

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 1113 - L.D. 1503

An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, contamination of soil and water in the State from perfluoroalkyl and polyfluoroalkyl substances, or PFAS, poses a significant threat to the environment of the State and to the health of its citizens; and

Whereas, the full extent of PFAS contamination in the State is not presently known but is anticipated to be widespread and to require a significant expenditure of resources to identify and remediate; and

Whereas, PFAS continue to be used across a variety of industries for a variety of purposes and are ultimately contained in a variety of products sold in the State; and

Whereas, to address the imminent threat of further contamination of soil and water in the State, it is imperative to collect information regarding the use of PFAS in and to phase out the sale of certain nonessential products containing PFAS, as proposed in this legislation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1612 is enacted to read:

§1612. Products containing PFAS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Carpet or rug" means a fabric marketed or intended for use as a floor covering.

B. "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.

C. "Fabric treatment" means a substance applied to fabric to give the fabric one or more characteristics, including but not limited to stain resistance or water resistance.

D. "Intentionally added PFAS" means PFAS added to a product or one of its product components to provide a specific characteristic, appearance or quality or to perform a specific function. "Intentionally added PFAS" also includes any degradation by-products of PFAS.

E. "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if 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.

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

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

H. "Product component" means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

I. "Publicly owned treatment works" has the same meaning as in section 361-A.

2. Notification. A manufacturer of a product for sale in the State that contains intentionally added PFAS shall comply with the requirements of this subsection.

A. Beginning January 1, 2023, a manufacturer of a product for sale in the State that contains intentionally added PFAS shall submit to the department a written notification that includes:

(1) A brief description of the product;

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

(3) The amount of each of the PFAS, identified by its chemical abstracts service registry number, in the product, reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes by the department;

(4) The name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer; and

(5) Any additional information established by the department by rule as necessary to implement the requirements of this section.

B. With the approval of the department, a manufacturer may supply the information required in paragraph A for a category or type of product rather than for each individual product.

C. In accordance with rules adopted by the department, a manufacturer shall update and revise the information in the written notification whenever there is significant change in the information or when requested to do so by the department.

3. Waiver of notification; coordination with other states; extension of deadline.

The department may waive all or part of the notification requirement under subsection 2 if the department determines that substantially equivalent information is already publicly available. The department may enter into an agreement with one or more other states or political subdivisions of a state to collect notifications and may accept notifications to a shared system as meeting the notification requirement under subsection 2. The department may extend the deadline for submission by a manufacturer of the information required under subsection 2 if the department determines that more time is needed by the manufacturer to comply with the submission requirement.

4. Exemptions. The following are exempt from this section:

A. A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority; and

B. A product subject to Title 32, chapter 26-A or 26-B.

5. Prohibition on sale of products containing intentionally added PFAS. This subsection governs sales of products containing intentionally added PFAS.

A. Effective January 1, 2023, a person may not sell, offer for sale or distribute for sale in this State 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 this State a fabric treatment that contains intentionally added PFAS. This prohibition does not apply to the sale or resale of a used fabric treatment.

C. The department may by rule identify products by category or use that may not be sold, offered for sale or distributed for sale in this State if they contain intentionally added PFAS. The department shall prioritize the prohibition of the sale of product categories that, in the department's judgment, are most likely to cause contamination of the State's land or water resources if they contain intentionally added PFAS. Products in which the use of PFAS is a currently unavoidable use as determined by the department may be exempted by the department by rule. The department may not prohibit the sale or resale of used products.

Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. Effective January 1, 2030, a person may not sell, offer for sale or distribute for sale in this State 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 used products.

6. Fees. The department may establish by rule and assess a fee payable by a manufacturer upon submission of the notification required under subsection 2 to cover the department's reasonable costs in developing rules under subsection 5, paragraphs C and D and administering the requirements of subsections 2 and 9.

7. Failure to provide notice. A person may not sell, offer for sale or distribute for sale in the State a product containing intentionally added PFAS if the manufacturer has failed to provide the information required under subsection 2.

A. 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.

B. The prohibition in this subsection does not apply to a retailer in the State 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 subsection 8, paragraph B that the sale of the product is prohibited.

8. Certificate of compliance. If the department has reason to believe that a product contains intentionally added PFAS and is being offered for sale in violation of subsection 7, the department may direct the manufacturer of the product to, within 30 days:

A. Provide the department with the certificate attesting that the product does not contain intentionally added PFAS; or

B. Notify persons who sell that product in this State that the sale of that product is prohibited in this State and provide the department with a list of the names and addresses of those notified.

9. PFAS source reduction program. To the extent funds are available and in consultation with relevant stakeholders, the department shall develop and implement a program to reduce the presence of PFAS in discharges to air, water and land by encouraging the use of safer alternatives and the proper management of materials containing PFAS. The program may include:

A. Information resources targeted to industrial or commercial users of PFAS;

B. Education of the general public;

C. To the extent funds are available, grants to operators of publicly owned treatment works for the purposes of developing, expanding or implementing pretreatment standards for PFAS and education of users on sources of PFAS and proper management;

D. To the extent funds are available, grants to municipalities for the purposes of educating solid waste disposal users on sources of PFAS and proper management; and

E. Other efforts determined by the department to be prudent to achieve the program's purpose.

10. Rules. The department shall adopt rules to implement this section. Except as provided in subsection 5, paragraph C, rules adopted to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.