

Joint Standing Committee on Environment and Natural Resources

MEETING AGENDA

Monday, October 2nd, 2023

Cross State Office Building, Room 216 (ENR Committee Room)

The meeting will be livestreamed at the following link: <https://legislature.maine.gov/Audio/#216>

- 10:00 a.m.** **Welcome, introductions and overview of meeting**
➤ *Committee Chairs*
- 10:05 a.m.** **Overview of PFAS in products law; review of PFAS-related proposals considered by ENR in 2023**
➤ *Dan Tartakoff, Office of Policy and Legal Analysis*
- 10:15 a.m.** **Regulatory update, PFAS in products law**
➤ *Mark Margerum, Department of Environmental Protection*
- 11:15 a.m.** **European approaches to regulation of PFAS in products**
➤ *Jonatan Kleimark, ChemSec*
- 12:00 p.m.** **Break for lunch (1 hour)**
- 1:00 p.m.** **US approaches to regulation of PFAS in products**
➤ *Gretchen Lee Salter, Safer States*
- 1:45 p.m.** **Committee member discussion and next steps**
- 2:30 p.m.** **Adjourn**

****Please note that times are approximate and subject to change****

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

H.P. 138 - L.D. 217

**An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl
and Polyfluoroalkyl Substances**

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

Sec. 1. 38 MRSA §1614, sub-§2, ¶A, as enacted by PL 2021, c. 477, §1 and reallocated by RR 2021, c. 1, Pt. A, §54, is amended to read:

A. ~~Beginning~~ Except as provided in subsection 3, by January 1, 2023 2025, 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, including an estimate of the total number of units of the product sold annually in the State or nationally;
- (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 or in the absence of this number a description approved by the department, in the product, reported as an exact quantity, or as the amount of total organic fluorine if the amount of each PFAS compound is not known, determined using commercially available analytical methods or based on information provided by a supplier 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.

Sec. 2. 38 MRSA §1614, sub-§2, ¶D is enacted to read:

D. The requirements of this subsection do not apply to a manufacturer that employs 25 or fewer people.

Sec. 3. 38 MRSA §1614, sub-§4, as enacted by PL 2021, c. 477, §1 and reallocated by RR 2021, c. 1, Pt. A, §54, is amended to read:

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 package, as defined in Title 32, section 1732, subsection 4, for a product subject to Title 32, chapter 26-A or 26-B, except when the package is the product of the manufacturer; and

C. A used product or used product component.

Sec. 4. 38 MRSA §1614, sub-§7, as enacted by PL 2021, c. 477, §1 and reallocated by RR 2021, c. 1, Pt. A, §54, is amended to read:

7. Failure to provide notice. A Beginning January 1, 2025, 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, ~~except that this prohibition does not apply to:~~

A. ~~The department may exempt a~~ A product exempted from the prohibition under this subsection if by the department determines upon a determination by the department that the use of PFAS in the product is a currently unavoidable use;

B. ~~The prohibition in this subsection does not apply to a~~ 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;

C. A manufacturer exempted from the notification requirement pursuant to subsection 2, paragraph D;

D. A product for which the department has waived the notification requirement pursuant to subsection 3; and

E. A manufacturer that pursuant to subsection 3 has received from the department an extension of the deadline for submission of the information required by subsection 2. The exception under this paragraph applies only for the duration of the extension provided by the department.

Sec. 5. Retroactivity. This Act applies retroactively to January 1, 2023.

NOTE: amendments resulting from Public Law 2023, chapter 138 (LD 217), which take effect October 25, 2023, are *italicized* below.

§1614. 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. *Except as provided in subsection 3, by January 1, 2025, 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, *including an estimate of the total number of units of the product sold annually in the State or nationally;*
- (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 *or in the absence of this number a description approved by the department*, in the product, reported as an exact quantity, *or as the amount of total organic fluorine if the amount of each PFAS compound is not known*, determined using commercially available analytical methods *or based on information provided by a supplier* 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.

D. *The requirements of this subsection do not apply to a manufacturer that employs 25 or fewer people.*

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;

B. *A package, as defined in Title 32, section 1732, subsection 4, for a product, except when the package is the product of the manufacturer; and*

C. *A used product or used product component.*

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. *Beginning January 1, 2025, 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, except that this prohibition does not apply to:*

A. A product exempted from the prohibition under this subsection by the department upon a determination by the department that the use of PFAS in the product is a currently unavoidable use;

B. 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;

C. A manufacturer exempted from the notification requirement pursuant to subsection 2, paragraph D;

D. A product for which the department has waived the notification requirement pursuant to subsection 3; and

E. A manufacturer that pursuant to subsection 3 has received from the department an extension of the deadline for submission of the information required by subsection 2. The exception under this paragraph applies only for the duration of the extension provided by the department.

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.

** previously distributed analysis*



**Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS**

www.mainelegislature.gov/opla
13 State House Station, Augusta, Maine 04333-0013
(207) 287-1670

BILL ANALYSIS

TO: Members, Joint Standing Committee on Environment and Natural Resources
FROM: Dan Tartakoff, Principal Analyst, Office of Policy and Legal Analysis
DATE: May 4, 2023
RE: Analysis of LDs relating to PFAS in products law (217, 242, 1214, 1273, 1537)

Background – LD 1503 (2021)/38 MRSA §1614

In 2021, the Legislature enacted LD 1503, An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution, now codified at 38 MRSA §1614. That law contains a number of prohibitions and requirements applicable to manufacturers of certain PFAS-containing products.

- 1. Carpets, rugs and fabric treatments prohibited** – beginning January 1, 2023, a person may not sell a carpet, rug or fabric treatment containing intentionally added PFAS.
- 2. Statutory prohibition; all other products** – beginning January 1, 2030, a person may not sell any product containing intentionally added PFAS unless the DEP determines by rule that the use of PFAS is a currently unavoidable use. A “currently unavoidable use” of PFAS is a use that is “essential for health, safety or the functioning of society and for which alternatives are not reasonably available.”
- 3. Rule-based prohibition; other products** – DEP may adopt major substantive rules prohibiting the sale of additional products containing intentionally added PFAS. This appears meant to address the sale of certain PFAS-containing products subsequent to the enactment of this law but prior to January 1, 2030 when the broad prohibition takes effect.
- 4. Notification requirement** – beginning January 1, 2023, a manufacturer of a product for sale in the State that contains intentionally added PFAS must submit a written notification to DEP containing a variety of information about the product and the PFAS in the product. DEP may extend the deadline for submission of the notification upon a determination that the manufacturer needs more time to comply.
- 5. Failure to notify; prohibition** – a person may not sell a product containing intentionally added PFAS if the manufacturer has failed to provide the notification required by law. DEP is authorized to exempt a product from this prohibition upon a determination that the use of PFAS in the product is a “currently unavoidable use”

As noted by DEP at the LD 242 hearing, it is currently in the process of adopting rules under this law, which it expects to complete sometime this year. This is a routine technical rulemaking. A copy of the draft rule was distributed at the LD 142 hearing.

Summary of bills

1. **LD 217, An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances (Representative Campbell):** prior to the hearing the sponsor distributed a proposed amendment that replaces the bill, which is a concept draft. The amendment extends the January 1, 2023 deadline for reporting the use of PFAS in products for sale to January 1, 2025, with such change made retroactive to January 1, 2023.
2. **LD 242, An Act to Clarify That Animal Health Products Are Exempt from the Perfluoroalkyl and Polyfluoroalkyl Substances Reporting Law (Senator Baldacci):** provides that certain health products intended for animals that are regulated under the Federal Food, Drug, and Cosmetic Act, the federal Virus-Serum Toxin Act or the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from the notification requirements that generally apply to products containing PFAS.
3. **LD 1214, An Act to Clarify the Laws to Combat Perfluoroalkyl and Polyfluoroalkyl Substances Contamination (Senator Baldacci):** makes the following changes to laws governing PFAS in products.
 - Changes the definitions of "intentionally added PFAS" and "perfluoroalkyl and polyfluoroalkyl substances."
 - Changes the date for the requirement that a manufacturer of a product for sale in the State that contains intentionally added PFAS submit a written notification to the DEP from January 1, 2023 to January 1, 2024. With respect to this notification, it requires a manufacturer to designate confidential business information claims in accordance with the laws of the State and the Uniform Trade Secrets Act.
 - Removes the provision of law that provides that, 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 DEP has determined by rule that the use of PFAS in the product is a currently unavoidable use.
4. **LD 1273, An Act to Exempt Some Businesses from Certain Laws Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in Accordance with the Size of the Business (Senator Stewart):** exempts certain businesses from the requirement to test products for PFAS.
5. **LD 1537, An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and to Provide Additional Funding (Senator Ingwersen):** makes the following changes to laws governing PFAS in products.

- Extends the deadline for reporting the use of PFAS in products for sale until October 1, 2023.
- Authorizes reporting the amount of total organic fluorine if the amount of each PFAS compound is not known and allows the amount of PFAS to be reported based on information provided by a supplier rather than testing.
- Clarifies the packaging exemption and exempts manufacturers with less than \$20,000,000 in annual national sales from the PFAS reporting requirements but not from any sales prohibitions.
- Requires the DEP, not later than January 1, 2025 and every year thereafter until December 31, 2029, to adopt a rule identifying at least one product category or use that may not be sold, offered for sale or distributed in this State if it contains intentionally added PFAS.
- Prohibits the DEP prior to January 1, 2028 from providing an exemption for products in which the use of PFAS is a currently unavoidable use unless the DEP has adopted rules that identify a relevant related product category or use for a sales prohibition.
- Funds 2 positions and expenditures related to the implementation of the laws governing products containing PFAS.

Public hearing information – LD 242

Date of public hearing: February 15, 2023

List of legislators and entities/organizations submitting testimony on bill: Sen. Baldacci, Animal Health Institute, Defend Our Health, Department of Environmental Protection, IDEXX Laboratories, Maine Organic Farmers and Gardeners Association, Maine State Chamber of Commerce, Mitsubishi Electric, additional members of the public.

Public hearing information – LDs 217, 1214, 1273, 1537

Date of public hearing: April 26, 2023

List of legislators and entities/organizations submitting testimony on bill: Representative Campbell, Senator Stewart, Senator Baldacci, Senator Ingwersen, Representative Gramlich, Advanced Medical Technology Association, AGC Chemicals Americas Inc., Alliance for Automotive Innovation, Alliance for Telomer Chemistry, American Apparel and Footwear Association, American Chemistry Council, American Coatings Association, Animal Health Institute, Arkema Inc., Association of Home Appliance Manufacturers, Back Cove Yachts, Bangor Region Chamber of Commerce, BASF Corporation, BP Polymers, C&L Aerospace, Center for the Polyurethanes Industry, Coastal Enterprises Inc., Complex Product Coalition, Consumer Healthcare Products Association, Consumer Technology Association, Daikin America, Defend Our Health, Department of Agriculture, Conservation and Forestry, Department of Environmental Protection, Don't Waste Maine, Household and Commercial

Products Association, IDEXX Laboratories, INDA/Association of the Nonwoven Fabrics Industry, Juvenile Products Manufacturers Association, Maine Forest Products Council, Maine Grocers and Food Producers Association, Maine Hospital Association, Maine Marine Trades Association, Maine Organic Farmers and Gardeners Association, Maine Pharmacy Association/Maine Society of Health System Pharmacists, Maine State Chamber of Commerce, Maine Vegetable and Small Fruit Growers Association, Manufacturers Association of Maine, MEMA/The Vehicle Suppliers Association, Mid-Maine Chamber of Commerce, MilliporeSigma, National Association of Chemical Distributors, National Council of Textile Organizations, National Marine Manufacturers Association, Natural Resources Defense Council, Norther Turf Management, Ornamental Horticulture Council, Outdoor Power Equipment Institute, Performance Fluoropolymer Partnership, Personal Care Products Council, Polyisocyanurate Insulation Manufacturers Association, PRINTING United Alliance, Raytheon Technologies, Retail Association of Maine, RISE/CropLife America, SEMI, Slingshot, Solvay, Sustainable PFAS Action Network, SWD Urethane, TCI, Truck and Engine Manufacturers Association, Yarmouth Research and Technology LLC, additional members of the public.

