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4 **1. Applicability.** The proposed rule would detail the notification requirements and sales prohibitions for
5 products containing Intentionally ~~Added~~added PFAS under Maine’s *Act to Stop Perfluoroalkyl and*
6 *Polyfluoroalkyl Substances Pollution*, 38 M.R.S. §1614.
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8 **2. Definitions.**
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- 10 **A. Alternative.** “Alternative” means a substance or chemical that, when used in place of PFAS,
11 results in a functionally similar product and that, when compared to a PFAS that it could replace,
12 would reduce the potential for harm to human health or the environment, or has not been shown
13 to pose the same or greater potential for harm to human health or the environment as that PFAS.
14 Alternatives include reformulated versions of products, including versions reformulated by
15 removal or addition of one or more chemicals or substances, that result in the reduction or
16 removal of intentionally added PFAS from the product. Alternatives also include changes to the
17 manufacturing process that result in the reduction or removal of PFAS from a product.
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- 19 **B. Brand name.** “Brand name” means a name, symbol, word, or mark that identifies a product, and
20 attributes the product to the owner of the brand.
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- 22 **C. Carpet or rug.** ““Carpet” or “rug” means any consumer product made from natural or
23 synthetic fabric product marketed or intended for use to be used as a floor covering. Carpet or rug
24 does not include products that are placed on the floor that do not have a primary purpose of
25 covering inside commercial, industrial, or protecting the floor residential buildings. This includes
26 carpeted door mats intended for indoor use.
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- 28 **D. Commercially available analytical method.** “Commercially available analytical method” means
29 any test methodology used by a laboratory that performs analyses or tests for third parties to
30 determine the concentration of PFAS in a product. Commercially available analytical methods do
31 not need to be performed at a third-party laboratory; however, they must remain unmodified.
32 Commercially available analytical methods include methods approved by the U.S. Environmental
33 Protection Agency (EPA) when used in accordance with that approval.
34

35 NOTE: Information about EPA approved methods is available at
36 <https://www.epa.gov/measurements-modeling/collection-methods>.
37

- 38 **E. Consumer.** “Consumer” means any person who purchases goods or services which are sold by
39 manufacturers, wholesalers, or retailers.
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- 41 **F. Currently Unavoidable Use.** “Currently unavoidable use” means a use of PFAS that the
42 department has determined by rulemaking to be essential for health, safety or the functioning of
43 society and for which alternatives are not reasonably available.
44
- 45 **F.G. Department.** “Department” means the Department of Environmental Protection
46 composed of the Board of Environmental Protection and the Commissioner of the Department of
47 Environmental Protection.
48

49 **G.H. Distribute for sale.** “Distribute for sale” means to ship or otherwise transport a product
50 with the intent or understanding that it will be sold or offered for sale by a receiving party
51 subsequent to its delivery.
52

53 ~~**European article number (EAN).** “European article number” or “EAN” means a 13-digit~~
54 ~~barcode used for product identification purposes, also referred to as an international article~~
55 ~~number.~~
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57 **I. Essential for Health, Safety, or the Functioning of Society.** “Essential for Health, Safety or the
58 Functioning of Society” means Products that if unavailable would result in a significant increase
59 in negative healthcare outcomes, an inability to mitigate significant risks to human health or the
60 environment, or significantly interrupt the daily functions on which society relies. Products that
61 are Essential for Health, Safety or the Functioning of Society include those that are required by
62 Federal or State Laws and Regulations. Essential for the Functioning of Society includes but is
63 not limited to climate mitigation, critical infrastructure, delivery of medicine, lifesaving
64 equipment, public transport, and construction.
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66 **H.J. Fabric.** “Fabric” means a textile made by weaving, knitting, or felting natural or
67 synthetic fibers. For the purposes of this rule fabric includes leather.
68

69 **I.K. Fabric treatment.** “Fabric treatment” means a consumer product ~~meant~~intended to be
70 applied to fabric ~~or leather~~ to give or enhance one or more characteristics, including but not
71 limited to stain resistance or water resistance. Fabric treatments do not include fabric dyes.
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73 **L. Fully Fluorinated Carbon Atom.** “Fully fluorinated carbon atom” means a carbon atom on
74 which all the hydrogen substituents have been replaced by fluorine.
75

