under section 1612,
29 information related to priority toxic chemicals submitted to the department under chapter
30 27, information related to products that contain the "deca" mixture of polybrominated
31 diphenyl ethers submitted to the department under section 1609 or information related to
32 reporting on reportable recyclable materials submitted to the department under section
33 2145 may be designated by the person submitting it as being only for the confidential use
34 of the department, its agents and employees, the Department of Agriculture, Conservation
35 and Forestry and the Department of Health and Human Services and their agents and
36 employees, other agencies of State Government, as authorized by the Governor, employees
37 of the United States Environmental Protection Agency and the Attorney General and, for
38 waste information, employees of the municipality in which the waste is located. The
39 designation must be clearly indicated on each page or other portion of information. The
40 commissioner shall establish procedures to ensure that information so designated is
41 segregated from public records of the department. The department's public records must
42 include the indication that information so designated has been submitted to the department,
43 giving the name of the person submitting the information and the general nature of the

1 information. Upon a request for information, the scope of which includes information so
2 designated, the commissioner shall notify the submitter. Within 15 days after receipt of
3 the notice, the submitter shall demonstrate to the satisfaction of the department that the
4 designated information should not be disclosed because the information is a trade secret or
5 production, commercial or financial information, the disclosure of which would impair the
6 competitive position of the submitter and would make available information not otherwise
7 publicly available. Unless such a demonstration is made, the information must be disclosed
8 and becomes a public record. The department may grant or deny disclosure for the whole
9 or any part of the designated information requested and within 15 days shall give written
10 notice of the decision to the submitter and the person requesting the designated information.
11 A person aggrieved by a decision of the department may appeal only to the Superior Court
12 in accordance with the provisions of section 346. All information provided by the
13 department to the municipality under this subsection is confidential and not a public record
14 under Title 1, chapter 13. In the event a request for such information is submitted to the
15 municipality, the municipality shall submit that request to the commissioner to be
16 processed by the department as provided in this subsection.

17 **Sec. 3. 38 MRSA §1612** is enacted to read:

18 **§1612. Products containing PFAS**

19 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
20 following terms have the following meanings.

21 A. "Final product" means any product, including its components, sold or distributed
22 for personal, residential, commercial or industrial use, including materials used to
23 manufacture other products.

24 B. "Intentionally added PFAS" means PFAS added to a final product or one of its
25 product components to provide a specific characteristic, appearance or quality or to
26 perform a specific function. "Intentionally added PFAS" includes any degradation
27 by-products of those PFAS.

28 C. "Manufacturer" means any person who created a final product or whose brand name
29 is affixed to the product. In the case of a product that was imported into the United
30 States, "manufacturer" includes the importer or first domestic distributor of the product
31 if the person who manufactured or assembled the product or whose brand name is
32 affixed to the product does not have a presence in the United States.

33 D. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means any member of
34 the class of fluorinated organic chemicals containing at least one fully fluorinated
35 carbon atom.

36 E. "Product" means an item manufactured, assembled, packaged or otherwise prepared
37 for sale to consumers.

38 F. "Product component" means a portion of a final product. A product component
39 may be created by the same manufacturer that created the final product or by a different
40 manufacturer.

41 **2. Notification.** The following provisions govern notification.

42 A. Effective January 1, 2023, a manufacturer of a final product for sale in the State
43 that contains intentionally added PFAS shall submit to the department a written

1 notification, unless the notification requirement is waived by the department pursuant
2 to this section. The written notification must include:

3 (1) A brief description of the final product;

4 (2) The purpose for which PFAS are used in the final product, including its product
5 components;

6 (3) The amount of PFAS, by individual chemical abstracts service registry
7 number, in each final product, reported as an exact quantity determined using
8 commercially available analytical methods or as falling within a range approved
9 for reporting purposes by the department; and

10 (4) The name and address of the manufacturer and the name, address and phone
11 number of a contact person for the manufacturer.

12 B. With the approval of the department, a manufacturer may supply the information
13 required in paragraph A for a product category rather than for an individual final
14 product.

15 C. The manufacturer shall update and revise the information in the written notification
16 required in paragraph A whenever there is significant change in the information, as set
17 forth in department rules adopted under subsection 9, or when requested by the
18 department.

19 **3. Waiver of notification; extension of deadline.** The department may waive all or
20 part of the notification requirement under subsection 2 if the department determines that
21 substantially equivalent information is already publicly available. The department may
22 extend the deadline for submission by a manufacturer of the information required under
23 subsection 2 if the department determines that more time is needed by the manufacturer to
24 comply with the submission requirement.

25 **4. Exemptions.** The following provisions govern exemptions.

26 A. A retailer is exempt from subsection 6 unless that retailer knowingly sells a product
27 containing PFAS after that retailer has received notification in accordance with
28 subsection 7, paragraph B.

29 B. The following products are exempt from this section:

30 (1) A final product for which federal law governs notice of the presence of PFAS
31 in the product in a manner that preempts state authority; and

32 (2) A product subject to Title 32, chapter 26-A or 26-B.

33 **5. Fees.** The department may assess a fee payable by a manufacturer upon submission
34 of the notification required under subsection 2 to cover the department's reasonable costs
35 in managing the information collected. Fees must be established in department rules as set
36 forth in subsection 9.

37 **6. Failure to provide notice.** A final product containing PFAS may not be sold,
38 offered for sale or distributed for sale in this State if the manufacturer has failed to provide
39 the information required under subsection 2. The department shall exempt a final product
40 from this prohibition if, in the department's judgment, the lack of availability of the final
41 product could pose an unreasonable risk to public health, safety or welfare.

1 7. Certificate of compliance. If the department has evidence that a final product is
2 being offered for sale in violation of this section, the department may request the
3 manufacturer of the final product to provide a certificate of compliance with this section.
4 Within 30 days of receipt of a request under this subsection, the manufacturer shall:

5 A. Provide the department with the certificate of compliance attesting that the final
6 product does not contain intentionally added PFAS; or

7 B. Notify persons who sell the final product in this State that the sale of the final
8 product is prohibited and provide the department with a list of the names and addresses
9 of those notified.

10 8. Confidentiality. Information submitted to the department pursuant to this section
11 is subject to the confidentiality provisions under section 1310-B.

12 9. Rules. The department shall adopt rules to implement this section. Rules adopted
13 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
14 subchapter 2-A.

15 SUMMARY

16 This bill requires manufacturers of products with intentionally added perfluoroalkyl
17 and polyfluoroalkyl substances to report the presence of those substances in those products
18 to the Department of Environmental Protection beginning in 2023. This bill also requires
19 any person who causes a discharge of aqueous film-forming foam into waters of the State
20 to report that discharge to the department within 24 hours.