Written testimony, if submitted, is available online through legislature.maine.gov

Issues, proposed amendments and additional information

1. Definition of PFAS – LD 1214 proposes to amend the definition of PFAS as it applies in Section 1614 (see below).

- Current definition: “PFAS” means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- LD 1214 proposal: “PFAS” means a group of synthetic perfluoroalkyl and polyfluoroalkyl substances that contain at least 2 sequential fully fluorinated carbon atoms, excluding polymers, gases and volatile liquids.

There was some disagreement at the hearing over what the effect might be of adopting the definition proposed in LD 1214.

- Proponents suggested the change would limit the focus to legacy “long-chain” PFAS (e.g., PFOA and PFOS) and many “short-chain” PFAS of concern (e.g., PFBA, PFBS, PFHxA, PFHxS and HFPA dimer acid) but would exclude polymeric PFAS, which are highly stable, and PFAS gasses and volatile liquids, which are already highly regulated under federal law.
- Opponents suggested the change would exclude a number of harmful or understudied (or unstudied) PFAS, including several adjuvants and precursors as well as the so-called GenX PFAS, and would be inconsistent with the PFAS definition adopted in other areas of Maine law, by many other states and even in some federal laws.

2. Delay of notification requirement – as noted above, Section 1614 requires manufacturers to submit the required notification to DEP beginning January 1, 2023. A number of bills proposed to extend that date, as noted below.

- **LD 217** – extend to January 1, 2025, retroactive to January 1, 2023.
- **LD 1214** – extend to January 1, 2024, retroactive to January 1, 2023.
- **LD 1537** – extend to October 1, 2023, retroactive to January 1 2023.

It is worth noting that none of these bills are proposed as emergency legislation, meaning that, if enacted this session, they are likely to take effect in September or October 2023.

3. **Exemptions** – a number of these bills propose to exempt certain categories of manufacturers from some or all of requirements of the law.

- **LD 242** – exempts manufacturers of animal drugs, biologics, parasiticides, medical devices or diagnostics regulated under certain federal laws.
- **LD 1273** – exempts businesses with fewer than 10 employees or with less than \$1 million in annual revenue.
- **LD 1537** – exempts manufacturers with less than \$20 million in national annual sales of products from notification requirement but not from any sales prohibitions.

4. **Prohibition for failure to submit notification** – Section 1614 prohibits the sale of products that contain intentionally-added PFAS if the manufacturer has failed to provide the required notification. The prohibition appears to have been in effect since January 1, 2023, which is the first date that manufacturer notifications were required.

- Although not explicit in the law, DEP’s proposed rule stipulates that the granting of an extension to a manufacturer in submitting the required notification also delays application of this sales prohibition for the product(s) in question. The Committee may want to consider whether to make this stipulation explicit in the law.
- This prohibition also appears to provide that if DEP determines that the use of PFAS in a product is a “currently unavoidable use,” the DEP may also exempt the product from the prohibition (i.e., sale would not be prohibited for lack of the required notification).
- A “currently unavoidable use” determination for a specific use of PFAS must be accomplished through DEP rule adoption. The proposed rule now out for comment does not include any such determinations.

5. **“Product” vs “product component”** – this law requires reporting on intentionally added PFAS in a “product,” which is defined to include “product components.” “Product component” is in turn defined to include any identifiable component “regardless of whether the manufacturer of the product is the manufacturer of the component.”

- As noted by some testifying, certain products can contain hundreds or even thousands of components, many of which are not manufactured by the product manufacturer. Some manufacturers reported significant difficulties in obtaining information from

suppliers regarding PFAS in product components, which has delayed submission of the required notification.

- For certain complex products with a substantial number of components, some manufacturers suggested that obtaining all information necessary to submit the notification could take years.

6. Exemption for used products – there was some disagreement at the hearing over the application of this law to the sale of used products that may contain intentionally added PFAS (whether in the product or a product component).

- Although some supporters of the law suggested that used products are excluded, there is no explicit exemption for used products in terms of the notification requirement. The sales prohibitions provisions, however, do explicitly state that DEP may not prohibit the sale or resale of used products.
- As such, there is some uncertainty about whether a manufacturer that sells a used product or a product that includes used components would be required to report PFAS-related information on such a used product or used component.

7. Confidential information – LD 1214, among other things, proposes in Section 7 to provide confidentiality protection to a manufacturer’s “confidential business information in accordance with the laws of the State and the Uniform Trade Secrets Act” (UTSA).

- As noted by DEP, the Freedom of Access Act already provides confidentiality protection for records a court would find within the scope of a privilege, which DEP interprets to include the UTSA.
- It is unclear, however, what exactly is meant by the undefined phrase “confidential business information,” especially as the UTSA defines and is largely focused on “trade secrets.” The proposed protection is also not clearly limited to the UTSA but also “the laws of the State,” although the meaning of that language is unclear.
- If the intent is to protect this type of information from disclosure, the common approach taken in Title 38 is to use the term “proprietary information,” which has a standard definition (see below, from 38 MRS §1771(6-A)), and the information-handling process set forth in §1310-N.

"Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

At the Committee's request, the OPLA analyst can provide suggested language to achieve the goal of protecting proprietary information that might be submitted by a manufacturer to DEP under §1614.

- Note that if a new public records exception is proposed for enactment and supported by a majority of ENR, the exception will need to be submitted to the Judiciary Committee to conduct a review pursuant to Title 1, section 434.

8. **Additional suggested amendments** – in addition to expressing support or opposition to the amendments to Section 1614 proposed in the different bills, as noted below, a number of persons suggested other amendments either to those bills or to the underlying law (suggesting entity noted in parentheses). Note that this may not be an exhaustive list.

- A. Amend Section 2 of LD 1537 to clarify whether the exemption for packaging regulated under Title 32, section 1732, subsection 4 is meant only to apply to packaging when sold by itself as a product or also to exempt such packaging when used to contain another product for sale (DEP).
- B. Strike Section 4 of LD 1537 (appropriations) to allow for development of an appropriate fiscal estimate by DEP (DEP).
- C. Ensure consistency in and consider impacts of changes to Title 7 pesticide laws as proposed in Sections 1 to 3 of LD 1214. For example, the bill would retain the prohibition on distributing pesticides contaminated by PFAS but the Title 7 provision uses the definition of PFAS in Title 32, which LD 1214 does not amend (i.e., such pesticides might be banned in Title 7 and eventually in Title 38 but using two different definitions of PFAS) (DACF).

Others directly suggested the Committee reject any proposed changes to the Title 7 pesticide laws as outside of ENR's jurisdiction and as they are part of an ongoing broader process implemented last Legislature.

- D. Amend current exemption for "product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority" (§1614)(4)(A)) to clarify that the federal law or regulation need not explicitly reference the presence of PFAS to preempt state authority (C&L Aerospace).
- E. Require DEP to make currently unavoidable use determinations for uses of PFAS in essential products before requiring manufacturer notifications (C&L Aerospace).
- F. Provide explicit exemption for manufacturers of FDA-regulated medical devices and medical products including drugs (for humans and animals). Suggested language provided in testimony (Advanced Medical Technology Association; similar idea suggested by Animal Health Institute, IDEXX Laboratories and Maine Hospital Association).

- G. Require DEP to establish a list of reportable PFAS chemicals with specific CAS numbers identified and then to require reporting only on those chemicals. Suggested language provided in testimony (Complex Product Coalition; similar idea suggested by Juvenile Products Manufacturers Association and National Marine Manufacturers Association).
- H. Specify that complex product manufacturers can notify suppliers that their components are in products sold in Maine and that the suppliers must provide the required notification to DEP. Suggested language provided in testimony (Complex Product Coalition; similar idea suggested by Maine Marine Trades Association).
- I. Require notification only from the actual manufacturer of a product component (National Marine Manufacturers Association).
- J. Require prioritization of reporting on types of PFAS that pose greatest threats to soil, water and people and on products that contain such PFAS where there is a risk that the PFAS will leave the product and threaten soil, water or people (National Marine Manufacturers Association; similar idea suggested by Maine Marine Trades Association).
- K. Require DEP to provide training and clear guidelines on how manufacturers are to comply with the notification and other requirements of the law (National Marine Manufacturers Association).
- L. Clarify that notification is only required for PFAS compounds for which commercial testing is widely available (IDEXX Laboratories).
- M. Allow manufacturers who assemble products from various components to utilize material disclosures from their suppliers to satisfy the notification requirement (IDEXX Laboratories).
- N. Amend LD 1537 to allow for notification of PFAS compounds where a CAS registry number is unavailable only using other regulatory nomenclature, such as IUPAC nomenclature for organic chemistry (i.e., not an open-ended description of the PFAS approved by DEP, as suggested in the bill) (IDEXX Laboratories).
- O. Clarify manufacturers of custom-built products, such as many marine products, where each order results in a slightly different product, may report on an average-sized product from the manufacturer or a range for PFAS content between the smallest and largest product it produces (Maine Marine Trades Association).

- P. Provide an exemption for the use of recycled content in a product if the manufacturer of the product does not intentionally add PFAS to the recycled content (Maine Marine Trades Association).
 - Q. Amend sales prohibitions (failure to notify and product category?) to clarify that the application must be based on the manufacturing or import date of a product as opposed to a date of sale (Juvenile Products Manufacturers Association).
 - R. Amend definition of “intentionally-added PFAS” to include a specific threshold of at or above 100 parts per million (Juvenile Products Manufacturers Association).
 - S. Exempt from regulation inaccessible product components (i.e., components specifically designed to remain inside of a product and not accessible by a user) (Juvenile Products Manufacturers Association).
 - T. Clarify that a manufacturer of a product prohibited from sale in Maine either due to a failure to notify or a categorical prohibition must purchase back from a retailer any such prohibited products (Retail Association of Maine).
 - U. Require manufacturers to report on estimated sales volume in the State or nationally for the full calendar year in which a product is being reported (Mark Hyland).
 - V. Postpone notification requirement until 18 months after final promulgation of forthcoming EPA reporting rules (Sustainable PFAS Action Network).
 - W. Require DEP, at least 24 months prior to initiating rulemaking to prohibit the sale of a category of products, to identify sites contaminated with PFAS based on federal data and form a plan for remediation (Sustainable PFAS Action Network).
 - X. If a product is to be prohibited from sale in the State due to a failure to provide the required notification, DEP (or manufacturer?) must provide notification/ information on the prohibition to product users (Maine Hospital Association).
 - Y. Amend Section 5 in LD 1214 to further clarify for the new definition of PFAS that the polymers excluded also excludes additives that might be in a polymer; clarify the conditions under which a material is considered a gas (e.g., temperature and pressure); and define “volatile liquid.” (SEMI).
9. **Technical issues** – There are some technical and other drafting issues with some of these proposals, and, as identified above, there may be a number of other technical or drafting issues with the underlying statute. Depending on how the Committee wants to proceed with any of these proposals or suggested amendments, those issues may be able to be addressed by the OPLA analyst, with sponsor and/or stakeholder input, at the Committee’s direction and brought back for review.

Fiscal information

- **For LD 242** – preliminary fiscal impact statement dated February 8, 2023 indicates no fiscal note required with the following explanation: “Any additional costs to the Department of Environmental Protection to adopt the changes in this bill are expected to be minor and can be absorbed within existing budgeted resources.”
- **For LD 1214** – preliminary fiscal impact statement dated April 10, 2023 indicates no fiscal note required with the following explanation: “Any additional costs to the Department of Environmental Protection to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.”
- **For LD 1273** – preliminary fiscal impact statement dated April 10, 2023 indicates no fiscal note required with the following explanation: “Any additional costs to the Department of Environmental Protection to adopt the changes in this bill are expected to be minor and can be absorbed within existing budgeted resources.”
- **Not yet available from OFPR for LDs 217 and 1537.** Note that LD 1537 already includes a number of specific appropriations, which would be expected to be included in some form within a fiscal note should the bill be voted OTP.