76 **J.M. Intentionally added PFAS.** “Intentionally added PFAS” means PFAS added to a product
77 or one of its product components in order to provide a specific characteristic, appearance, or
78 quality or to perform a specific function. Intentionally added PFAS also includes any degradation
79 byproducts of PFAS ~~;~~ serving a functional purpose or technical effect within the product or its
80 components. Products containing intentionally added PFAS include products that consist solely
81 of PFAS. Intentionally added PFAS does not include PFAS that is ~~used in or that comes in~~
82 ~~contact with a product during the manufacturing process but is not~~ present in the final product as
83 a contaminant.
84

85 **K.N. Manufacturer.** “Manufacturer” means the person that manufactures a product, or whose
86 brand name is affixed to the product. In the case of a product that is imported into the United
87 States where the person that manufactured or assembled the product or whose brand name is
88 affixed to the product does not have a presence in the United States, manufacturer includes either
89 the importer or the first domestic distributor of the product, whichever is first to sell, offer for
90 sale, or distribute for sale the product in the State of Maine.
91

92 NOTE: Certain online retail platforms may allow for purchase of products directly from a
93 producer. When no other person meets the definition of manufacturer under this Chapter,
94 the importer will be considered the manufacturer.

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96 **L.O. Offer for sale.** “Offer for sale” means to make a product available for purchase by
97 consumers, including viathrough online sales platforms that deliver into the State of Maine.

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M.P. Perfluoroalkyl and polyfluoroalkyl substances (PFAS). "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means all substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

NOTE: The U.S. EPA maintains a webpage of chemicals that have been identified as PFAS (available at: <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster>) which provides clarity on what is considered a PFAS. Any product sold, offered for sale, or distributed for sale in the State of Maine which contains intentionally added PFAS must be reported to the Department regardless of whether the substance is found on any list.

N.Q. Person. "Person" means any individual, partnership, corporation, firm, federal, state, or local government entity, or public or private organization of any character.

O.R. Product. "Product" means an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components, that is sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products.

P.S. Product component. "Product component" means an identifiable part of a product, including its packaging, regardless of whether the manufacturer of the product is the manufacturer of the product component.

Q.T. Publicly available. "Publicly available" means information that is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures made to the general public that are required by federal, state, or local law.

R.U. Significant change. "Significant change" means a change in the chemical composition of a product which results in the addition or removal of a specific PFAS; a change in the amount of PFAS of more than ~~___%~~, plus or minus a 10% increase of the current concentration when compared to the existing notification; or a change in ~~contact person~~ responsible official or contact information.

S.V. Substantially equivalent information. "Substantially equivalent information" means information that ~~a consumer~~ the Department can reasonably identify ~~and understand~~ as conveying the same information ~~which it is represented as being equivalent, required in Section 3(A).~~ Substantially equivalent information must all be in a single document or location.

~~Universal product code (UPC). "Universal product code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers for product identification purposes. Universal product code includes any industry accepted barcode used for product identification purposes in a manner similar to a UPC, including, but not limited to, an EAN.~~

T.W. Used. "Used" means the condition of a product having been installed, operated, or utilized for its intended purpose by at least one owner or operator. Used does not apply to a product that has been returned to a retailer or that is otherwise offered for resale without the product having been installed, operated, or utilized.

3. Notification.

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148 A. Beginning January 1, 2023, and prior to sale or distribution for sale in Maine of a product that
149 contains intentionally added PFAS.

150 ~~(1) Extension of notification deadline. The Department will issue an extension to the~~
151 ~~notification deadline if the following conditions are met:~~

152
153 (1) A manufacturer of such a product must submit to the Department a notification that includes.

154
155 (a) A brief description of the product, including at minimum;

156
157 ~~(i) Details sufficient to allow a consumer to readily differentiate the product from~~
158 ~~any other similar products, such as the marketed name of the product;~~

159 (i) Global Product Classification brick category and code;

160
161 (ii) Estimated sales volume in the State or nationally for the full calendar year following
162 the year in which the product is being reported;

163
164 ~~(ii) The UPC, if applicable;~~

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166 ~~(i)(iii)~~ The general type of the product, and

167
168 ~~(i)(iv)~~ Its intended use.

