

Maine Seeks Feedback on Types of Food Packaging Subject to PFAS Prohibition and Availability of “Safer Alternatives”

[Joseph J. Green](#)

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After [years of back-and-forth](#), the Maine Department of the Environment (“MDEP”) is seeking comment ([by this coming Monday](#)) on a “[concept draft](#)” regulation identifying the types of food packaging that would fall under a 2019 state ban on intentionally added per- and polyfluoroalkyl substances (“PFAS”).

Maine’s 2019 Toxic Chemicals in Food Packaging Act, codified at [MRS Title 32, Section 1733 \(3-B\)](#), authorizes MDEP to prohibit a manufacturer, supplier or distributor from offering for sale “a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence.” Prior to imposing such a prohibition, MDEP must issue a determination that a “safer alternative” to the use of PFAS is available. “Safer alternatives” must be readily available in sufficient quantity and at a comparable cost, and perform as well or better than PFAS in the specific food packaging application.

Relying on two assessments by Washington State’s Department of Ecology (the first in [May 2021](#) and the second in [May 2022](#)), MDEP concludes that “safer alternatives” to the use of PFAS are available for the nine food packaging applications it received.

Specifically, the prohibition would apply to food packaging:

- Intended for direct food contact (short-term storage or to hold freshly prepared food);
- Comprised in substantial part of paper, paperboard or other materials “originally derived from plant fibers which are intended for short-term storage or to hold freshly prepared food”;
- To which PFAS have been intentionally introduced in any amount greater than an incidental presence; and
- In one of the following categories:
 1. Bags and sleeves: containers made from flexible material that can be folded flat and are typically used to transport food from a foodservice establishment. Sleeves include sealed-end bags referred to as pinch-bottom bags.
 2. Bowls: an open-topped container with a wide rim opening and a bottom that allows spooning of

food. These containers are typically designed to hold foods for serving that have a substantial liquid component; this includes portion cups.

3. Closed containers: a container that encloses food on all sides, with interlocking pieces or overlapping walls which hold the container closed for transport. Examples include clamshells, food pails, bakery boxes, and deli containers.
4. Flat serviceware: shallow, flat-bottomed containers with large surface areas used for serving and transporting food which have one large surface or multiple compartments to separate food items during food service. Examples include, but are not limited to, trays, cafeteria-style trays, and plates.
5. Food boats: a type of tray with tall, lipped edges and no compartments. Examples include, but are not limited to, food service containers for fried clams and lobster rolls. (Very Maine)
6. Open-top containers: containers that enclose food on all but one side and are designed to hold food for serving or transportation. Examples include, but are not limited to, paper cones, cups, bowls, and food boats.
7. Pizza boxes: a folded box used for serving, holding, or transporting various sizes of pizza or calzones.
8. Plates: flat serviceware, whether single or with multiple compartments, used for serving or holding food items during food service.
9. Wraps and liners: sheets used to wrap food for food service or create a lining inside other serviceware to act as an additional barrier.

The regulation would exempt manufacturers that have less than \$1,000,000,000 of total annual national sales of food and beverage products.

MDEP is accepting [public comment](#) through **August 21, 2023** on the draft and anticipates formally proposing the regulation later this year.