PFAS-related legislation considered by ENR in 2023

Bills Enacted in 2023			
LD	Title	Summary	Additional Notes
217	An Act to Support Manufacturers Whose Products Contain Perfluoroalkyl and Polyfluoroalkyl Substances	Extends the January 1, 2023 deadline for reporting the use of PFAS in products for sale to January 1, 2025 and authorizes reporting the amount of total organic fluorine if the amount of each PFAS compound is not known and allows the amount of PFAS to be reported based on information provided by a supplier rather than testing.	<ul style="list-style-type: none"> • Representative Campbell, sponsor • Voted OTP-AM 5/10/2023 • Signed by Governor 6/8/2023 as Public Law 2023, chapter 138 • Effective date of law is October 25, 2023
Bills with Final Disposition in 2023			
LD	Title	Summary	Additional Notes
169	An Act to Amend and Clarify the Laws Governing Perfluoroalkyl and Polyfluoroalkyl Substances and Other Harmful Chemicals	Proposed to revise the definition of PFAS to align with federal law, require downstream notification and allow for a safe harbor, implement a process for banning harmful chemicals that include exemptions for de minimis concentrations and replacement parts, require the consideration of limiting access to areas contaminated by PFAS and prohibit certain bulk chemicals, components and parts containing PFAS.	<ul style="list-style-type: none"> • Representative Campbell, sponsor • Introduced as concept draft • Leave to Withdraw accepted 4/25/2023
171	An Act to Provide That All Rules Regarding Perfluoroalkyl and Polyfluoroalkyl Substances Are Major Substantive Rules	Proposed to require rules related to PFAS to be major substantive rules.	<ul style="list-style-type: none"> • Representative Campbell, sponsor • Leave to Withdraw accepted 4/25/2023

242	An Act to Clarify That Animal Health Products Are Exempt from the Perfluoroalkyl and Polyfluoroalkyl Substances Reporting Law	Proposed to provide that certain health products intended for animals that are regulated under the Federal Food, Drug, and Cosmetic Act, the federal Virus-Serum Toxin Act or the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from the notification requirements that generally apply to products containing PFAS.	<ul style="list-style-type: none"> • Senator Baldacci, sponsor • Voted ONTP in ENR 5/10/2023 • ONTP accepted 5/18/2023
304	An Act to Establish Statewide Standards for Perfluoroalkyl and Polyfluoroalkyl Substances	Proposed to establish statewide standards for testing and acceptable levels of PFAS.	<ul style="list-style-type: none"> • Representative Hynes, sponsor • Introduced as concept draft • Voted ONTP in ENR 4/26/2023 • ONTP accepted 5/9/2023
1214	An Act to Clarify the Laws to Combat Perfluoroalkyl and Polyfluoroalkyl Substances Contamination	Proposed the following changes to the laws governing products containing PFAS. <ol style="list-style-type: none"> 1. Change the definitions of "intentionally added PFAS" and "perfluoroalkyl and polyfluoroalkyl substances." 2. Change the date for the requirement that a manufacturer of a product for sale in the State that contains intentionally added PFAS submit a written notification to the DEP from January 1, 2023 to January 1, 2024. With respect to this notification, it requires a manufacturer to designate confidential business information claims in accordance with the laws of the State and the Uniform Trade Secrets Act. 3. Remove the provision of law that provides that, 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 DEP has determined by rule that the use of PFAS in the product is a currently unavoidable use. Current law provides that the DEP may by rule identify products by category or use that may not be sold, offered for sale or distributed for sale in 	<ul style="list-style-type: none"> • Senator Baldacci, sponsor • Voted ONTP in ENR 5/10/2023 • ONTP accepted 5/18/2023

Bills Carried Over to 2024 Session			
LD	Title	Summary	Additional Notes
1273	An Act to Exempt Some Businesses from Certain Laws Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in Accordance with the Size of the Business	this State if they contain intentionally added PFAS and that products in which the use of PFAS is a currently unavoidable use as determined by the DEP may be exempted by rule. Proposed to exempt certain businesses from the requirement to test products for PFAS.	<ul style="list-style-type: none"> • Senator Stewart, sponsor • Voted ONTP in ENR 5/10/2023 • ONTP accepted 5/18/2023
277	An Act Regarding Perfluoroalkyl and Polyfluoroalkyl Substances	Would amend the laws regarding PFAS.	<ul style="list-style-type: none"> • Representative Fay, sponsor • Introduced as concept draft • Carried over by joint order, 7/26/2023
1537	An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and to Provide Additional Funding	Would extend the deadline for reporting the use of PFAS in products for sale until October 1, 2023. Would authorize reporting the amount of total organic fluorine if the amount of each PFAS compound is not known and allow the amount of PFAS to be reported based on information provided by a supplier rather than testing. Would clarify the packaging exemption and exempt manufacturers with less than \$20,000,000 in annual national sales from the PFAS reporting requirements but not from any sales prohibitions. Would require the DEP, not later than January 1, 2025 and every year thereafter until December 31, 2029, to adopt a rule identifying at least one product category or use that may not be sold, offered for sale or distributed in this State if it contains intentionally added PFAS. Would prohibit the DEP prior to January 1, 2028 from providing an exemption for products in which the use of PFAS is a currently unavoidable use unless the DEP has adopted rules that	<ul style="list-style-type: none"> • Senator Ingwersen, sponsor • Carried over by joint order, 7/26/2023 • Much of the substance proposed in LD 1537 was incorporated into LD 217 as enacted (see above).

		<p>identify a relevant related product category or use for a sales prohibition. Would provide funding for 2 positions and expenditures related to the implementation of the laws governing products containing PFAS.</p>	
1960	<p>An Act to Support Farming in Maine by Extending the Deadline for Manufacturers of Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances to Report on Those Products</p>	<p>Would extend the deadline by which manufacturers of products containing PFAS are required to submit to the DEP certain information about those products.</p>	<ul style="list-style-type: none"> • President Jackson, sponsor • Introduced as concept draft • Carried over by joint order, 7/26/2023 • Although only a concept draft, the described proposal to extend the reporting deadline for products containing PFAS appears to overlap with portions of LD 217 as enacted.



PFAS in Products Reporting Program


Mark Margerum
Office of the Commissioner

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
Protecting Maine's Air, Land and Water

1

Implementation Progress

- Maine Law 38 MRSA §1614
- Stakeholder engagement
- Extension requests
- Preliminary reports
- PFAS Sales Prohibitions
- LD 217, Public Law Chapter 138



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION www.maine.gov/dep

2

Reporting Requirement

Beginning January 1, 2025, a manufacturer of any product offered for sale in Maine that contains intentionally added PFAS must submit a notification to the Department.

Notification:

- Description of the product, including an estimate of sales volume
- Purpose of PFAS used in the product or product components.
- Amount of each PFAS identified by CAS
- The name and address of the manufacturer



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

www.maine.gov/dep

3

Definitions

Manufacturer means the person that manufactures a product or whose brand name is affixed to the product ... includes the importer or first domestic distributor ...

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

Product component means an identifiable part of a product regardless of whether the manufacturer of the product is the manufacturer of the product component.



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

www.maine.gov/dep

4

Public Comments on Draft Rule

- Including components would significantly increase the complexity of reporting and reporting burden
- Complex durable products have a high level of customization
- Limit reporting to final consumer products
- Concerns regarding cross-linking reports within the database
- Duplicative reporting
- Concerns about variation between product categories and individual product identification
- Grouping products to be registered in the database using common designations within the industry other than GPC or HTS



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

www.maine.gov/dep

5

Public Comments Related to Statute

- Definition of PFAS
- Start date
- Sales volume
- Sell through
- Known or reasonably ascertainable
- De Minimis
- Preemption
- Total Organic Fluorine
- Currently Unavoidable Use



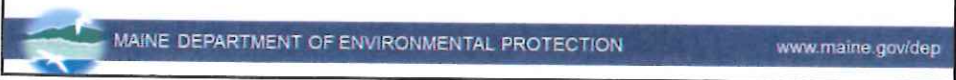
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

www.maine.gov/dep

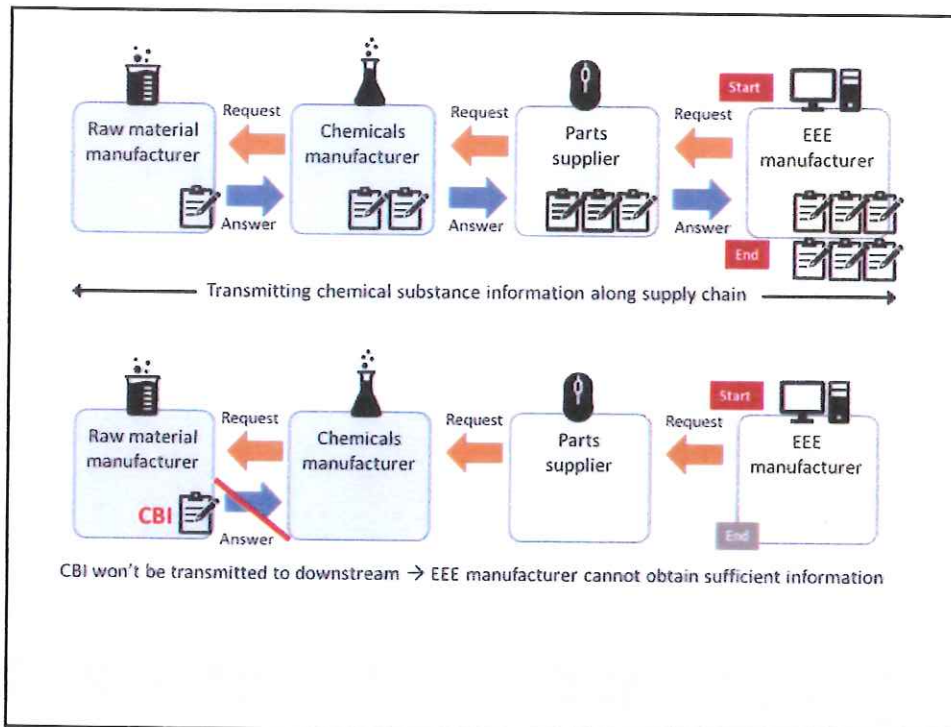
6

Complex Supply Chain Comments

- Final products may be composed out of thousands of parts sourced through the international supply chain
- Complex durable products have a high level of customization
- Manufacturers struggle to identify the origin of a specific component within multi-layer deep supply chains and assess PFAS content
- Supplier claims of Confidential Business Information (CBI) increase the difficulty



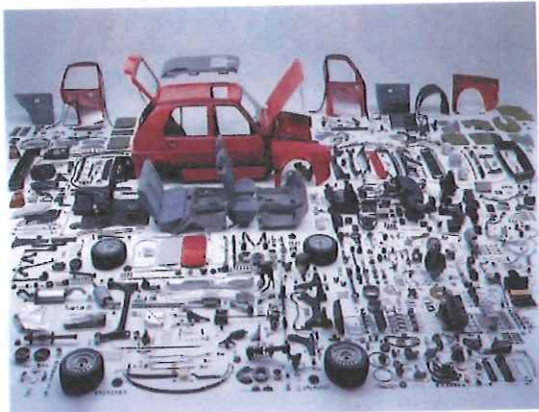
7



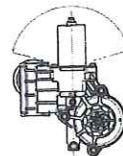
8

Vehicle Complexity

As many as 30,000 parts at the smallest component level

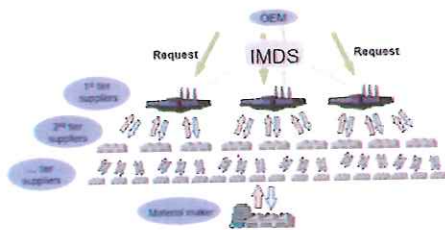


A power window motor contains 190 different substances

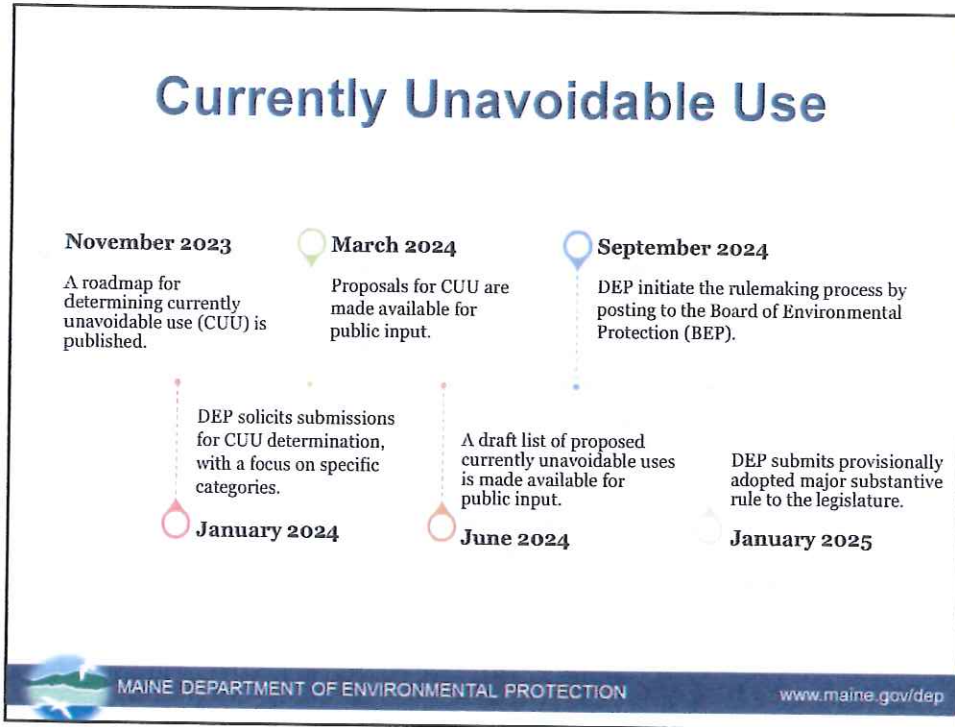


9

Vehicle Supply Chain and Complexity



10



11

Current Challenges in Implementing the Program

- Products composed of multiple components
- Complex international supply chains
- Claims of Confidential Business Information within the supply chain
- Currently Unavoidable Use (CUU) determinations
- Scope of products
- Range of chemicals subject to reporting

