

Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

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Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances

SUMMARY: This Chapter details the sales prohibitions for new and unused products and product components containing intentionally added Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) as well as the notification requirements for products containing intentionally added PFAS determined to be a currently unavoidable use pursuant to 38 M.R.S. § 1614.

NOTE: The statutory basis for this rulemaking contains citations to the jurisdiction of federal agencies, federal statutes, and federal regulations. Such legislative citations are not subject to the same Maine Administrative Procedures Act limitations, such as prospective incorporation by reference. As such, the Department understands the legislative intent to be that any changes at the federal level are to be incorporated into the program immediately without the need for additional public processes.

1. Applicability. Unless exempted in Section 4, this Chapter applies to all new and unused products and product components sold, offered for sale, or distributed for sale in the State of Maine which contain intentionally added perfluoroalkyl and polyfluoroalkyl substances.

2. Definitions.

Adult Mattress. “Adult mattress” is defined at 38 M.R.S. §1614(1).

Aerosol propellant. “Aerosol propellant” is defined at 38 M.R.S. §1614(1).

Air care product. “Air care product” is defined at 38 M.R.S. §1614(1).

Aircraft. “Aircraft” is defined at 38 M.R.S. §1614(1).

NOTE: While the FAA considers unmanned aerial vehicles, commonly referred to as drones, to be aircraft, for the purposes of this rule, due to their unmanned nature, they do not meet the definition of aircraft.

Alternative. “Alternative” is defined at 38 M.R.S. §1614(1).

Architectural fabric structure. “Architectural fabric structure” is defined at 38 M.R.S. §1614(1).

Artificial Turf. “Artificial turf” is defined at 38 M.R.S. §1614(1).

Automotive maintenance product. “Automotive maintenance product” is defined at 38 M.R.S. §1614(1).

NOTE: Automotive maintenance products may be used on or marketed for use on any style of motor vehicle. Automotive maintenance products do not include items which are used in the mechanical maintenance of an automobile, such as oil, coolant, filters, and other consumable and replacement and repair parts.

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.

Carpet or rug. “Carpet or rug” is defined at 38 M.R.S. §1614(1).

Chemically-formulated. “Chemically-formulated” means a synthetic substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term does not apply to substances created by naturally occurring biological processes.

Cleaning Product. “Cleaning product” is defined at 38 M.R.S. §1614(1).

NOTE: The definition of cleaning product does not include products that are used solely in an industrial setting.

NOTE: The defined term of air care product is more narrowly defined as a consumer product.

Clothing item. “Clothing item” means an article of wearing apparel designed to be worn on or about the human body. The term does not include accessories or special clothing, such as jewelry, watches, watchbands, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, belts, and belt buckles, footwear, or articles of wearing apparel designed to be worn by animals.

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, the method must remain unmodified when not performed by a third-party laboratory. 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>.

Consumer products. “Consumer products” means goods which are intended to be used primarily for personal, family or household purposes.

NOTE: Non-consumer products and consumer products refer to the characteristic of a product, while the defined term consumer refers to a characteristic of a person. For the purposes of this Chapter, the character of the purchaser does not impact the character of the goods purchased.

NOTE: The statutorily defined terms of carpet or rug, air care products, and automotive maintenance products are limited to consumer products.

Container. “Container” means any package as defined in 32 M.R.S. §1732(4), which is meant to encase a liquid, powder, or gas by means of direct contact.

Cookware product. “Cookware product” is defined at 38 M.R.S. §1614(1).

NOTE: The definition of cookware is limited to houseware. Cookware does not encompass items intended for use in and market exclusively for use in commercial, industrial, or institutional settings.

NOTE: Cookware meant as houseware for food storage is sold as a product and not packaging, therefore it is not covered by any exemption found in Section 4.

Cosmetic Product. “Cosmetic Product” is defined at 38 M.R.S. §1614(1).

NOTE: Cosmetic products include inks, such as tattoos, implants, jewelry, and body modifications that are introduced into the human body unless otherwise exempted under Section 4.

NOTE: To be considered a soap, alkali salts of fatty acids must be the only material that results in the product’s cleaning action. If the product contains synthetic detergents, it is a cosmetic, not a soap, even though it may still use the word “soap” on the label.

