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Concept Draft for the Maine PFAS in Products Program

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

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

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

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- H. Distribute for sale.** “Distribute for sale” means to ship or otherwise transport a product with the intent or understanding that it will be sold or offered for sale by a receiving party subsequent to its delivery.
- I. Use of PFAS That is Essential for Health, Safety, or the Functioning of Society.** A “Use of PFAS That is Essential for Health, Safety or the Functioning of Society” means that there are no available safer alternatives to the use of the chemical, that the function of the chemical is integral to the function of the product, and that the unavailability of the product ~~Products that if unavailable~~ would result in a significant increase in negative healthcare outcomes, an inability to mitigate significant risks to human health or the environment, or significantly interrupt the daily functions on which society relies. ~~Products~~ Uses of PFAS That are Essential for Health, Safety or the Functioning of Society include those that are required by Federal or State Laws and Regulations. ~~Products~~ Essential for the Functioning of Society includes but is not limited to products integral to addressing climate mitigation, providing critical infrastructure or the delivery of health care/medicine, and lifesaving equipment, public transport, and construction. For a use of PFAS to be essential, not only must the product meet the essentiality criteria above, but there must also be no safer alternatives to the use of the chemical for the function provided and the function provided by the chemical must be necessary for the product to work.
- J. Fabric.** “Fabric” means a textile made by weaving, knitting, or felting natural or synthetic fibers. For the purposes of this rule fabric includes leather.
- K. Fabric treatment.** “Fabric treatment” means a consumer product intended to be applied to fabric to give or enhance one or more characteristics, including but not limited to stain resistance or water resistance. Fabric treatments do not include fabric dyes.
- L. Fully Fluorinated Carbon Atom.** “Fully fluorinated carbon atom” means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.
- M. Intentionally added PFAS.** “Intentionally added PFAS” means PFAS added to a product or one of its product components in order to provide a specific characteristic, appearance, or quality or to perform a specific function. Intentionally added PFAS also includes any degradation byproducts of PFAS serving a functional purpose or technical effect within the product or its components. Products containing intentionally added PFAS include products that consist solely of PFAS. Intentionally added PFAS does not include PFAS that is present in the final product as a contaminant.
- N. Manufacturer.** “Manufacturer” means the person that manufactures a product, or whose brand name is affixed to the product. In the case of a product that is imported into the United States where the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States, manufacturer includes either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the State of Maine.

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

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the product for the manufacturer in the United States; The online platform is the importer where it acts as the distributor of the product domestically.

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

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 containing a partial list of 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. However, the Maine definition of PFAS is broader, thus Any product sold, offered for sale, or distributed for sale in the State of Maine which contains intentionally added PFAS as defined under Maine law must be reported to the Department regardless of whether the substance is found on any list.

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

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.

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.

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.

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 a 10% increase of the current concentration when compared to the existing notification; or a change in responsible official or contact information.

V. Substantially equivalent information. “Substantially equivalent information” means information that the Department can reasonably identify as conveying the same information required in Section 3(A). Substantially equivalent information must all be in a single document or location.

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.

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3. Notification.

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

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

- (a) A brief description of the product, including at minimum:
 - (i) Global Product Classification brick category and code;
 - (ii) Estimated sales volume in the State or nationally for the full calendar year following the year in which the product is being reported;
 - (iii) The general type of the product, and
 - (iv) Its intended use.
- (b) The purpose for which PFAS are used in the product, including the identity of the product component to which PFAS have been intentionally added~~PFAS in any product component~~;
- (c) The amount of each of the PFAS as a concentration, identified by name and its chemical abstracts service (CAS) registry number, or if no CAS registry number is applicable, the name and its molecular formula and weight, ~~of~~ each PFAS in the product or any product component reported as an exact quantity determined using commercially available analytical methods, or as falling within a range approved by the Department; ~~and~~
 - (i) If reporting PFAS as falling within a Department-approved range found in the Department's online notification system, the manufacturer may rely on calculations specific to the inputs and outputs of their manufacturing process or that of a product component's manufacturer to determine the amount of PFAS present.

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

- (d) The name and address of the reporting manufacturer, and the name, address, email address, and phone number of a responsible official for the manufacturer. The responsible official provided must have the authority to carry out or direct someone else to carry out the steps in Section 8 below; ~~and~~;
- ~~(d)~~(e) Available PFAS environmental monitoring or wastewater discharge data at the product manufacturing location.

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

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

- (2) Waiver of Notification. The Department may waive all or part of the notification requirement under Subsection 1 if the Department determines that substantially equivalent information is publicly available, except that the Department will not issue a waiver for the information required in Subsection 1(d) above.
- (a) The Department will evaluate issuing a waiver to the notification requirement if the manufacturer submits a request containing the following:
- (i) A description of the product(s) for which a waiver is requested;
 - (ii) A list of which requirements of Subsection 1 the manufacturer seeks a waiver for;
 - (iii) A description of any publicly available records which contain information duplicative of the information required in Subsection 1, above; and
 - (iv) A link to or copy of all publicly available substantially equivalent information described by the manufacturer.
- (b) If the Department issues a partial waiver the manufacturer must still complete the notification for any requirements that were not waived, include directions to where the publicly available substantially equivalent information can be found, and pay the fee established in Section 6.
- B.** The information required in Subsection A above must be submitted in a form approved by the Department. Electronic submission of complete information to the Department’s online notification system satisfies this requirement.

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

- C.** If, through the notification system, the Department determines that reporting as a category or type is feasible and consistent with the purposes of the program, a group of products may be reported together by category only if;
- (1) All products to be so reported fall within the same Global Product Classification brick,
 - (2) The same PFAS are present in every product, and
 - (3) Each PFAS is present in every product, either:

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- (a) In the same a substantially similar amount as determined by a commercially available analytical method, or
- (b) If reporting by range of concentration is available, within the same concentration range.

D. A manufacturer must update the information in the notification whenever there is a significant change in the reported information or when requested to do so by the Department.

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

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

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

E. If a product is imported directly into the State of Maine from outside the United States to be sold, offered for sale, or distributed for sale outside of the sales and distribution channels controlled by the manufacturer and the manufacturer has not submitted notification of the product to the Department, it is the responsibility of the person importing the product into the State of Maine to submit notification of the product to the Department as required by Subsection A.

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

G. A manufacturer must provide, upon request by the Department, evidence sufficient to demonstrate the accuracy of information reported in Subsection A.

4. Exemptions.

A. The following are exempt from the requirements of this Chapter:

- (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

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(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.

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

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

ATTACHMENT A – NRDC SUGGESTED CHANGES TO SECOND CONCEPT DRAFT

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- (2) The Department may exempt a product from the prohibition under this subsection if the Department has determined after rulemaking that the use of PFAS in the product is a currently unavoidable use.

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

8. Certificate of Compliance.

- A. If the Department has reason to believe that a product contains intentionally added PFAS and is being sold, offered for sale, or distributed for sale in violation of Section 7, the Department may direct the manufacturer of the product to, within 30 days:
- (1) Provide the Department with certification, on forms provided by the Department, attesting that the product does not contain intentionally added PFAS; or
 - (2) Notify persons who sell, offer for sale, or distribute for sale that product in Maine that the sale of that product is prohibited in Maine, and provide the Department with a list of the names and addresses of those notified.