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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**To:** Board of Environmental Protection

**From:** Tom Graham, *Policy Specialist*  
Kerri M Farris, *Planning and Research Associate*  
Blazka Zgec, *Environmental Specialist*

**Date:** April 7, 2025

**Re:** Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

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The objective of Maine law *Products Containing PFAS*, Title 38 M.R.S. §1614, is to reduce the potential for environmental contamination and human exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) by eliminating their non-essential use in products through sales prohibitions. Where the use of PFAS is critical to a product that is deemed essential for health, safety or the functioning of society, and for which alternatives are not reasonably available, the Legislature has provided for a currently unavoidable use (CUU) designation. Once designated a currently unavoidable use, manufacturers continuing the use of intentionally added PFAS in specific CUU product categories must meet notification requirements prior to sales continuing in Maine beyond the effective date of the prohibition.

This rule explains how the Department will implement the law and establish expectations for the regulated community wishing to submit proposals for CUU designations.

Before initiating formal rulemaking for proposed Chapter 90, the Department published a concept draft of the proposed rule for public input on August 5, 2024. Numerous stakeholders commented on the concept draft, which resulted in the Department making several revisions. At its meeting on December 19, 2024, the Board voted to post proposed rule Chapter 90, *Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances*, for public comment and to hold a public hearing. The public hearing took place January 16, 2025, during which the Board heard

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testimony from several stakeholders. The associated 30-day public comment period closed on January 28, 2025.

From this public comment period, the Department received and reviewed 57 comments totaling 419 pages. Based on comments received, the draft rule has been amended by correction of typos, elimination of superfluous language, and the addition of clarifying language. None of these changes are significant.

### Regulatory Framework

The PFAS in Products Program was initially enacted in Public Law 2021, c. 477, *An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*. This established an all-encompassing reporting requirement for any product sold in Maine containing intentionally added PFAS. The statute was amended in 2023 (PL 2023, c. 138) to, among other things, delay implementation of the reporting program based on the depth of the Department's implementation needs for what was expected to be tens of thousands of incoming chemical use reports. The program's governing statute was more comprehensively amended in 2024 by [Public Law 2023, c. 630](#), *An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances*, which adopted additional targeted sales prohibitions in 2026, in 2032 the scope of regulated products expands ([Title 38 M.R.S. §1614](#)).

These legislative changes eliminate the general notification requirement that was previously scheduled to take effect on January 1, 2025, and created several new sales prohibitions for products with intentionally added PFAS with varying effective dates, created some specific exemptions to the prohibitions, and established a new reporting program for those product categories that receive a CUU determination from the Department. These determinations will be made through future routine technical rulemakings.

Because the general reporting requirement has been eliminated, CUU proposals are now only applicable to those product categories subject to upcoming sales prohibitions. Regulated manufacturers whose products are included within a CUU determination must now report their

continued use of PFAS to the Department prior to continuing sales after the effective date of a prohibition. Notifications expire at the same time as the underlying 5-year CUU determination expires. A new notification must be submitted if there is a subsequent CUU determination.

The proposed rule is authorized by 38 M.R.S. § 1314 (10):

**10. Rules.** The department shall adopt rules to implement this section. Except as provided in subsection 5, paragraph C [currently unavoidable use determinations], rules adopted to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Requested Action

The Department recommends that the proposed rule Chapter 90 be adopted by the Board.

Estimated time of agenda item

2 Hours

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