Cosolvent. “Cosolvent” means substances added to a primary solvent in small amounts to increase the solubility of a poorly soluble compound.

Currently unavoidable use. “Currently unavoidable use” is defined at 38 M.R.S. §1614(1).

Dental floss. “Dental floss” means a product designed to clean between teeth in places that are not accessible with a toothbrush or an interdental brush. The product can be packaged with pre-cut or continuous length of strong thread or fine tape and is specifically designed to be drawn between the teeth to remove food particles and prevent dental plaque, such as dental floss and dental tape. Dental floss includes products commonly referred to as flossers where a section of dental floss is mounted to a handle or device meant to facilitate the act of flossing. Dental floss does not include products such as water flossers or other similar devices.

Department. “Department” means the Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner of the Department of Environmental Protection.

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.

Electronics. “Electronics” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Environmental Control Technology. “Environmental control technology” means any system, item of equipment or component having as its primary function the reduction or prevention of an environmental impact.

Essential for Health, Safety, or the Functioning of Society. “Essential for Health, Safety or the Functioning of Society” is defined at 38 M.R.S. §1614(1).

Fabric. “Fabric” means a textile made by weaving, knitting, or felting natural or synthetic fibers. For the purposes of this rule, fabric includes leather and synthetic leather.

Fabric treatment. “Fabric treatment” is defined at 38 M.R.S. §1614(1).

NOTE: Fabric treatments do not include fabric dyes.

Finished product. “Finished product” means a product that has been manufactured, packaged, and is in the form, packaging, and condition in which it will be sold, offered for sale, or distributed for sale.

Foam. “Foam” is defined at 38 M.R.S. §1614(1).

Fully fluorinated carbon atom. “Fully fluorinated carbon atom” means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

Functionally Equivalent. “Functionally Equivalent” means a product or product component that functions in the same basic manner as the product it is being compared against to perform the same purpose to the same standard as the original PFAS containing product or product component it is being compared against.

Fluorinated container. “Fluorinated container” means any container which has been treated with fluorine atoms to create a permanent barrier that protects the container from the chemical it is intended to encounter.

General cleaning product. “General cleaning product” means Products designed to clean multiple common surfaces.

Intentionally added PFAS. “Intentionally added PFAS” is defined at 38 M.R.S. §1614(1).

NOTE: Intentionally added PFAS includes degradation by-products 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 or PFAS used in the manufacturing process or comes into contact with the product during the manufacturing process but is not present in the final product.

Intrinsic to the design or construction of a building. “Intrinsic to the design or construction of a building” means those elements of a building or structure which are necessary to perform its intended purpose. Intrinsic to the design or construction of a building may include structural elements and elements meant to block light, wind, or precipitation. Intrinsic to the design or construction of a building does not include elements which are solely decorative or otherwise merely enhance the attractiveness of a structure or its function or those elements that are quickly or easily removed from the structure.

Juvenile product. “Juvenile product” is defined at 38 M.R.S. §1614(1).

Known or reasonably ascertainable by. “Known or reasonably ascertainable by” is defined at 38 M.R.S. §1614(1).

Laboratory equipment. “Laboratory equipment” means any analytical instrument or support equipment that is required to generate the results of an analysis. Laboratory equipment includes, but is not limited to, any tool, gear, or appliance that is intended to be used in the creation of a substance, such as reaction vessels, gas generators, or preparatory or purifying equipment.

Manufacturer. “Manufacturer” is defined at 38 M.R.S. §1614(1).

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, and the product is sold, offered for sale, or distributed for sale in the State of Maine, the Department will consider the importer to be the manufacturer.

NOTE: When it is possible to consider multiple entities the manufacturer, the Department will consider the party who controls the formulation of the product and its PFAS content to be the manufacturer.

Mattress. “Mattress” means a resilient material or combination of materials enclosed by ticking, intended for sleeping upon, and may include adult, youth, crib, bunk bed, futon, flip chairs, sleeper, water, or air mattresses.

Medical device. “Medical device” is defined at 38 M.R.S. §1614(1).

Menstruation products. “Menstruation products” means products used to catch menstrual flow, such as disposable and reusable pads, tampons, period underwear, and menstrual cups.

