

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 a fabric product marketed or intended for use as a floor covering in households or businesses. 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. **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.

Currently avoidable use. "Currently unavoidable use" means a use of PFAS that the department has determined by rule under this section to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

Degradation byproducts of PFAS. "Degradation byproducts of PFAS" means only those that occur during the chemical manufacturing process of the PFAS.

De Minimis. "De minimis" means the minimum reporting threshold for reporting PFAS in the product. The minimum reporting threshold is 0.1% in the product.

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.

Commented [BG1]: This addition is similar to Colorado HB 1345 PFAS

Commented [BG2]: This definition comes from the legislation

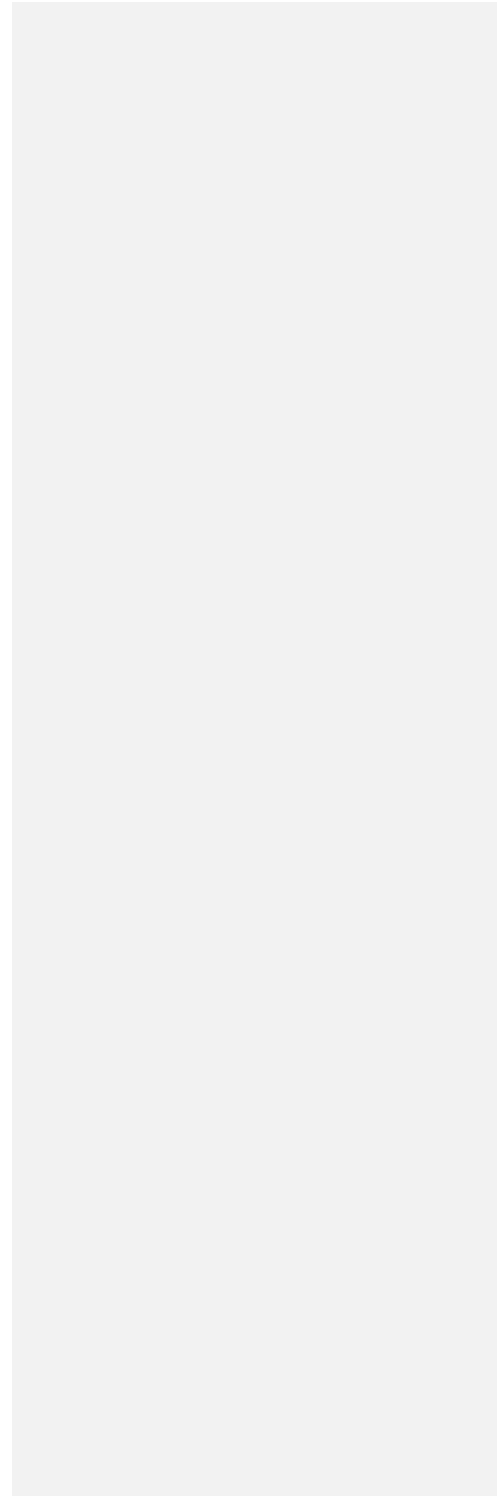
Commented [BG3]: Added degradation byproducts definition

Commented [BG4]: Add de minimis to definitions

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 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 number.

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- I. **Fabric.** "Fabric" means a textile made by weaving, knitting, or felting natural or synthetic fibers.
- J. **Fabric treatment.** "Fabric treatment" means a consumer product meant to be applied **by the consumer** to fabric or leather 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 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. 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 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 consumers, 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 **and has a Chemical Abstract Service (CAS) number**.

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.

- O. **Person.** "Person" means any individual; partnership; corporation; firm; federal, state, or local government entity; or public or private organization of any character.
- P. **Product.** "Product" means an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components **and replacement, maintenance, or service parts**, that is sold or distributed 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.

Commented [BG5]: This makes it clear that this is covering after market fabric treatment products.

Commented [BG6]: Request that a definition for degradation byproducts of PFAS be created.