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION www.maine.gov/dep

12



Contact:

Mark Margerum

Mark.T.Margerum@Maine.gov
PFASProducts.DEP@Maine.gov

www.maine.gov/dep



September 20, 2023

Explanation of Difficulties in Obtaining Information on Chemical Substances Contained in EEE (Electrical and Electronic Equipment)

1. Framework on Investigating Chemical Substances Contained in Products within the EEE Industry

The EEE industry has developed an international standard, IEC62474, and conducts surveys of chemical substances used throughout the supply chain based on this standard. The standard utilizes a Declarable Substance List (DSL), which lists substances of concern that are subject to restrictions based on global chemical substance regulations and that may be contained in EEE (based on the knowledge of experts in each country). Substances that have not been found to be hazardous and are not restricted by the regulations in various countries are generally not added to the DSL.

Even if the CASRNs are identified, it would take at least months (or potentially years) if EEE manufacturers need to survey the supply chain for the presence of numerous chemical substances. This is due to the fact that EEE manufacturers are placed towards the bottom of the supply chain, and the inquiry on the presence of chemical substances may need to be transmitted to the top of the supply chain (the chemical manufacturers), and the results must then be transmitted back to the EEE manufacturers.

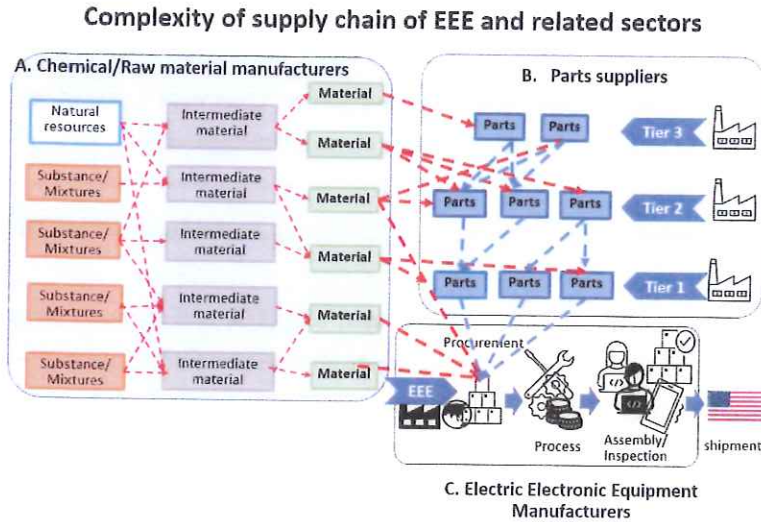
2. Adding PFASs to the DSL

With the promulgation of the PFAS Law in the State of Maine, the EEE industry has begun to take certain actions. Although most PFASs have not been found to be hazardous, due to PFAS Law in Maine, "PFAS" was recently added to the DSL on January 17, 2023. Nevertheless, since the Maine PFAS Law does not specify the CAS numbers of the specific PFAS substances, the DSL does not identify the specific PFAS substances. Instead, a non-exhaustive list of 629 PFAS substances (selected based on expert knowledge) was added to the Reference Substance List (RSL).

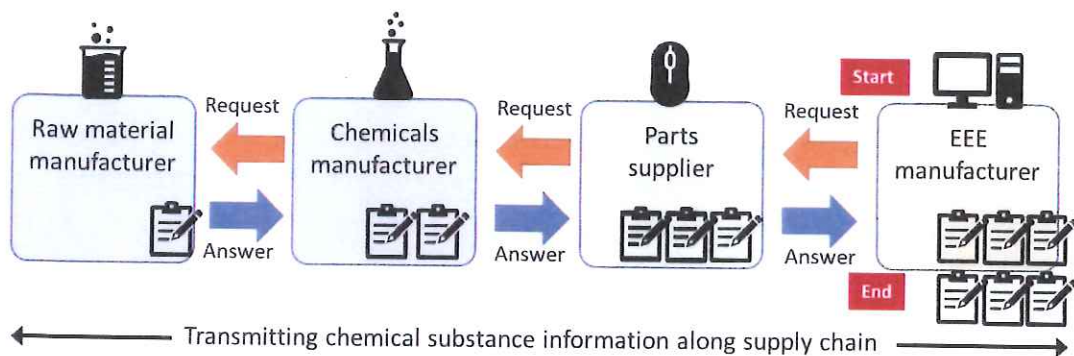
This will enable the future survey of the listed PFASs across the supply chain, but there are many obstacles to conducting such surveys, as described below.

3. Conducting Surveys

For complex articles such as EEE, the supply chain is multi-layered and complex, and operates on a global scale.

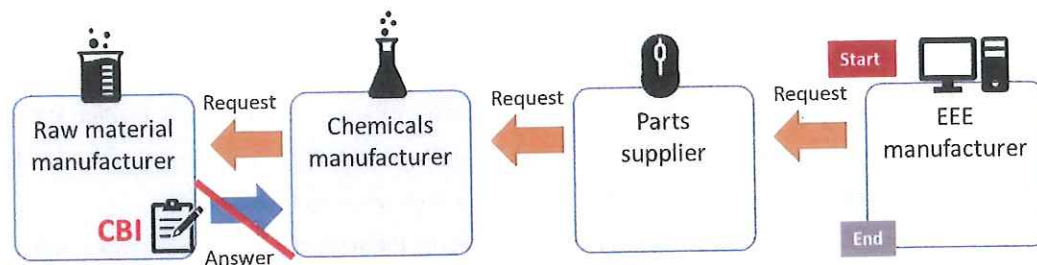


For the final EEE manufacturers (placed downstream in the supply chain) to obtain information about the chemicals contained in each part of component of the product, it is necessary to communicate the need for information upstream in the supply chain one tier at a time. Generally, the final EEE manufacturers are only capable of directly communicating with suppliers that are two-tiers upstream, at best.



The detailed chemical composition of the functional material (in which PFAS may be used) is often considered a trade secret and is not communicated to the downstream entity beyond the level required for safe use. Furthermore, in the case of impurities or by-products generated during the

manufacturing process, such information may not be communicated due to trade secret issues. In such cases, even the upstream chemicals manufacturer may not know the information unless a highly accurate analysis is conducted. For example, one of our members was unable to obtain from its suppliers the specific chemical names of PFOA-related substances covered under the PFOA exemptions under the Stockholm Convention.



CBI won't be transmitted to downstream → EEE manufacturer cannot obtain sufficient information

The more complex the supply chain and the larger the number of substances surveyed, the longer the time that is needed to obtain responses (ranging from months to years).

If the substances subject to the survey are not uniquely identified, the supplier who is asked to complete the survey has no means to verify whether or not their products, purchased parts, or materials contain PFAS (and consequentially, which specific PFAS and how much of them are contained), making it more difficult for the surveyor (e.g. EEE manufacturer) to receive a response. Additionally, in our experience, even when an EEE manufacturer has information that certain fluorinated compounds (not necessarily PFAS) are used in certain applications, it was almost impossible for the EEE manufacturer to know whether or not they are PFAS.

EEE manufacturers have hundreds or thousands of tier 1 suppliers, and it is not possible to estimate how much time and effort it would take to obtain information on the use of potentially more than 10,000 PFAS substances throughout the entire supply chain.

The EEE manufacturer specifies the necessary specifications of the main material or finished product to its suppliers, but rarely specifies the use of each substance in each article (except for legally restricted substances). Also, in most cases, finished article manufacturers themselves rarely use PFAS substances or PFAS-containing mixtures. Furthermore, in the supply chain, the users of the PFAS chemicals themselves are not the "first or second tier" suppliers, but are often the material manufacturers that are further upstream.

Therefore, the EEE manufacturer has no choice but to rely on information communicated through their direct channels. The information that the EEE manufacturer ultimately receives from these direct channels may consist of information from suppliers further upstream.

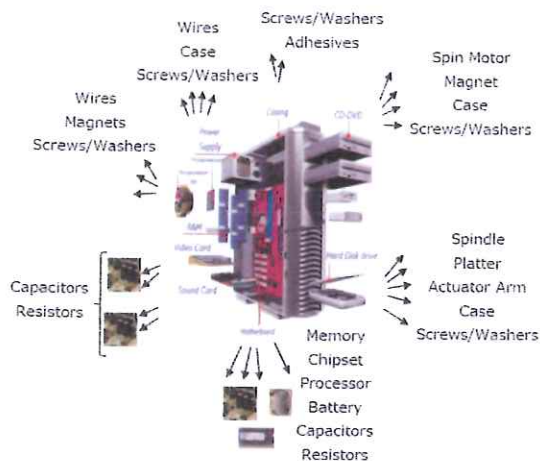
Although a list of certain PFAS substances were added to the DSL to initiate the investigation of their use in the supply chain, the information may be transmitted to EEE manufacturers years later. There is also no certainty that the EEE manufacturers would obtain information on all of the PFAS substances used in their articles even if substantial time is used to conduct these investigations.

4. Difficulty of analyzing PFAS in EEE

Internationally-recognized analytical methods have been established for only some PFASs, including those already internationally regulated. The EPA provides [PFAS analysis methods](#) but it does not list the methods that can be used to analyze the PFAS content in articles.

In addition, the Act allows companies to report the total organic fluorine when individual PFASs cannot be identified. However, Combustion-Ion Chromatography (CIC), the commonly known analytical method to detect fluorine, detects both organic and inorganic fluorine. Therefore, it is not possible to detect only total organic fluorine. Even if an EEE manufacturer were capable of conducting analytical testing, EEE consists of tens of thousands of parts. It would be impractical for companies to expend significant resources to analyze each of these parts to determine PFAS content.

Here is an example. A computer consists of many parts as shown in the figure.



Each part consists of many tiny components (a board unit is shown as an example).

Small circuit board unit



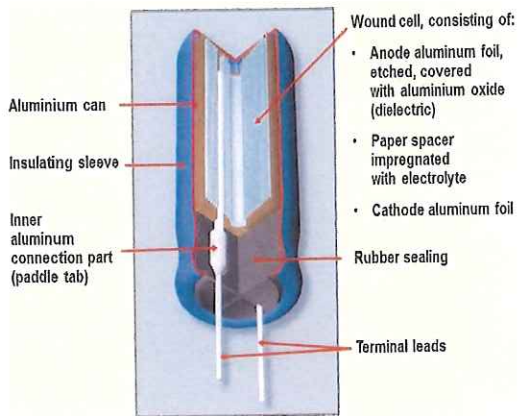
Simple BoM

Qty	Component
1	PCB FR4 (66mm x 23mm x 2.5mm)
2	Ceramic Capacitor 0.1 uF (0803 size)
15	Ceramic Capacitor 100 nF (0402 size)
1	Ceramic Capacitor 2.2 uF (0803 size)
2	Al Electrolytic Capacitor (SMD)
4	Ceramic Resistor 0 ohm (0402 size)
24	22AWG wire (7cm)
15	Ceramic Resistor 32.5k ohm (0402 size)
2	Label 4.5mm x 6mm
1	Ceramic Resistor 56k ohm (0803 size)
1	IC CMOS Inverter (SOT23 size)
1	IC PLD (84L TCFP)
2	Transistor MOSFET (SOT-23 size)
1	24 pin connector
1	Pushbutton switch 12 V
2	Clinch Nut (PEM Nut)
10	LED lamp Orange SMT

Parts of Al capacitor

Qty	Component	Sub-Component
2	Al Electrolytic Capacitor(SMD)	<ul style="list-style-type: none"> Aluminum can Insulating sleeve Al anode & cathode Paper spacer Electrolyte solution Seal ring Terminal leads

To be analyzed in this level

To conduct a PFAS analysis, it would be necessary to analyze at a material level of the tiny components. Even these components may consist of multiple material, making it difficult to estimate the time, effort, and cost to conduct analyses for each component of every EEE distributed to Maine.

