

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 equivalent product and that, when compared to a PFAS that it could replace, would reduce the potential for harm to human health or the environment. 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 a fabric product marketed or intended for use as a floor covering in a residential or commercial building. Carpet or rug does not include products that are placed on the floor that do not have a primary purpose of covering or protecting the floor.
- D. **Validated analytical method.** “Validated analytical method” means any certified and validated test methodology used by a laboratory that performs analyses or tests to determine the concentration of PFAS in a product. Validated analytical methods do not need to be performed at a third-party laboratory; however, they must remain unmodified. Validated 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. **Purchaser.** “Purchaser” means any person who purchases goods which are sold by manufacturers, wholesalers, or retailers.
- F. **Department.** “Department” means the Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner of the Department of Environmental Protection.
- G. **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 in Maine by a receiving party subsequent to its delivery.
- H. **European article number (EAN).** “European article number” or “EAN” means a 13-digit barcode used for product identification purposes, also referred to as an international article

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Commented [SS1]: Does 'substance' intend to mean something other than 'chemical'? If so, please specify.

Commented [SS2]: If this provision is not deleted, it could lead to “regrettable substitution” In other words, an alternative must be shown to be “safer” than the PFAS it replaces.

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number.

- I. **Fabric.** "Fabric" means a textile made by weaving, knitting, or felting natural or synthetic fibers.
- J. **Fabric treatment.** "Fabric treatment" means an after-market consumer product meant to be applied to a finished fabric or leather product 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.
- K. **Intentionally added PFAS.** "Intentionally added PFAS" means PFAS added to and intentionally present in 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 intentionally added PFAS. Products containing intentionally added PFAS include products that consist solely of PFAS. Intentionally added PFAS does not include PFAS that is used in or that comes in contact with a product during the manufacturing process but is not intentionally present in the final product.
- L. **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.

- M. **Offer for sale.** "Offer for sale" means to make a product available for purchase by purchasers in Maine, including via online sales platforms that deliver into the State of Maine.
- N. **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 examples of substances considered to be 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.

- O. **Person.** "Person" means any individual; partnership; corporation; firm; federal, state, or local government entity; or public or private organization of any character.

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- P. Product.** "Product" means an item manufactured, assembled, packaged, or otherwise prepared for sale to purchasers, including its product components, that is sold or distributed in Maine for personal, residential, commercial, or industrial use, including for use in making other products.
 - Q. Product component.** "Product component" means an identifiable part of a product, regardless of whether the manufacturer of the product is the manufacturer of the product component.
 - R. 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.
 - S. 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 **50%**, plus or minus of the current concentration when compared to the existing notification; or a change in contact person or contact information.
 - T. Substantially equivalent information.** "Substantially equivalent information" means information that a consumer can reasonably identify and understand as conveying the same information which it is represented as being equivalent. Substantially equivalent information must all be in a single document or location.
 - U. 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.
 - V. 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.**
- A.** Beginning January 1, 2023, and prior to sale or distribution for sale in Maine of a product that a **manufacturer** knows or reasonably should know contains intentionally added PFAS.

Commented [SS3]: The law provides for notification wavier and deadline extensions, but neither these are addressed in the regulations and need to be.

Commented [SS4]: A definition of 'knows or reasonably should know' needs to be added.

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

Commented [SS5]: This should be moved to (2).

(2) A manufacturer of such a product must submit to the Department a notification that includes the following information, to the extent that it is known to or reasonably ascertainable by the manufacturer:

Commented [SS6]: A definition of 'known to or reasonably ascertainable by'. Suggest use of EPA's definition in TSCA Section 8 regulations.

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

(i) Details sufficient to allow a purchaser to readily differentiate the product from any other similar products, such as the marketed name of the product,

(ii) The UPC, if applicable;

(iii) The general type of the product, and

(iv) Its intended use.

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

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

(c) The amount of each PFAS in the product as a concentration, identified by a chemical name and Chemical Abstracts Service (CAS) registry number, a descriptive name and EPA Accession Number, or other unique identifier. For purposes of this paragraph, concentrations of each PFAS shall be reported as falling within one of the following ranges, unless the manufacturer knows of the exact quantity of the PFAS, as determined using validated analytical methods, in which case the exact quantity shall be reported.

Ranges:

< 10 ppb;

10 ppb to <1 ppm;

1 ppm to <100 ppm

100 ppm to < 0.1%

0.1% to 10 %

> 10%

(i) If reporting PFAS as falling within a range, unless there is evidence indicating a different amount, 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.

(d) The name and address of the manufacturer, and the name, address, email address, and

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phone number of a contact person for the manufacturer. The contact person provided must have the authority, in the event of noncompliance, to carry out or direct someone else to carry out the steps in Section 8 below.

- 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 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 PFAS in each product are sufficiently similar (for example, with respect to identity, exposure potential, concentration or percent composition, etc.) to warrant reporting as a category.
- 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) A manufacturer must update the notification to inactive status whenever a product is modified such that it no longer contains any intentionally added PFAS.
 - (2) In the event of a significant change, a manufacturer must update their notification:
 - (a) Within 30 days, when requested to do so by the Department;
 - (b) Within 30 days, when there is a change in contact person or contact information; or
 - (c) Within 30 days of becoming aware of a change in the amount or type of PFAS present in the product. These updates 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
 - (d) Within 30 days, when updating the notification to inactive status for a product that no longer contains intentionally added PFAS.
- E.** If a product is imported into the State of Maine, to be sold, offered for sale, or distributed for sale outside of the sales and distribution channels controlled by the manufacturer and notice of the product has not been submitted to the Department, it is the responsibility of the person bringing the product into the State of Maine to ensure the Department receives notice as required by Subsection A.
- F.** A notification is not effective until the Department has received payment of the fee required in Section 6.

Commented [SS7]: It is not clear that paragraph E is needed, in light of the definition of 'manufacturer'.

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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
- (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, unless the department has determined that the use of PFAS in the product is a currently unavoidable use. 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 \$_____.

- (1) The fee must be paid for each individual product registered regardless of whether it is registered independently or as part of a category.
- (2) A fee is only required for new product notifications. No fee is required for product updates or changes to inactive status.

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

7. Failure to Provide Notice.

A. A person may not sell, offer for sale, or distribute for sale in the State of Maine a product

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Commented [SS8]: This provides too much uncertainty. If product can't be sold in the state (because the notification is not "complete") until the fee is paid; companies need a quick, verifiable mechanism to prove "payment"

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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.

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 the certificate, on forms provided by the Department, attesting that the product does not contain intentionally added PFAS; or
 - (2) Provide any information necessary to comply with Section 3 or provide the Department with information to demonstrate that the manufacturer is in compliance with Section 7.
- B. If the manufacturer fails to provide the forms or information required under (A)(1) or (2), the Department may direct the manufacturer to notify persons who sell, offer for sale, or distribute for sale that product in this State 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.