Off-highway vehicle. “Off-highway vehicle” is defined at 38 M.R.S. §1614(1).

NOTE: A vehicle manufactured by the brand Stellantis and badged with the Jeep brand does not qualify solely based on its brand name. The common term jeep refers to a small, sturdy, four-wheel drive vehicle; a Jeep must meet the meaning of the common term to be considered a jeep.

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

Outdoor apparel for severe wet conditions. “Outdoor apparel for severe wet conditions” is defined at 38 M.R.S. §1614(1).

Perfluoroalkyl and polyfluoroalkyl substances (PFAS). “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” is defined at 38 M.R.S. §1614(1).

NOTE: The EPA maintains a webpage of chemicals that it has 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 under a currently unavailable use determination which contains

intentionally added PFAS must be reported to the Department regardless of whether the substance is found on any list.

Person. “Person” means any individual; partnership; corporation; firm; or public or private organization of any character.

Product. “Product” is defined at 38 M.R.S. §1614(1).

NOTE: Product includes packages, packaging components, and food packaging as defined in 32 M.R.S. § 1732, when sold individually or in bulk and not used in marketing, handling, or protecting a product.

Product component. “Product component” is defined at 38 M.R.S. §1614(1).

Proprietary information. “Proprietary information” is defined at 38 M.R.S. §1614(1).

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.

Reasonably available. “Reasonably available” means a PFAS alternative which is readily available in sufficient quantity and at a comparable cost to the PFAS it is intended to replace and performs as well as or better than PFAS in a specific application of PFAS in a product or product component.

Refrigerant. “Refrigerant” is defined at 38 M.R.S. §1614(1).

Resilient floor covering. “Resilient floor covering” means a non-textile floor that provides underfoot comfort and characteristically bounces back from repeated traffic or compression.

Semiconductor. “Semiconductor” means a material having conductivity characteristics intermediate between conductors and insulators. Junctions between certain types of semiconductors permit electric current to flow more easily in one direction than the other. Semiconductors do not include commonly associated materials such as printed circuit boards, solder, flux, wires, screen printing ink, connectors and sockets, or conformal coatings.

NOTE: A product must meet the definition of a semiconductor, a product will not be considered a semiconductor solely because other products that serve the same or similar purpose are semiconductors.

Significant change. “Significant change” means a change in the composition of a product which results in the addition of a specific PFAS; a change in the amount of PFAS of more than a 10% increase, above the method variability allowed by the commercially available analytical method used, of the concentration that has been reported when compared to the existing notification; or a change in responsible official or contact information.

Single Use. “Single use” is defined at 38 M.R.S. §1614(1).

Soap. “Soap” means a product composed mainly of the alkali salts of fatty acids, that is, the material you get when you combine fats or oils with an alkali, such as lye.

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. Substantially equivalent information may include an existing notification by a person who manufactures a product or product component when the same product or product component is offered for sale under multiple brands.

Ski wax. “Ski wax” is defined at 38 M.R.S. §1614(1).

Textile. “Textile” is defined at 38 M.R.S. §1614(1).

Textile article. “Textile article” is defined at 38 M.R.S. §1614(1).

Upholstered furniture. “Upholstered furniture” is defined at 38 M.R.S. §1614(1).

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.

Vehicle. “Vehicle” is defined at 38 M.R.S. §1614(1).

3. Notification.

A. Upon the applicable effective date found in Section 5, for any product which is covered by a currently unavoidable use determination listed in Section 9(B) any manufacturer with greater than 100 employees of a product subject to this Chapter which is for sale in the State and that contains intentionally added PFAS shall submit to the Department a notification consisting of the following:

NOTE: Upon the applicable effective date listed in Section 5 a product containing intentionally added PFAS is prohibited from being sold, offered for sale, or distributed for in the State of Maine, including any products to which a currently unavoidable use determination may apply; this prohibition is effective immediately for all covered products, including those already in the stream of commerce. Only those products for which there is a currently unavoidable use determination and the Department has received a completed notification meeting the requirements under this section, including the accompanying fee, are permitted for sale after the effective date. To prevent sales disruptions, the Department encourages manufacturers to submit notifications in advance of any applicable effective date as detailed in Section X(X) of this rule.

