

Publications

Coalition of Northeastern States Published PFAS Prevention Model Act

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On May 2, 2023, the Northeast Waste Management Officials' Association (NEWMOA),^[1] a coalition of officials from eight Northeastern states, released for comment a proposed PFAS Prevention Model Act (the Model Act). The Model Act is designed to assist the member states in achieving NEWMOA's goal of the "virtual elimination of the environmental releases of PFAS into the environment" by, among other things, reducing or eliminating the use of PFAS in consumer products.

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a group of manmade chemicals that are sometimes referred to as "forever chemicals" because they persist in the environment and can accumulate in humans and animals. PFAS have been associated with a number of negative health consequences, including cancers, decreased immune functions, developmental and reproductive harm, and kidney and liver damage. To learn more about what PFAS are, [click here](#).

The Model Act is designed to provide certainty to regulated entities. In order to accomplish this, the Model Act is drafted with a "menu" of options that states can consider in addressing PFAS in their states. The Model Act addresses three broad issues – notification of the presence of intentionally added PFAS in products; restrictions on the sale of products with intentionally added PFAS; and plans for the collection and disposal of PFAS-containing products. For purposes of the Model Act, "intentionally added PFAS" includes PFAS contained in a product or component of a product, degradation by-products of PFAS, and the use of PFAS or PFAS precursors as processing agents and mold release agents.

With respect to the notification provisions, the Model Act requires that, two years after the effective date of the Act, all manufacturers of products containing PFAS must provide prior written notification to the state or agency of the sale, use, or distribution of products containing added PFAS. This notification includes a description of the product, the purpose of the added PFAS, and the amount of each PFAS used in the product. While the notification requirement falls on the manufacturer,

the Act prohibits the sale or distribution of any product containing intentionally added PFAS if the notification requirement has not been met. Manufacturers and or suppliers also are required to label products that are determined to have a currently unavoidable use of PFAS in a product or component.

Three years after the effective date of the Act, the sale, use, or distribution of products with PFAS added will be prohibited, unless the enforcing agency has determined that the addition of PFAS to the product is “currently unavoidable.” A manufacturer may obtain a five year extension of the effective date of the PFAS ban if it can provide the enforcing agency sufficient evidence that the use of PFAS is currently unavoidable. Maine already has enacted a ban on the use or sale of products containing intentionally added PFAS as of January 1, 2030. Depending on the adoption date of this provision of the Model Act, a similar ban could take effect several years earlier. Further, because of the national scope of most retailing, a ban on the use of PFAS in products in one state would have nationwide effects.

Finally, for products that have a currently unavoidable use of PFAS, the manufacturer must provide a plan for “a convenient and accessible collection system” for disposal after the consumer has finished with the product. The cost of this system is to be borne by the manufacturer and not the consumer. Manufacturers are required to report biennially on the effectiveness of the collection system.

Comments on the proposed Model Act must be received no later than June 29, 2023. If you would like to discuss submitting comments to NEWMOA, please contact your Vorys attorney or Rick Schuster (rdschuster@vorys.com), Susan Harty (sbharty@vorys.com), or Nina Webb-Lawton (niwebb@vorys.com).

^[1] NEWMOA includes representatives from Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, and Vermont.