169
170 ~~If the Department determines that multiple products can be reported together as a~~
171 ~~category as provided for in subsection 3(C), the description must be sufficient to allow~~
172 ~~a consumer to readily ascertain which products are within the category and to~~
173 ~~differentiate them from any other similar products.~~

174
175 (b) The purpose for which PFAS are used in the product, including PFAS in any product
176 component;

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178 (c) The amount of each of the PFAS as a concentration, identified by name and its chemical
179 abstracts service (CAS) registry number, of each PFAS in the product or any product
180 component- reported as an exact quantity determined using commercially available
181 analytical methods, or as falling within a range approved by the Department; and

182
183 (i) If reporting PFAS as falling within a Department-approved range, ~~unless there is~~
184 ~~evidence indicating a different amount found in the Department's online notification~~
185 ~~system~~, the manufacturer may rely on calculations specific to the inputs and outputs
186 of their manufacturing process or that of a product component's manufacturer to
187 determine the amount of PFAS present.

188
189 For product components for which the Department has previously received notifications
190 which are used in more complex products containing the reported components the
191 manufacturer may report total PFAS in the product including its components, or may
192 refer to the notifications for product components and any PFAS in the remainder of the
193 product.

- 195 (d) The name and address of the reporting manufacturer, and the name, address, email
196 address, and phone number of a contact person responsible official for the manufacturer.
197 The contact person responsible official provided must have the authority, ~~in the event of~~
198 ~~noncompliance~~, to carry out or direct someone else to carry out the steps in Section 8
199 below.

201 NOTE: Claims of Confidential Business Information may be made at the time of
202 reporting and will be managed under the Uniform Trade Secrets Act 10 M.R.S.
203 §1542(4)(A)&(B).

204
205 For notifications submitted to the Department prior to the effective date of this rule
206 and/or the availability of the digital reporting system, the notification must be
207 submitted into the digital database within of 90 of days of the effective date of this rule.

208
209 (2) Waiver of Notification. The Department may waive all or part of the notification requirement
210 under Subsection 1 if the Department determines that substantially equivalent information is
211 publicly available, except that the Department will not issue a waiver for the information
212 required in Subsection 1(d) above.

213
214 (a) The Department will evaluate issuing a waiver to the notification requirement if the
215 manufacturer submits a request containing the following:

216
217 (i) A description of the product(s) for which a waiver is requested;

218
219 (ii) A list of which requirements of Subsection 1 the manufacturer seeks a waiver for;

220
221 (iii) A description of any publicly available records which contain information duplicative
222 of the information required in Subsection 1, above; and

223
224 (iv) A link to or copy of all publicly available substantially equivalent information
225 described by the manufacturer.

226
227 (b) If the Department issues a partial waiver the manufacturer must still complete the
228 notification for any requirements that were not waived, include directions to where the
229 publicly available substantially equivalent information can be found, and pay the fee
230 established in Section 6.

231
232 **B.** The information required in Subsection A above must be submitted in a form approved by the
233 Department. Electronic submission of complete information to the Department's online
234 notification system satisfies this requirement.

236 NOTE: The Department's online notification system is available at [HTTPS://](https://)

237 [://](https://)
238
239 **C.** If, through the notification system, the Department determines that reporting as a category or type
240 is feasible and consistent with the purposes of the program, a group of products may be reported
241 together by category only if;
242

- 243 (1) All products to be so reported fall within the same Global Product Classification brick,
244
245 (2) The same PFAS are present in every product, and
246
247 (3) Each PFAS is present in every product, either:
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249 (a) In the same a substantially similar amount as determined by a commercially available
250 analytical method, or
251
252 (b) If reporting by range of concentration is available, within the same concentration range.
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254 **D.** A manufacturer must update the information in the notification whenever there is a significant
255 change in the reported information or when requested to do so by the Department.
256

257 ~~(2) A manufacturer must update the notification to inactive status whenever a product is~~
258 ~~modified such that it no longer contains any intentionally added PFAS.~~

259
260 (1) In the event of a significant change, a manufacturer must update their notification:

- 261 (a) Within ~~30~~60 days, when requested to do so by the Department;
262
263 (b) Within 30 days, when there is a change in ~~contact person~~responsible official or contact
264 information; or
265
266 (c) Prior to the start of sales of a product with a new formulation, when there is a significant
267 change in the amount or type of PFAS present in the product. ~~These updates~~The update
268 must include the date after which the prior formulation will not be sold, offered for sale,
269 or distributed for sale in the State of Maine; or
270