Based on the above, it is not practical for an EEE manufacturer (as downstream entity of the supply chain) to analyze and identify the type and content of the PFASs contained in their products.

5. Conclusion

To the best extent possible, the EEE industry is conducting efforts to comply with the Maine PFAS requirements. However, the industry remains sincerely concerned about not being able to obtain the necessary information to fully satisfy the requirements by the deadlines posed under the Act.

If the DEP determines that it is necessary to obtain information on PFAS content in EEE, we believe following will be practical and effective.

1. Survey of the general use of PFAS within the chemical industry, considering how they are the upstream entities that manufacture PFAS in the supply chain.
2. Specifically identify PFAS substances that are determined to be hazardous, conduct assessments on exposure to human health and the environment, and identify high-risk products
3. Require reporting of PFAS for only the high-risk products identified above

EOF



INTERNATIONAL CHEMICAL SECRETARIAT



EUROPEAN APPROACHES TO REGULATION OF PFAS IN PRODUCTS

An overview of the proposal to restrict the use of PFAS, all substances and for all uses

WHAT WE DO AT CHEMSEC

- Drive the political discussion on hazardous chemicals
- Challenge companies to improve their chemicals management
- Develop online tools to help companies switch to safer chemicals
- Inform investors about risks and opportunities in the chemical industry



CHEMSEC TOOLS

 chemsec
SIN LIST

 chemsec
CHEMSCORE

 chemsec
PFASGUIDE

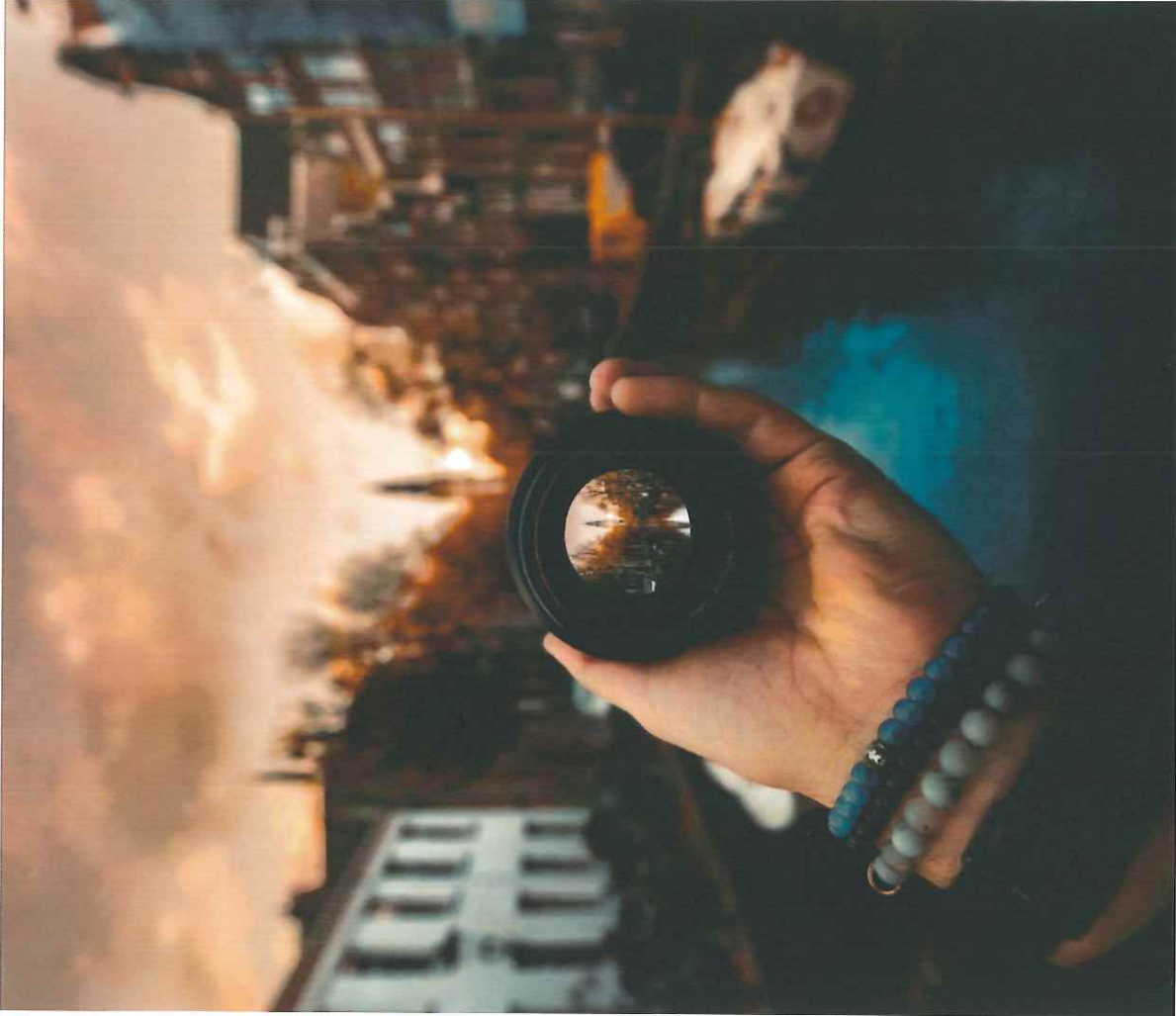
 chemsec
MARKETPLACE

 chemsec
SIN PRODUCERS

EU REGULATORY INITIATIVES

- EU – initiatives on PFAS regulation
 - PFOA, PFOS, PFHxS, C9-C14 – in force
 - PFHxA, PFAS in fire fighting foams – close to being in force
 - **Universal PFAS (uPFAS)** – under development



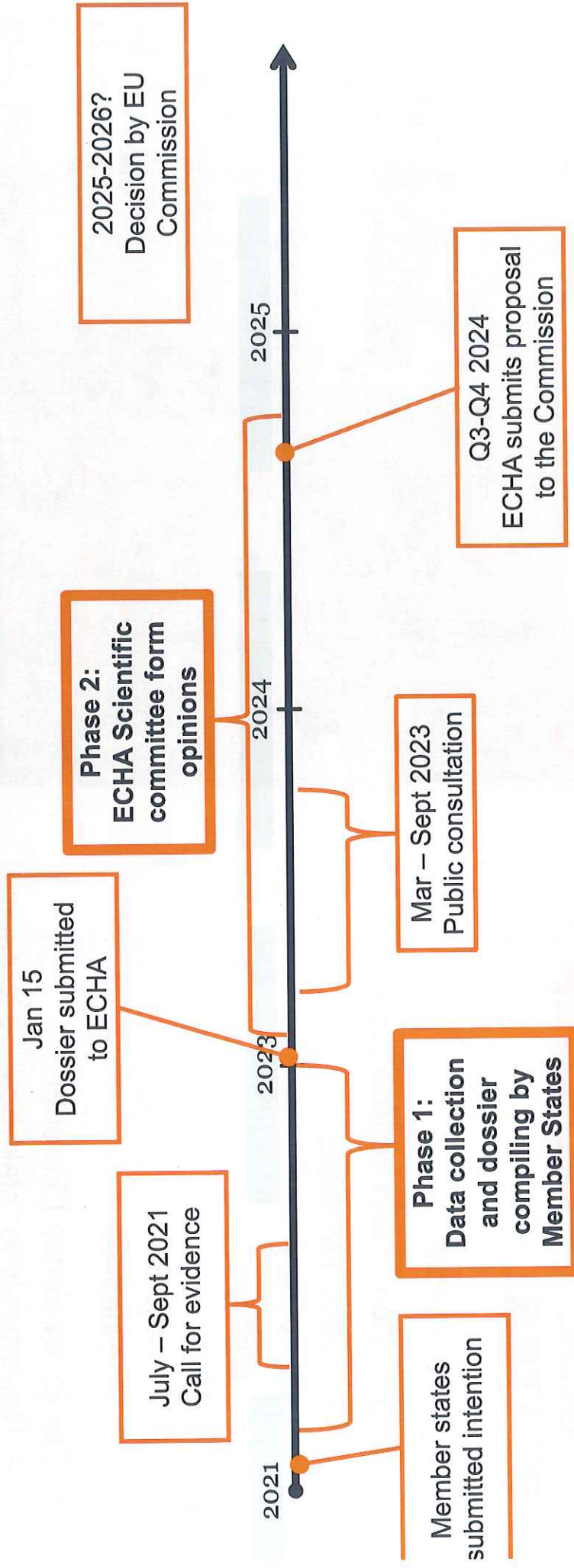


uPFAS RESTRICTION - OVERVIEW

- Suggested by 5 member states:
 - Sweden
 - Norway
 - Denmark
 - Netherlands
 - Germany
- Chemical Strategy of Sustainability, launched in 2020 states:
 - “...the use of PFAS is phased out in the EU, unless it is proven essential for society.”

EU uPFAS RESTRICTION - TIMELINE

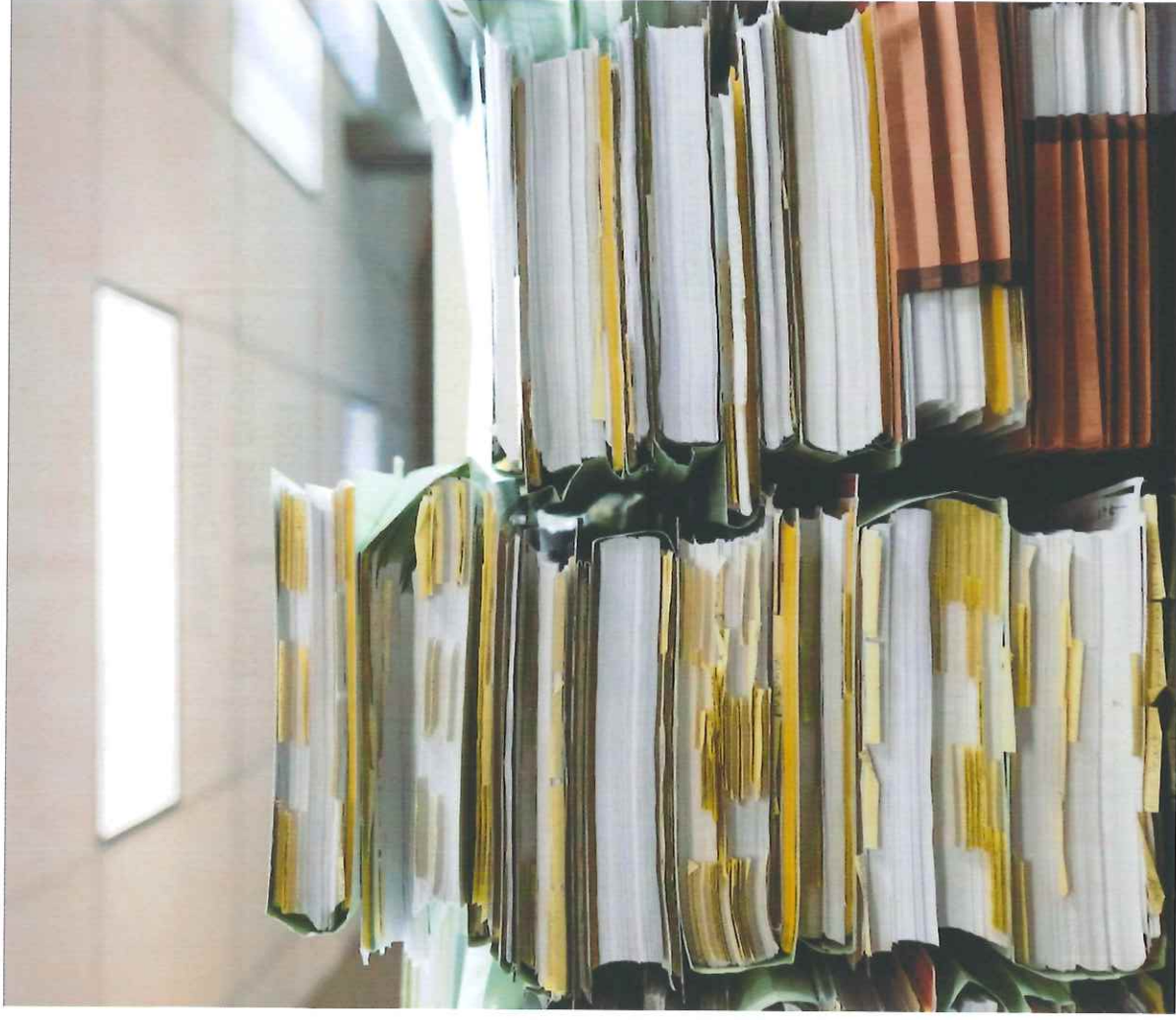
ECHA: European Chemicals Agency



PHASE 1 – MEMBER STATES

- 2 years of work
- Data gathering and verification
 - 17 sectors identified
 - Emissions
 - Tonnage
 - Uses
 - Functions
 - Alternatives
- Call for evidence (3 months)
 - Opportunity for stakeholders to submit data (not public data)