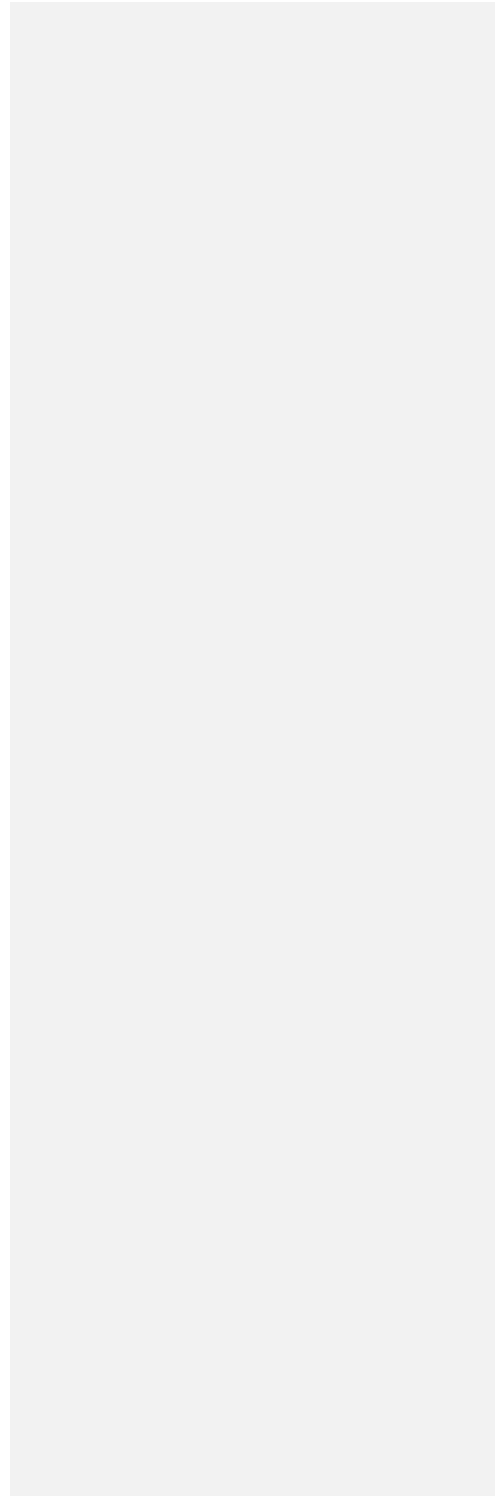
General Motors is concerned about the reporting aspect of degradation products of PFAS. Degradation can occur well after the product is manufactured or sold to the consumer. General Motors would be happy to further discuss this with Maine DEP.

Commented [BG7]: Required in the reporting section below

Commented [BG8]: Since replacement, maintenance, and service parts have the same types and amount of PFAS as in the original product, they should be included in the definition of product

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- 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 5% of the weight of the total product, 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.

Commented [BG9]: 5% accounts for formulation changes

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, the following apply:

Commented [BG10]: Updated sentence for clarity

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

(a) The manufacturer shall submit a request for extension that includes a description of the complexity of the products they manufacture and sell, and the presence of PFAS in the products.

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

(ii) The UPC, if applicable;

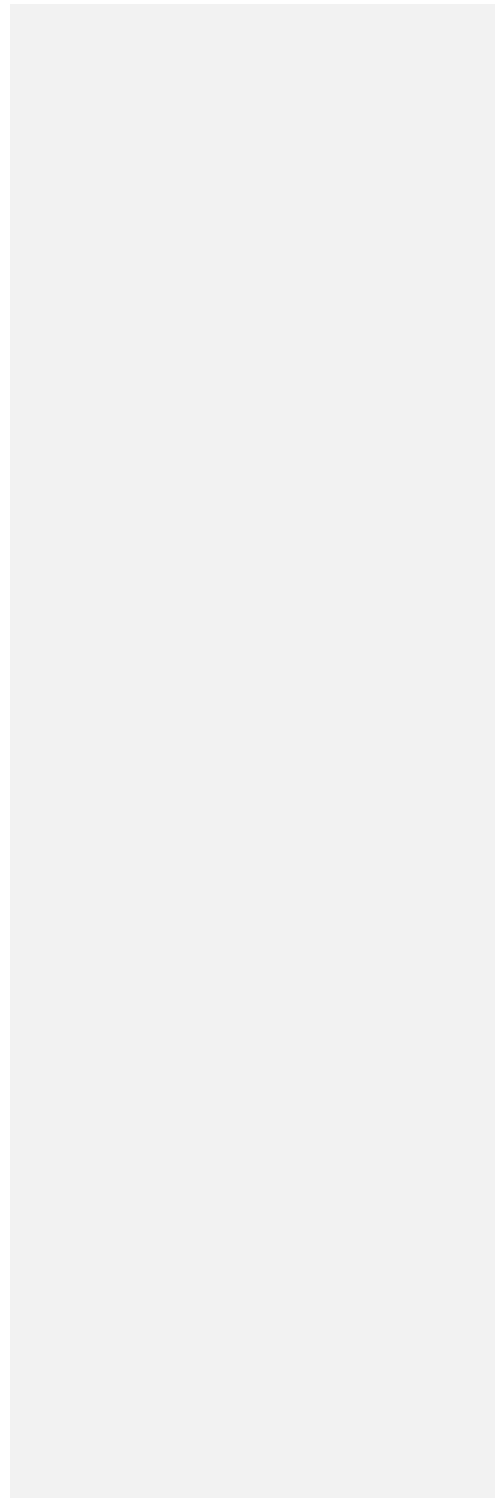
(iii) The general type of the product, and