(1) A notification under this section must include:

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

(i) Global Product Classification (GPC) brick category and code, if available;

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- (I) If GPC is not applicable to the product or product component, the United States International Trade Commission's Harmonized Tariff System (HTS).
- (ii) The North American Industry Classification System code for the sector or sectors in which the products containing intentionally added PFAS will be utilized.
- (iii) The general type of the product; and
- (iv) Its intended use.
- (b) An estimate of the total number of units sold annually in the State of Maine or nationally;
- (c) The purpose for which PFAS are used in the product, including PFAS in any product component;
- (d) The identify of each PFAS by:
 - (i) Its name and its chemical abstracts service (CAS) registry number; or
 - (ii) In the absence of this number, a description approved by the Department.
- (e) The amount of each of the PFAS in the product or any product component:
 - (i) Reported as an exact quantity as a concentration, determined using commercially available analytical methods;
 - (ii) The total organic fluorine if the amount of each PFAS is not known or easily ascertainable, determined using commercially available analytical methods;
 - (iii) Based on information provided by a supplier or as falling within a range approved by the Department.

If reporting PFAS as falling within a Department-approved range, implemented 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; or

- (iv) If neither quantities of specific PFAS compounds or total organic fluorine are known or reasonably ascertainable, a manufacturer must provide the total weight of the product.

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

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- (f) 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 execute or direct others to execute the steps in Section 8 below.

For notifications submitted to the Department under the statutory requirement and prior to the availability of the digital reporting system, the notification must be submitted into the digital database within 90 days of its availability.

- (g) Identification, by citation to a specific section of this Chapter, of the applicable determination by the Department that the use of PFAS in the product subject to the notification is a currently unavoidable use.

NOTE: To be considered a valid notification, where applicable, the information provided by the manufacturer must be consistent with the information listed in the applicable currently unavoidable use determination.

- (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 Subsections 1(f) and (g) 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 substantially equivalent to the information required in Subsection 1, above;
- (iv) A statement that information in Subsection 2(a)(iii) above is updated in a similar manner as required by Subsection D below and;
- (v) A link to or copy of all publicly available substantially equivalent information described by the manufacturer.

- (b) The manufacturer shall still complete the notification for any requirements that were not waived, and 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.

C. A manufacturer may submit a single notification to the Department for multiple products or product components if all of the products or product components are covered by the same currently unavoidable use determination found in Section 9(B).

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- D.** A manufacturer shall 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 or request by the Department, a manufacturer shall update their notification:
- (a) Within 60 days of a request by the Department;
 - (b) Within 30 days of any change in responsible official or contact information; or
 - (c) Prior to the start of sales of a product with a new formulation or 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.
- (2) A manufacturer may voluntarily update the notification whenever a PFAS is reduced or eliminated, or 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 by Section 6.
- G.** A manufacturer shall provide, upon request by the Department, evidence sufficient to demonstrate the accuracy of the information reported in Subsection A.
- H.** Notifications to the Department expire on the same date the applicable currently unavoidable use determination, in Section 9(B), lapses.

NOTE: See Section 9(A) for procedures for requesting a new currently unavoidable use determination, including determinations for products covered by a determination that will expire.

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.

NOTE: Federal preemption involves a determination that the intent of federal laws is to limit or eliminate overlapping programs at the state level; the intent can be expressly written into the enabling statute or implicit where the structure and scope of the federal law reflects the intent to preempt.

The Department will treat as exempt products where an applicable federal law is written with language that explicitly preempts parts of this program. The Department will also treat as exempt any products where an applicable opinion from a court having jurisdiction in Maine finds that preemption of parts of this program is implied. Further, the Department will treat any product as exempt if the Department determines that it is impossible to comply with both a federal requirement and this Chapter; the acts of applying for a currently unavoidable use determination and submitting a notification and fee alone do not rise to the level of impossibility.

In the absence of explicit statutory language, obvious conflict, or an applicable court finding, the Department does not have the authority to independently make a finding of law or accept an assertion that implied preemption exists.