--> 1,800 pages (in total) proposal for a restriction of PFAS



uPFAS RESTRICTION - SCOPE

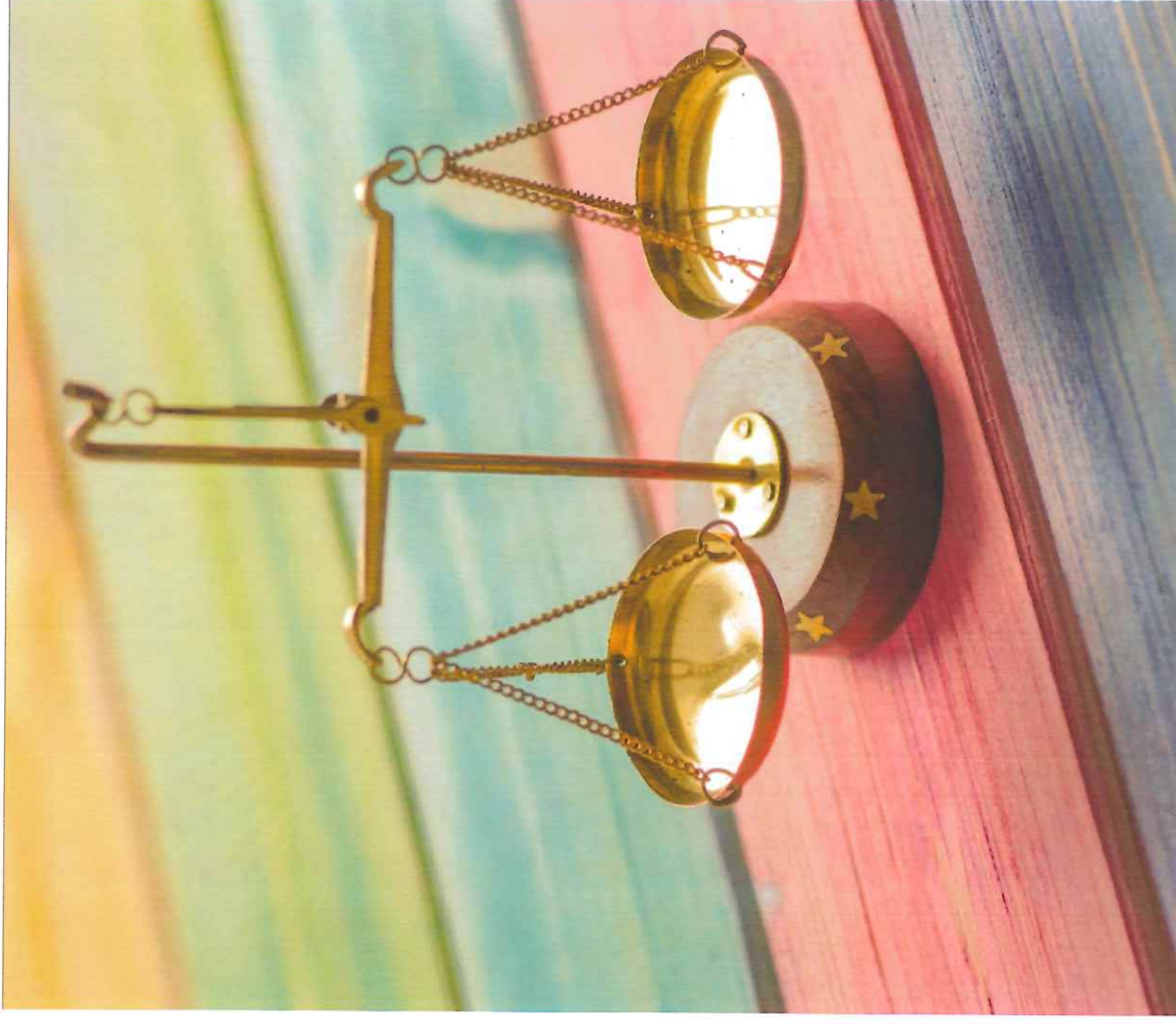
- OECD definition of PFAS
 - Any substance that contains at least one fully fluorinated methyl (CF₃-) or methylene (-CF₂-) carbon atom (without any H/Cl/Br/I attached to it)
- Conditions of restriction
 - Shall not be manufactured, used or placed on the market as substances on their own
 - Shall not be placed on the market in:
 - a. another substance, as a constituent;
 - b. a mixture,
 - c. an article
- Biocides, pharmaceuticals, and plant protection substances are excluded – separate regulation



uPFAS RESTRICTION - JUSTIFICATION

- Hazardous properties
 - Human health
 - Environment
- Persistence is the main concern!
- Emissions
 - 75,000 tonnes per year
 - 4.4 million tonnes until 2050 if no change

--> Union wide action is required

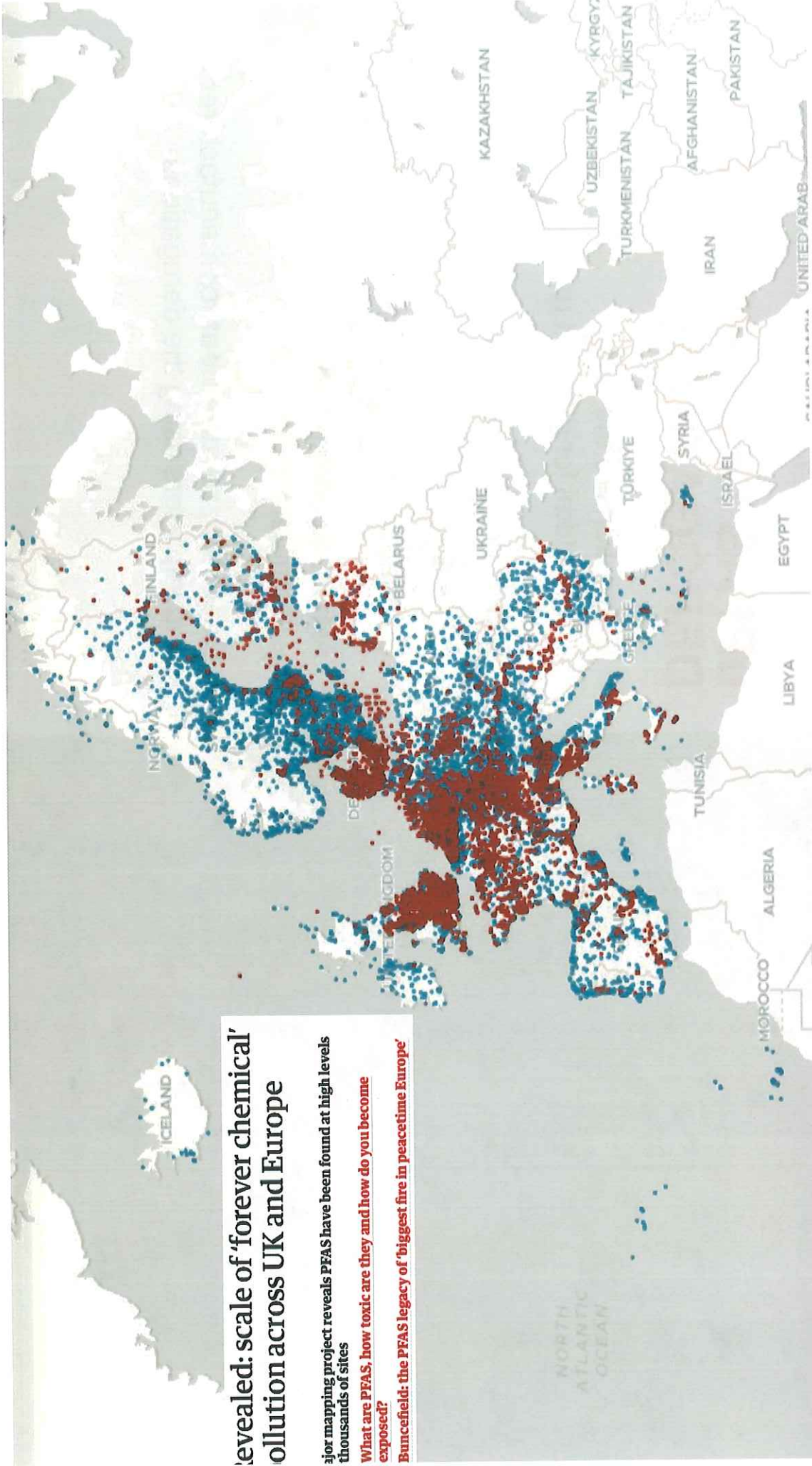


Revealed: scale of 'forever chemical' pollution across UK and Europe

Major mapping project reveals PFAS have been found at high levels at thousands of sites

What are PFAS, how toxic are they and how do you become exposed?

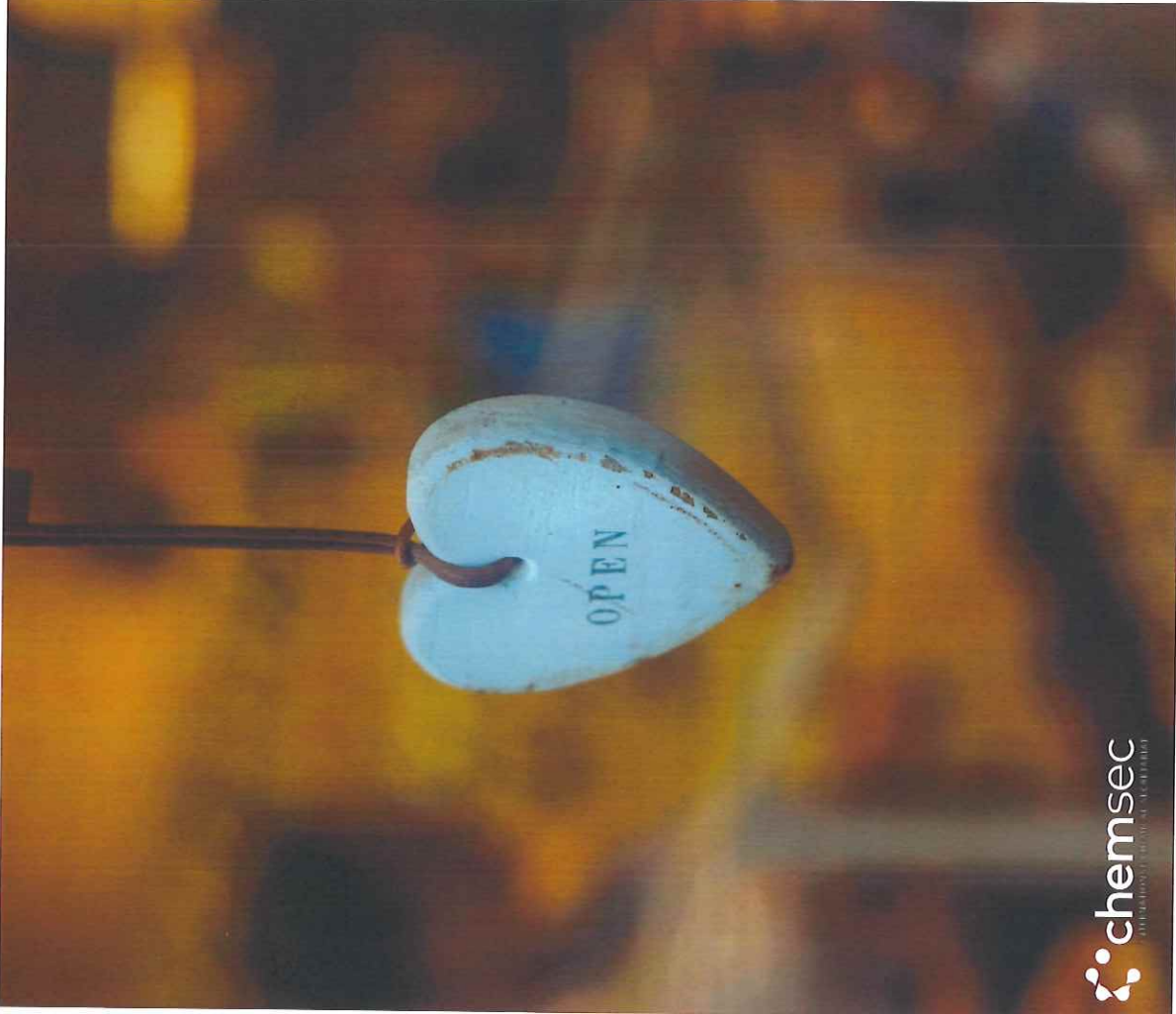
Buncefield: the PFAS legacy of 'biggest fire in peacetime Europe'