(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

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consumer 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 components
- (c) The amount of ~~each of the PFAS as a concentration~~ **each PFAS as a concentration in the product**, identified by name and its chemical abstracts service (CAS) registry number, 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, 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.
 - (ii) The name and address of the manufacturer, and the name, address, email address, and 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, 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:
 - (a) In the same 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) 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:

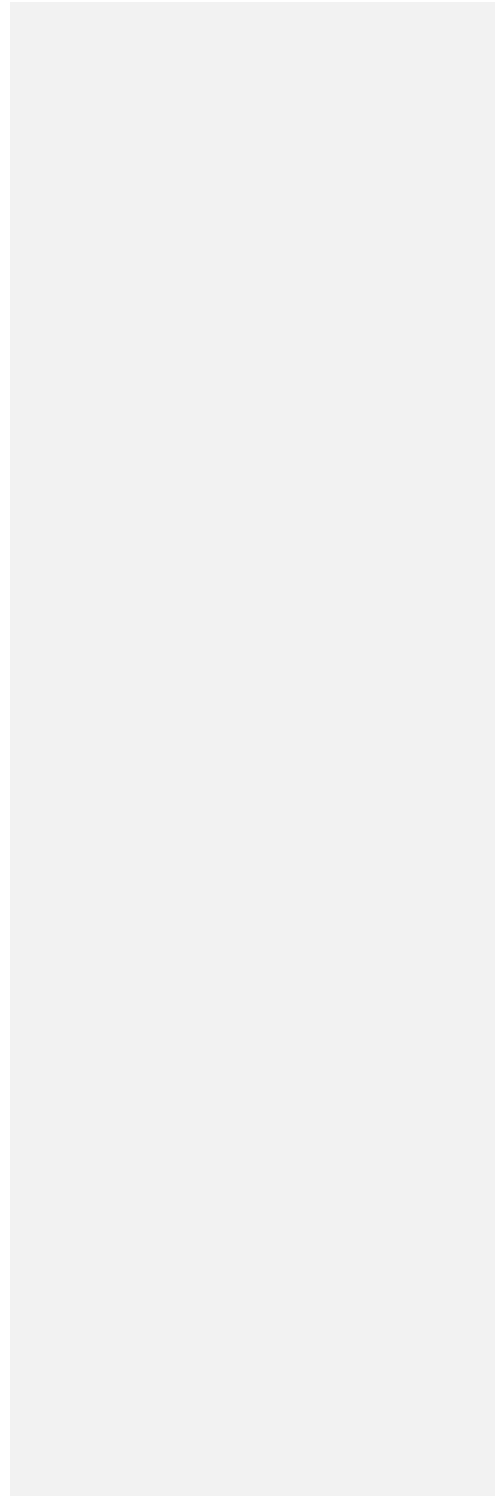
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Commented [BG11]: Added this so it is clear that we are reporting the amount of PFAS in the product

Commented [BG12]: "or any product component" wording is not in the legislation and keeping it in the document would confuse how to complete the reporting

Commented [BG13]: Not all analytical methods provide an exact amount of PFAS, and if offering up reporting a range, then providing an exact quantity really isn't applicable.

Commented [BG14]: We request that the contact person and the person of authority be separate people. General Motors is a large corporation and the person responsible for supplying PFAS information to Maine DEP is not the same person who would have authority during a noncompliance situation.