For more information on preemption see:

<https://crsreports.congress.gov/product/pdf/R/R45825/2>

- (2) A package as defined in 32 M.R.S. §1732(4), except when the package is the product of the manufacturer. The exemption under this Subsection does not apply to the package of a product prohibited from sale, offered for sale, or distributed for sale under Sections 5(B), (C), (E), and (F) if the package is a fluorinated container or container that otherwise contains intentionally added PFAS;
- (3) A used product or product component;
- (4) A firefighting or fire-suppressing foam or related product regulated under 38 M.R.S. § 424-C to which PFAS has been intentionally added;
- (5) A prosthetic or orthotic device or any product that is a medical device, drug or biologic or that is otherwise used in a medical setting or in medical applications that are regulated by or under the jurisdiction of the United States Food and Drug Administration (FDA).
- (6) A veterinary product intended for use in or on animals, including diagnostic equipment or test kits and the components and any product that is a veterinary medical device, drug, biologic or parasiticide or that is otherwise used in a veterinary medical setting or in veterinary medical applications that are regulated under the jurisdiction of:
 - (a) The FDA;
 - (b) The United States Department of Agriculture (USDA) pursuant to the federal Virus-Serum-Toxin Act; or
 - (c) The EPA pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, except that any such product approved by the EPA pursuant to that law for aerial or land application are not exempt from this Chapter.

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- (7) A product developed or manufactured for the purposes of public health, environmental, or water quality testing;
- (8) A product required to meet standards or requirements of the FAA, the National Aeronautics and Space Administration (NASA), the United States Department of Defense (DOD) or the United States Department of Homeland Security (DHS), except that the exemption under this Subsection does not apply to any textile article or refrigerant that is included in or as a component part of such products;
 - (a) If similar products are available for sale, offered for sale, or distributed for sale in the state of Maine either in compliance with an intentionally added PFAS sales prohibition or otherwise documented to be PFAS free, a manufacturer must, at the Department's request, provide sufficient justification that the product containing intentionally added PFAS is necessary to meet said requirements.
- (9) A motor vehicle or motor vehicle equipment regulated under federal motor vehicle safety standards, as defined in 49 U.S.C. § 30102(10), and any other motor vehicle, including an off-high vehicle or specialty vehicle, such as an all-terrain vehicle, side-by-side vehicle, farm equipment or personal assistive mobility device, except that the exemption under this Subsection does not apply to any textile article or refrigerant that is included in or as a component of such products;
- (10) A watercraft as defined in 32 M.R.S. § 13001(28)(2), or a seaplane, except that the exemption under this Subsection does not apply to any textile article or refrigerant that is included in or as a component part of such products;
- (11) A Semiconductor, including semiconductors incorporated into electronic equipment, and equipment and materials used in the manufacture of semiconductors;

NOTE: While semiconductors incorporated into electronic equipment are exempted from this Chapter, electronic equipment in their entirety is not. Manufacturers of electronic equipment are still subject to sales prohibitions, currently unavoidable use determinations, and notification requirements on the balance of their product which is not comprised of semiconductors.

- (12) Non-consumer electronics and non-consumer laboratory equipment not ordinarily used for personal, family or household purposes; or
- (13) Equipment directly used in the manufacture or development of products described in Subsections 5 through 12, above.

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

- A. Except as provided pursuant to Subsection H and Section 9(B), 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.

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- B.** Except as provided pursuant to Subsection H and Section 9(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.

The prohibition under this Subsection applies to fabric treatment that does not contain intentionally added PFAS but that is sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise 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.** Except as provided in Subsection H and Section 9(B), effective January 1, 2026, a person may not sell, offer for sale or distribute for sale in the State of Maine:

- (1) A cleaning product containing intentionally added PFAS;
- (2) A cookware product containing intentionally added PFAS;
- (3) A cosmetic product containing intentionally added PFAS;
- (4) Dental floss containing intentionally added PFAS;
- (5) A juvenile product containing intentionally added PFAS;
- (6) A menstruation product containing intentionally added PFAS;
- (7) A textile article containing intentionally added PFAS. The prohibition under this Subsection does not include:
 - (a) Outdoor apparel for severe wet conditions; or
 - (b) A textile article that is included in or a component part of a watercraft, aircraft or motor vehicle, including an off-highway vehicle;
- (8) Ski wax containing intentionally added PFAS; or
- (9) Upholstered furniture containing intentionally added PFAS.