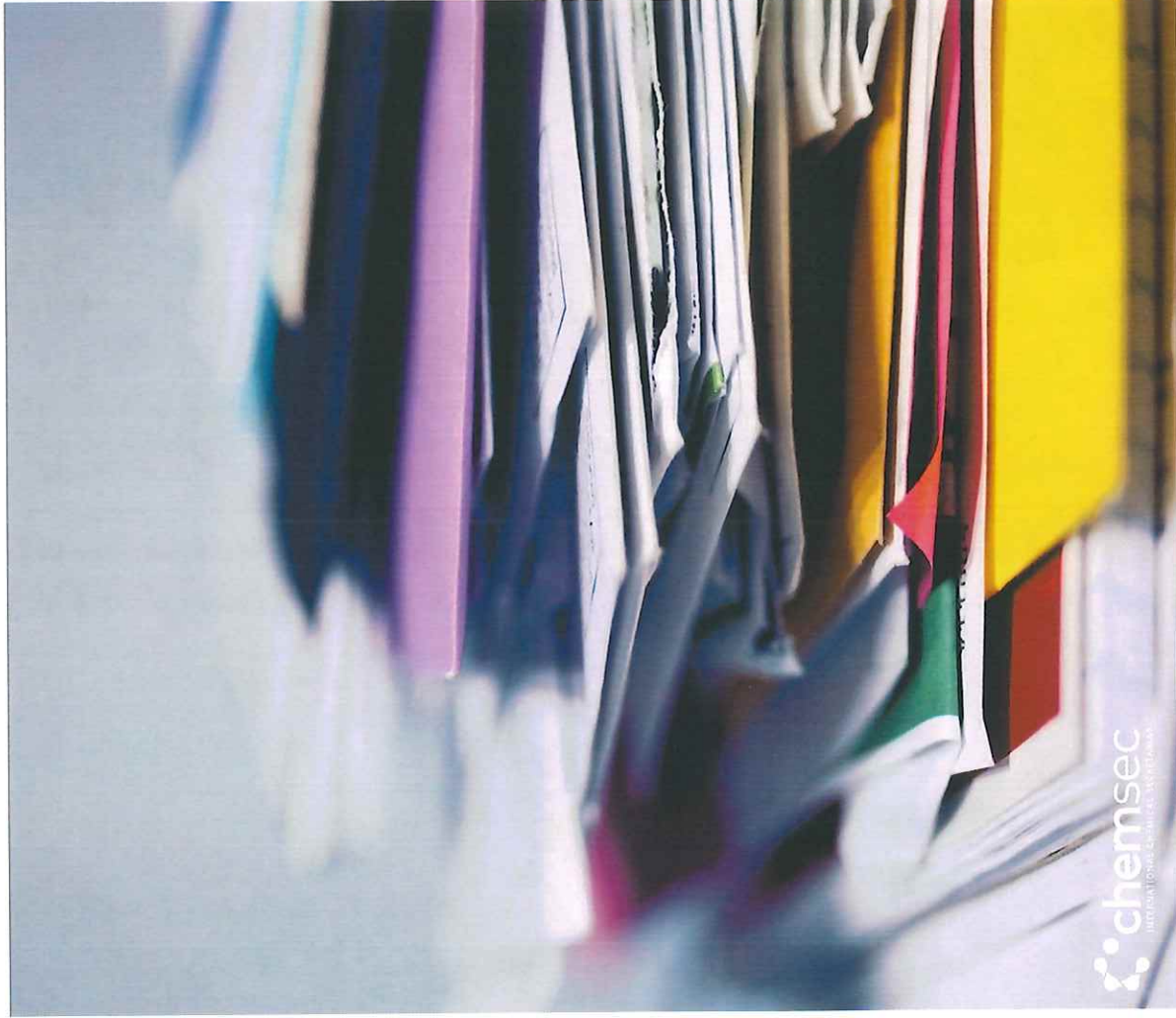


● Known contamination ◆ Presumptive contamination ● Known PFAS User ◆ PFAS manufacturing facility

uPFAS RESTRICTION - DEROGATIONS

- Exemptions to the ban
 - 46 in total for different uses
- Based on availability of alternatives and strength of evidence
- Estimation of substitution potential
- Almost all derogations are time-limited
 - Complete phase-out
- **Reporting requirement** for manufacturers and importers using the derogations





PHASE 2 – ECHA

- 1.5 years of work
- Scientific committees discussion
 - RAC (Risk Assessment Committee)
 - SEAC (Socio-Economic Analysis Committee)
- Public consultation (6 months)
 - Opportunity for stakeholders to submit data (public replies, confidential parts)
 - 5 600 replies
 - 1% from NGOs
 - 70% from industry
- Expected to be completed at the end of 2024

LAST STEP – EUROPEAN COMMISSION

- ECHA opinions form basis of decision
- EU Commission can still make amendments
 - Discussion with member states
- Decision taken in REACH Committee by all members states
- European Parliament can say no to the proposal