271
272 (2) ~~Within 30 days, when updating~~A manufacturer may update the notification to inactive status
273 ~~for whenever~~ a product is modified such that it no longer contains any intentionally added
274 PFAS.
275

276 **E.** If a product is imported directly into the State of Maine, ~~rather than into from outside~~ the United
277 States, to be sold, offered for sale, or distributed for sale outside of the sales and distribution
278 channels controlled by the manufacturer and ~~notice~~ the ~~product~~manufacturer has not ~~been~~
279 submitted notification of the product to the Department, it is the responsibility of the person
280 bringing importing the product into the State of Maine to ~~ensure~~submit notification of the product
281 to the Department ~~receives notice~~ as required by Subsection A.
282

283 **F.** A notification is not effective until the Department has received payment of the fee required in
284 Section 6.
285

286 **G.** A manufacturer must provide, upon request by the Department, evidence sufficient to
287 demonstrate the accuracy of information reported in Subsection A.
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289 4. Exemptions.

290 **A.** The following are exempt from the requirements of this Chapter:
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- (1) A product for which federal law or regulation controls the presence of PFAS in the product in a manner that preempts state authority. For this purpose, the provisions of this Chapter are severable, and if any phrase, Section or Subsection is preempted by federal law or regulation, the validity of the remainder of this Chapter shall not be affected.
- (2) A product subject to Title 32, §26-A, *Reduction of Toxics in Packaging*, and
- (3) A product subject to Title 32, §26-B, *Toxic Chemicals in Food Packaging*.

5. Prohibition on Sale of Products Containing Intentionally Added PFAS.

- A. Effective January 1, 2023, a person may not sell, offer for sale, or distribute for sale in the State of Maine a carpet or rug that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used carpet or rug.
- B. Effective January 1, 2023, a person may not sell, offer for sale, or distribute for sale in the State of Maine a fabric treatment that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used fabric treatment or used product to which fabric treatment has been applied.
- C. Effective January 1, 2030, a person may not sell, offer for sale, or distribute for sale in the State of Maine any product that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used product.

6. Fees.

- A. **Fee amount.** To cover the administrative costs incurred by the Department to administer the program, a manufacturer required by Section 3 to provide notice shall, as part of submission of notification, pay a fee of \$~~_____~~,250 for the first three notifications submitted under Section 3(A) and an additional \$50 for each additional notification.

~~(3) The fee must be paid for each individual product registered regardless of whether it is registered independently or as part of a category.~~

- (1) A fee is only required for new product notifications. No fee is required for product updates or changes to inactive status.
- (2) For notifications submitted to the Department prior to the effective date of this rule and/or the availability of the digital reporting system, the fee must be paid within 90 of days of the effective date of this rule.

- B. Fees will be considered paid when funds are transferred to the Treasurer.

7. Failure to Provide Notice.

- A. A person Unless granted an extension in accordance with 38 M.R.S. §1614(3) or a waiver in accordance with section 3(A)(2) above, a Person may not sell, offer for sale, or distribute for sale

340 in the State of Maine a product containing intentionally added PFAS if the manufacturer has
341 failed to provide the information required under Section 3.

342
343 (1) The prohibition in this Section does not apply to a retailer in the State of Maine unless the
344 retailer sells, offers for sale, or distributes for sale in the State a product for which the retailer
345 has received a notification pursuant to Section 8(A)(2) that the sale of the product is
346 prohibited.

347
348 (2) The Department may exempt a product from the prohibition under this subsection if the
349 Department has determined that the use of PFAS in the product is a currently unavoidable
350 use.
351

352 NOTE: Violations of this Chapter are subject to the Department's enforcement authority under
353 38. M.R.S. §§347-A-349.
354

355 8. Certificate of Compliance.

356
357 A. If the Department has reason to believe that a product contains intentionally added PFAS and is
358 being sold, offered for sale, or distributed for sale in violation of Section 7, the Department may
359 direct the manufacturer of the product to, within 30 days:

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361 (1) Provide the Department with ~~the certificate~~certification, on forms provided by the
362 Department, attesting that the product does not contain intentionally added PFAS; or

363
364 (2) Notify persons who sell, offer for sale, or distribute for sale that product in ~~this State~~ Maine
365 that the sale of that product is prohibited in Maine, and provide the Department with a list of
366 the names and addresses of those notified.
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368