The prohibitions under this Subsection apply to any of the products listed in Subsections 1 through 9 that do not contain intentionally added PFAS but that are sold, offered for sale or distributed for sale in a fluorinated container or container that otherwise contains intentionally added PFAS.

The prohibitions under this Subsection do not apply to products that are sold, offered for sale or distributed in used condition.

- D.** Except as provided in Subsection H and Section 9(B), effective January 1, 2029, a person may not sell, offer for sale or distribute for sale in the State of Maine;

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- (1) Artificial turf containing intentionally added PFAS; or
- (2) Outdoor apparel for severe wet conditions containing intentionally added PFAS, unless the apparel is accompanied by a legible, easily discernable disclosure that includes the following statement: “Made with PFAS chemicals.” The disclosure requirement under this Subsection applies to all sales, offers for sale or distributions for sale in the State of Maine for outdoor apparel for severe wet conditions containing intentionally added PFAS.

The prohibitions under this Subsection do not apply to any listed products that are sold, offered for sale or distributed for sale in used condition.

- E.** Except as provided in Subsection H and Section 9(B), effective January 1, 2032, a person may not sell, offer for sale, or distribute for sale in the State of Maine any product that is not already prohibited for sale under Subsections A, B, C, D, or G that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used product.

The prohibition under this Subsection applies to any such products that do not contain intentionally added PFAS but that are sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS.

The prohibitions under this Subsection do not apply to:

- (1) Any such product sold, offered for sale or distributed for sale in used condition; and
- (2) Products subject to Subsection F, below.

- F.** Except as provided in Subsection H and Section 9(B), effective January 1, 2040, a person may not sell, offer for sale or distribute for sale in the State of Maine:

- (1) Cooling, heating, ventilation, air conditioning or refrigeration equipment that contains intentionally added PFAS; or
- (2) Refrigerants, foams, or aerosol propellants that contain intentionally added PFAS.

The prohibitions under this Subsection apply to any of the listed products that do not contain PFAS but are sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS.

The prohibition of this Subsection does not apply to any such products sold, offered for sale or distributed for sale in used condition or to parts and other servicing needs for cooling, heating, ventilation, air conditioning or refrigeration equipment, including refrigerants used in servicing such equipment as long as the refrigerant is listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits by the United States Environmental Protection Agency pursuant to the Significant New Alternatives Program at 42 U.S.C. 82(G), as long as the refrigerant, foam, or aerosol propellant is sold, offered for sale or distributed for sale for the use for which it is listed pursuant to that program.

G. The Department has identified the following categories of products likely to cause contamination of the State's land or water resources if they contain intentionally added PFAS. Beginning on the date listed below a person may not sell, offer for sale, or distribute for sale the listed items in the State of Maine:

(1) [Reserved]. Example: *Beginning January 1, XXXX a person may not sell, offer for sale, or distribute for sale in the State of Maine PRODUCT CATEGORY that contains intentionally added PFAS.*

H. The prohibitions in Section 5 do not apply to a retailer in the State of Maine unless the retailer sells offers for sale or distributes for sale in the State of Maine a product containing intentionally added PFAS for which the retailer has received a notification pursuant Section 8(2) that the sale of the product is prohibited.

6. Fees.

A. Fee amount. To cover the administrative costs incurred by the Department to administer the program, a manufacturer of products or product components required by Section 3 to provide notice shall, as part of the submission of notification, pay a fee of \$5,000 for each notification submitted.

For the purposes of calculating fees, each submission of all the information required in Section 3(A)(1), which has not been waived, for either an individual product or product component or a group thereof reported under a single currently unavoidable use determination will be considered a separate notification.

NOTE: Notifications are required only for products or product components which are subject to a currently unavoidable use determination and are sold, offered for sale, or distributed for sale in the State of Maine. Product components that are incorporated into complex products which are sold, offered for sale, or distributed for sale in Maine are not subject to the notification requirement, even when information regarding the product components is provided as part of that product's notification submission.

A fee is required for notifications of products, including those submitted under a subsequent currently unavoidable use determination. No fee is required for information updates to an existing notification or changes to inactive status.