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- (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) 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. 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, rather than into 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 notice 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.
- 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*.

(4) Replacement and service parts for vehicles already manufactured prior to January 1, 2023 are exempt from notification and elimination requirements.

(5) De minimis levels (less than 0.1% in product) are exempt from notification and elimination requirements.

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

Commented [BG15]: It would be impossible for General Motors to be able to determine PFAS amounts in replacement parts that are already manufactured. We have replacement parts that go back 30+ years.

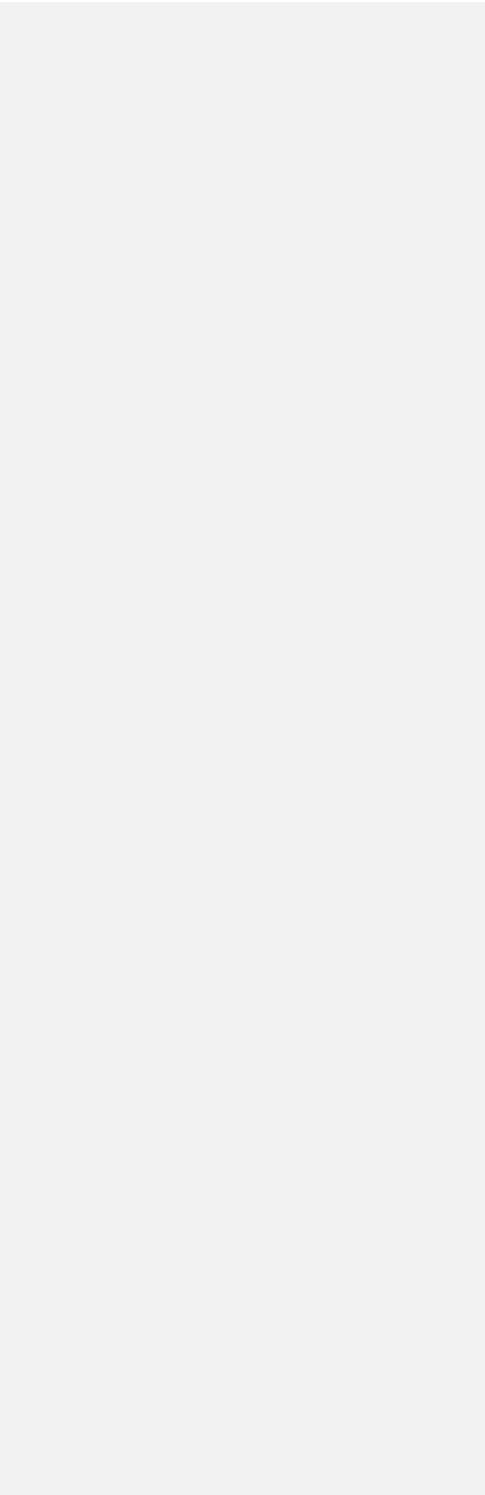
Commented [BG16]: General Motors is federally required to provide replacement and service parts for 15 years after manufacturing of the vehicle ceases.

Commented [BG17]: The automotive parts database (International Material Data System - IMDS) generally tracks substances of concern down to 0.1%, this is also the level that is used for Safety Data Sheets (SDS). Data below this level is generally not available.

apply to the sale or resale of a used fabric treatment or used product to which fabric treatment has been applied.

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- 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 by rule that the use of PFAS in the product is a currently unavoidable use. The department may specify specific products or product categories in which it has determined the use of PFAS is a currently unavoidable use.~~ This prohibition does not apply to the sale or resale of a used product.

Commented [BG18]: Updated to match the legislative text

6. Fees.

- A. **Fee amount.** To cover the ~~reasonable~~ 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 \$ ~~_____~~.

Commented [BG19]: Added per the legislation

~~(1) The fee must be paid for each individual product registered regardless of whether it is registered independently or as part of a category.~~

Commented [BG20]: It is inappropriate to define a fee this way until we know what the department's reasonable costs are to implement the program

(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 containing intentionally added PFAS if the manufacturer has failed to provide the information required under Section 3.

(1) ~~The department may exempt a product from the prohibition under this subsection if the department determines that the use of PFAS in the product is a currently unavoidable use.~~

Commented [BG21]: Added per the legislation

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) 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.

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