B. If paying electronically via the Department's reporting database, a receipt confirming digital payment will be issued.

C. Fees will be considered paid either when funds are transferred to the Treasurer of the State of Maine or when a confirmation of electronic payment is transmitted.

7. Failure to Provide Notice.

A. Unless granted 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 regardless of whether the Department has determined a current unavoidable use exists if the manufacturer has failed to provide the information required under Section 3.

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 of Maine 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. The Department's initial focus will be on encouraging voluntary compliance. If a person resists efforts to achieve voluntary compliance the Department may take progressive steps to achieve compliance.

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 Sections 5 and 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 any 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.

9. Currently Unavoidable Use.

A. Proposal for Currently Unavoidable Use Determinations.

Proposals for currently unavoidable use determinations may be submitted by manufacturers individually or collectively. A separate proposal must be submitted for each individual combination of product category and industrial sector. The Department requests that manufacturers submit their proposals to PFASProducts@maine.gov with a subject line of "Proposal for Currently Unavoidable Use Determination for [GPC/HTC] in [NAICS] sector by [Proposal Submitter's Name or Organization]".

For initial currently unavoidable use proposals, the requester shall submit the information in this Section no later than 18 months prior to the applicable sales prohibition. The Department will not consider any proposals for an initial currently unavoidable use determination prior to 36 months in advance of the applicable sales prohibition; any proposals received prior to this date will need to be updated and resubmitted between 36 and 18 months before the effective date of the applicable sales prohibition.

A proposal must a minimum contain:

- (1) A brief description of the type of product to which PFAS is intentionally added into including:
 - (a) A brief narrative of the product; its physical structure and appearance; how it functions; and if applicable its place in larger items, systems, or processes;

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- (b) If applicable, the Global Product Classification (GPC) brick category and code, or if GPC is not applicable then the Harmonized Tariff System (HTS) code; and
 - (c) The North American Industry Classification System (NAICS) code for the sector or sectors in which the products containing intentionally added PFAS will be utilized.
- (2) An explanation of why the availability of PFAS in the specific product identified in Subsection 1 is essential for health, safety or the functioning of society. This may include or take the form of a description of the negative impact that would be caused by the unavailability of PFAS for use in the product and the subsequent unavailability or unsatisfactory performance of the product;
- (3) A description of how the specific use of PFAS in the product is essential to the function of the product. Including:
- (a) If this use of PFAS is required by federal or state law or regulation, provide citations to that requirement. For the purposes of this Subsection “required” means the applicable statute or regulation specifically states that PFAS or a specific PFAS is required to be present in the product, not that the proposer’s understanding or experience of PFAS is necessary to meet a performance standard; such performance standards may be addressed in Subsection b, below; and

NOTE: Products required to meet certain federal standards or regulated under certain federal programs are exempt from this Chapter. See Section 4 for more information.

- (b) The required specific characteristic or combination of characteristics that necessitate the use of PFAS chemicals.
- (4) A description of whether there are alternatives for this specific use of PFAS which are reasonably available including:
- (a) Identification of specific compounds, classes of materials, or combinations of materials identified as potential alternatives including the removal of PFAS without substitution;
 - (b) An assessment of how the materials in Subsection a, above, meet or fail to meet the criteria identified in Subsection 3(b) above;
 - (c) An assessment if materials identified in Subsection a, above, are available in sufficient quantities to meet production needs without regard to cost;
 - (d) An assessment of the cost difference between obtaining PFAS for use in a product and obtaining the material identified in Subsection a, above, for the same purpose;
 - (e) A comparison of the known risks to human health and the environment between PFAS and the materials identified in Subsection a; and
 - (f) An assessment of whether there are feasible changes to the manufacturing process of the product that would eliminate the need for PFAS.

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- (5) A list of federal regulations, other State of Maine regulations, and regulations of other states which the product described in Subsection 1 is subject to by reason of containing PFAS, including;
 - (a) Details of any sales prohibition the product is subject to because of containing intentionally added PFAS including;
 - (i) Whether that sales prohibition is absolute or if there is a process similar to the State of Maine's currently unavoidable use determination.
 - (ii) If there is a similar process available, whether the requester has filed a proposal under the relevant state or federal program, and its status.
- (6) If, in another jurisdiction, subject to an absolute prohibition or no currently unavoidable use determination or similar has been made, a list of comparable products that the proposer is aware of remaining available for sale, offered for sale, or distributed for sale within that jurisdiction;
- (7) If a similar program's sales prohibition is identified as applicable in Subsection 5 and similar products are available for sale, offered for sale, or distributed for sale;
- (8) A justification explaining how products available in compliance with other similar sales prohibitions are not reasonably available alternatives in the State of Maine. This may include demonstrating that additional sales in the State of Maine would result in such an increased demand for the PFAS alternative that it would no longer be available in sufficient quantities, such a demonstration must include an assessment that an increase in production of the PFAS alternative is not possible.
- (9) Documentation demonstrating that products containing PFAS alternatives in other jurisdictions would not perform as intended in the State of Maine due to differing physical or climate conditions in the State of Maine;
- (10) Contact information for the submitter of the proposal. The contact person or persons should be familiar with the contents of the proposal and if necessary be able to answer Department questions or provide additional requested information; and
- (11) Any information known or reasonably ascertainable by the manufacturer regarding the impacts on human health or the environment of the product. At a minimum this should include the following items, if available;
 - (a) Any information documenting impacts on human health as a result of the specific use of PFAS in the product;
 - (b) A description of the likely pathways of human exposure for the specific use of PFAS in the product;
 - (c) Any information documenting environmental impacts as a result of the specific use of PFAS in the product;

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- (d) A description of any likely pathways for environmental release of PFAS as a result of the specific use of PFAS in the product; and
- (e) A description of the product's fate at the end of its lifecycle. This should include:
 - (i) Documentation of any product stewardship programs or other government-imposed processes at the end of a product's lifecycle,
 - (ii) How the product is intended to be disposed of such as landfilling or via sewage or septage system, and
 - (iii) The recycling rate of the product.

Information submitted to the Department in support of items 1 through 4 above and 10, must contain sufficient detail or supporting documentation for the Department to make a defensible determination.

NOTE: While 38 M.R.S. § 1614(12) and Section 10 provide a mechanism for the protection of proprietary information, currently unavoidable use determinations are subject to the Department's rulemaking process including approval by the Board of Environmental Protection in a public meeting and response to public comments. Should a proposal for a currently unavoidable use determination contain claims of confidentiality, the Department may determine that there is insufficient publicly available information to justify a rulemaking. The Department strongly recommends that all proposals for currently unavoidable use determinations do not contain claims of confidentiality.

Upon the expiration date listed in Section 9(B), a currently unavoidable use determination is no longer applicable, and all sales, offers for sale, or distributions for sale are immediately prohibited.

If a person believes the currently unavoidable use remains, they may submit a proposal to the Department for a new currently unavoidable use determination. That proposal, in addition to the information required above, must include a description of any changes since the time of the first currently unavoidable use determination and a summary of efforts made during that time to develop or discover alternatives or to make existing alternatives reasonably available. The Department will consider all subsequent proposals no sooner than 24 months prior to and no later than 12 months prior to the expiration date of the determination in effect.

B. Department Designations of Currently Unavoidable Uses.

The Department has determined that the following uses of PFAS are currently unavoidable uses. Each determination shall remain in effect until the date listed below.

- (1) [Reserved] Example: *The use of PFAS in products within the HTC/GPC classification ### in the industrial sector with the NAICS code ### are a currently unavoidable use until month day, year (either 5 years from applicable prohibition OR held blank to be filled in by SOS as 5 years from effective date).*

10. Proprietary Information.

Information submitted pursuant to Sections 3 and 9 above are presumptively public records under Maine’s Freedom of Access Act (“FOAA”), 1 M.R.S. §401 *et seq.* Any information submitted to the Department pursuant to this Chapter that the submitting party believes are not subject to disclosure under FOAA must be clearly marked as “claimed confidential.” Any request to the department seeking records submitted under this chapter that are marked as “claimed confidential” will be processed in accordance with 38 MRSA §1310-B, subsection 2.

This Subsection does not authorize a manufacturer to refuse to disclose to the Department information required under this Chapter.

AUTHORITY: 38 M.R.S. § 1614