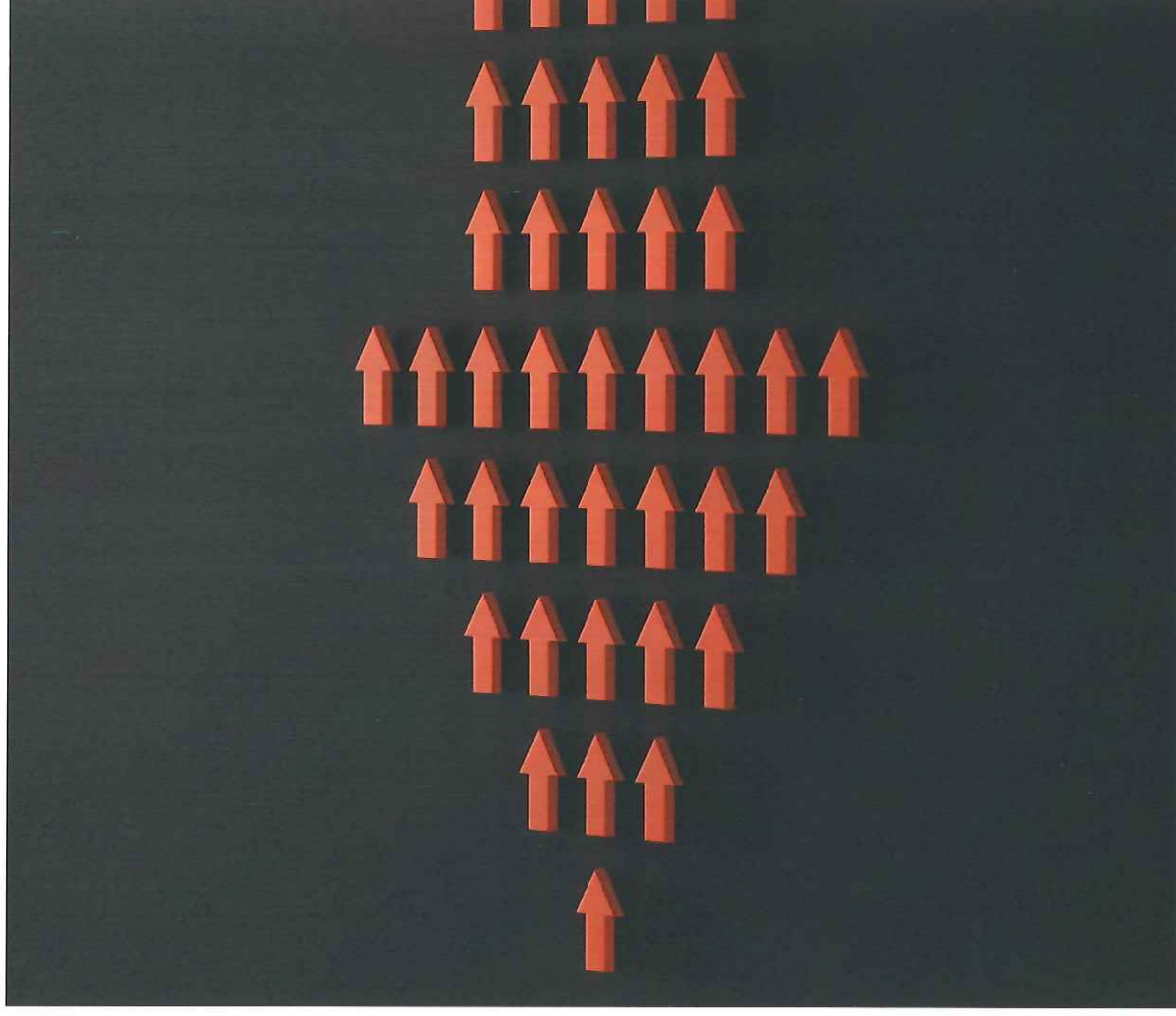
COMPARISON TO MAINE PROPOSAL

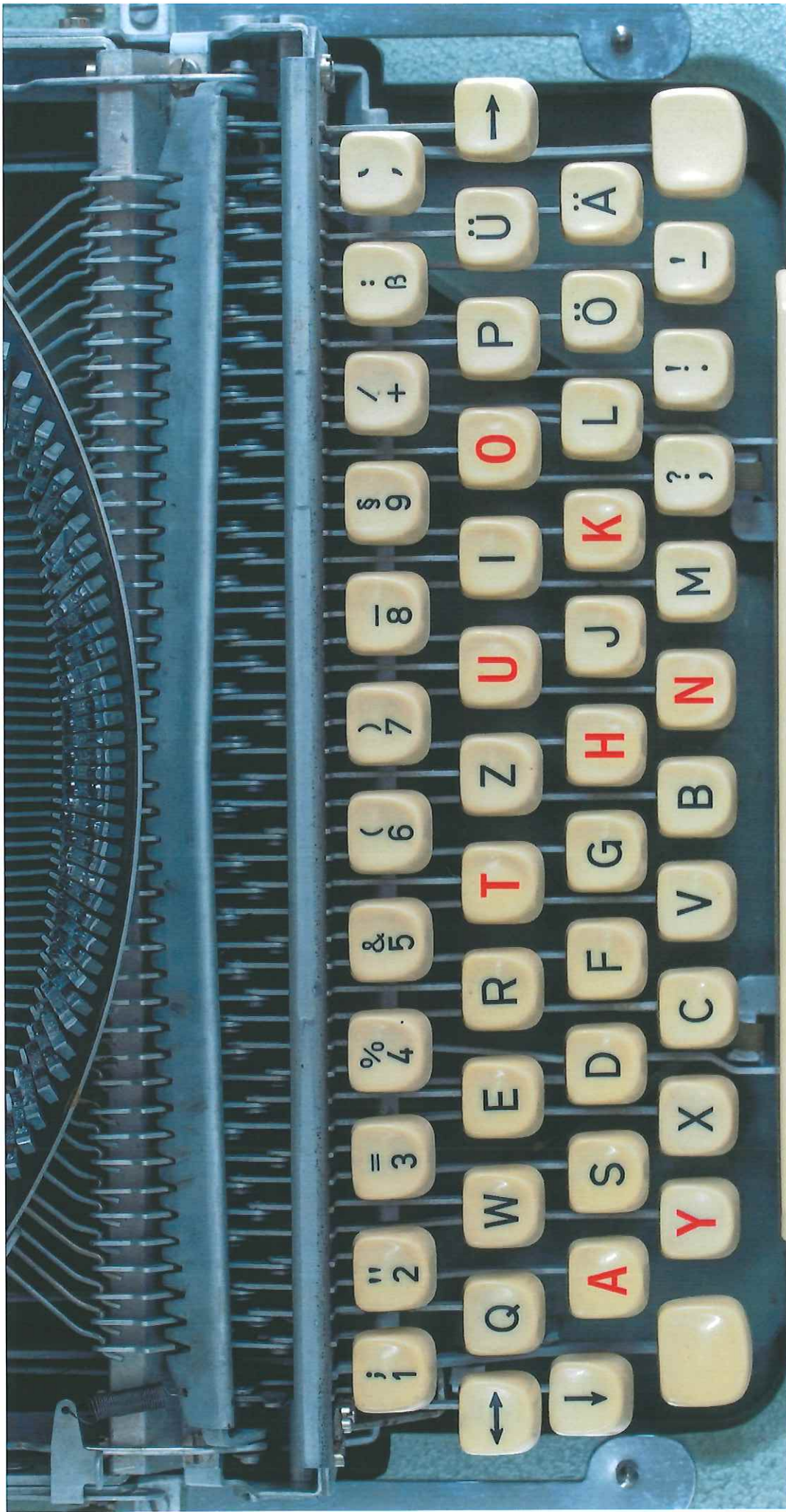
- Prioritization of uses vs. wide ban
- Data collecting from stakeholders
 - Reporting requirement vs. Public consultation / call for evidence
- Both proposals are aiming at a complete phase-out
- EU proposal based on availability of alternatives for exemptions
- EU proposal focusing on all uses – including industrial applications and processes



COMMENTS ON MAINE PROPOSAL

- Addresses an important concern
- Reporting requirement – a good way to collect information
- Focusing on products will decrease the direct
- Technical considerations
 - Concentration limits?
 - Database for reporting replies? Public data?



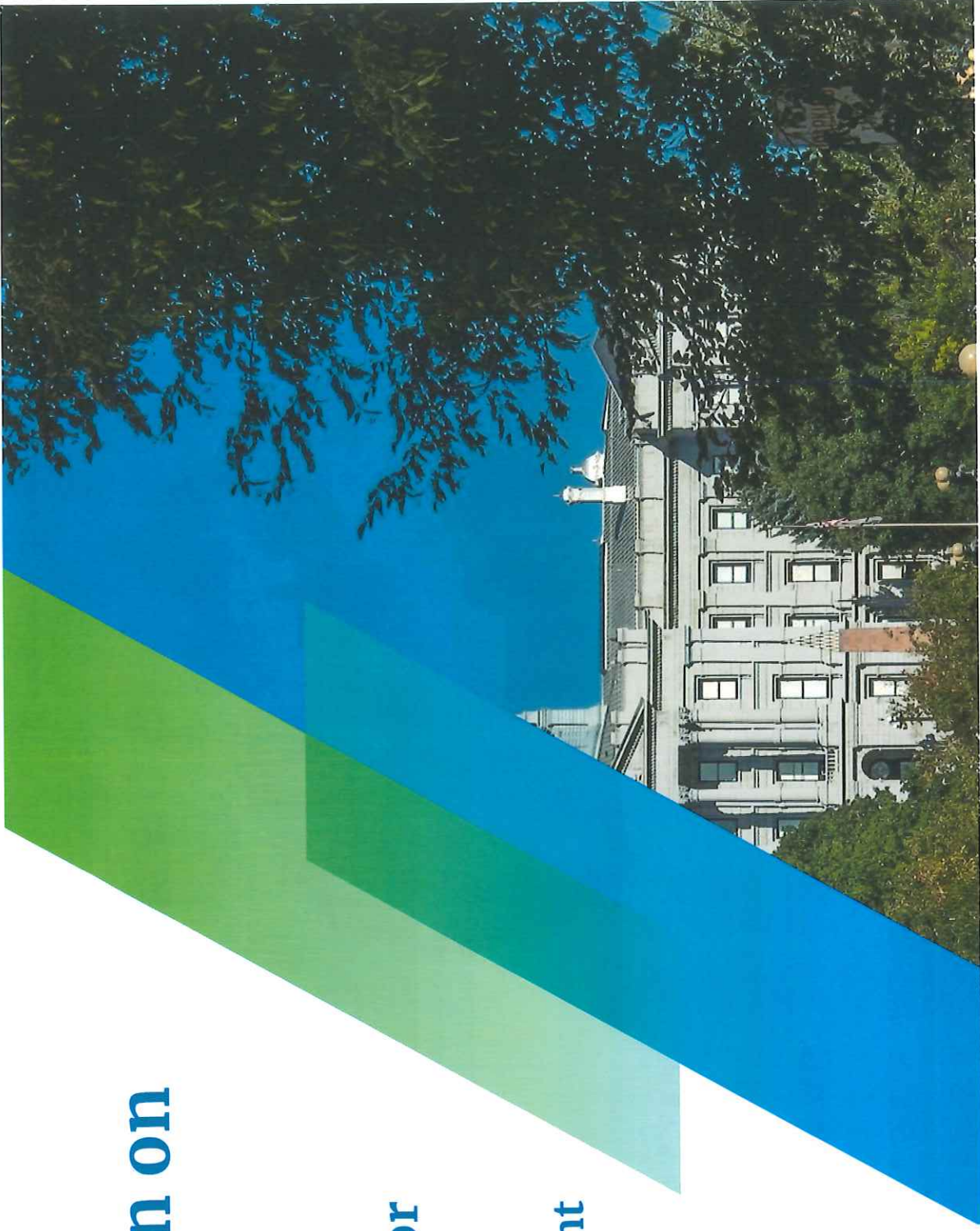


State Action on PFAS

Gretchen Salter
Strategic Advisor
Safer States

Maine Environment
Committee

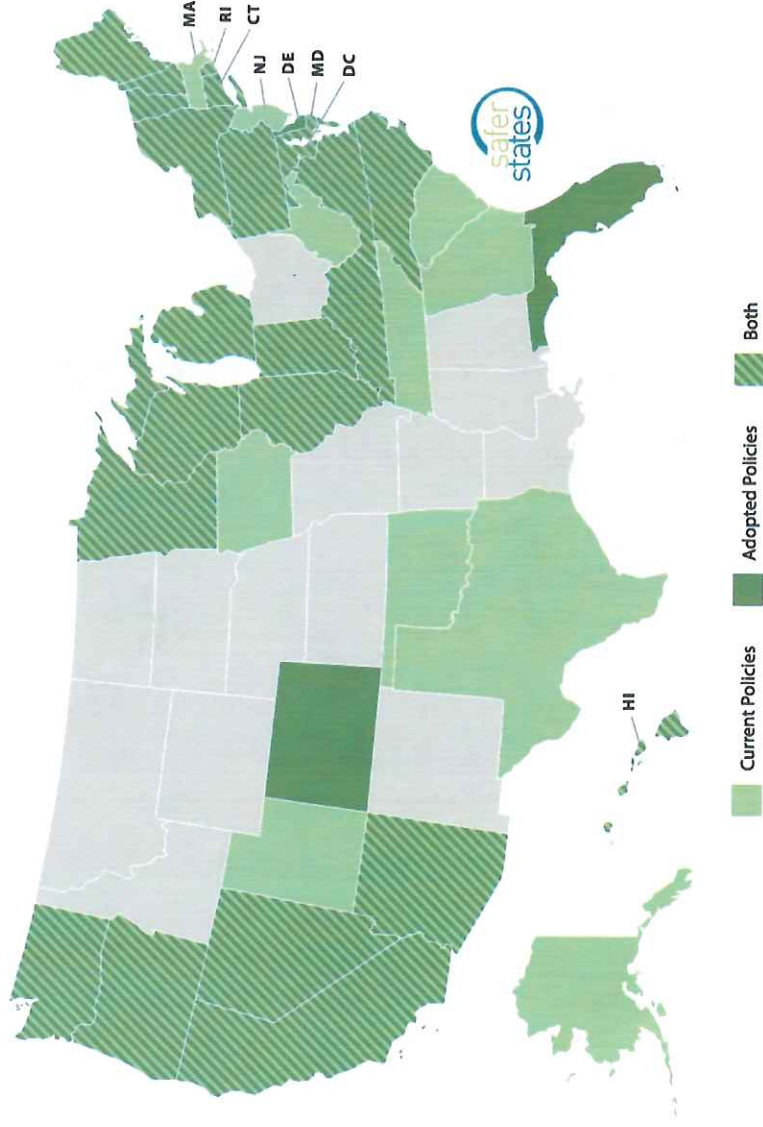
October 2, 2023



State Action on PFAS

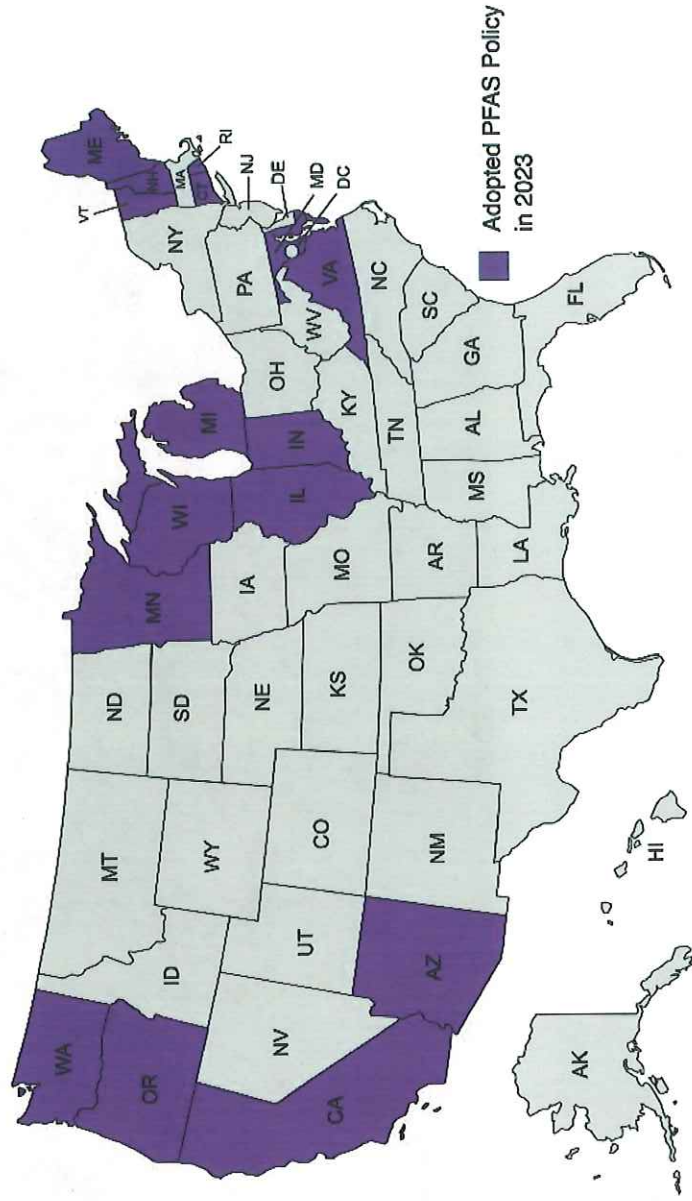
- 25 states have adopted 131 policies to address PFAS to date
- 33 states have introduced nearly 200 PFAS policies this legislative session (“current policies”)

197 current policies in 33 states
131 adopted policies in 25 states



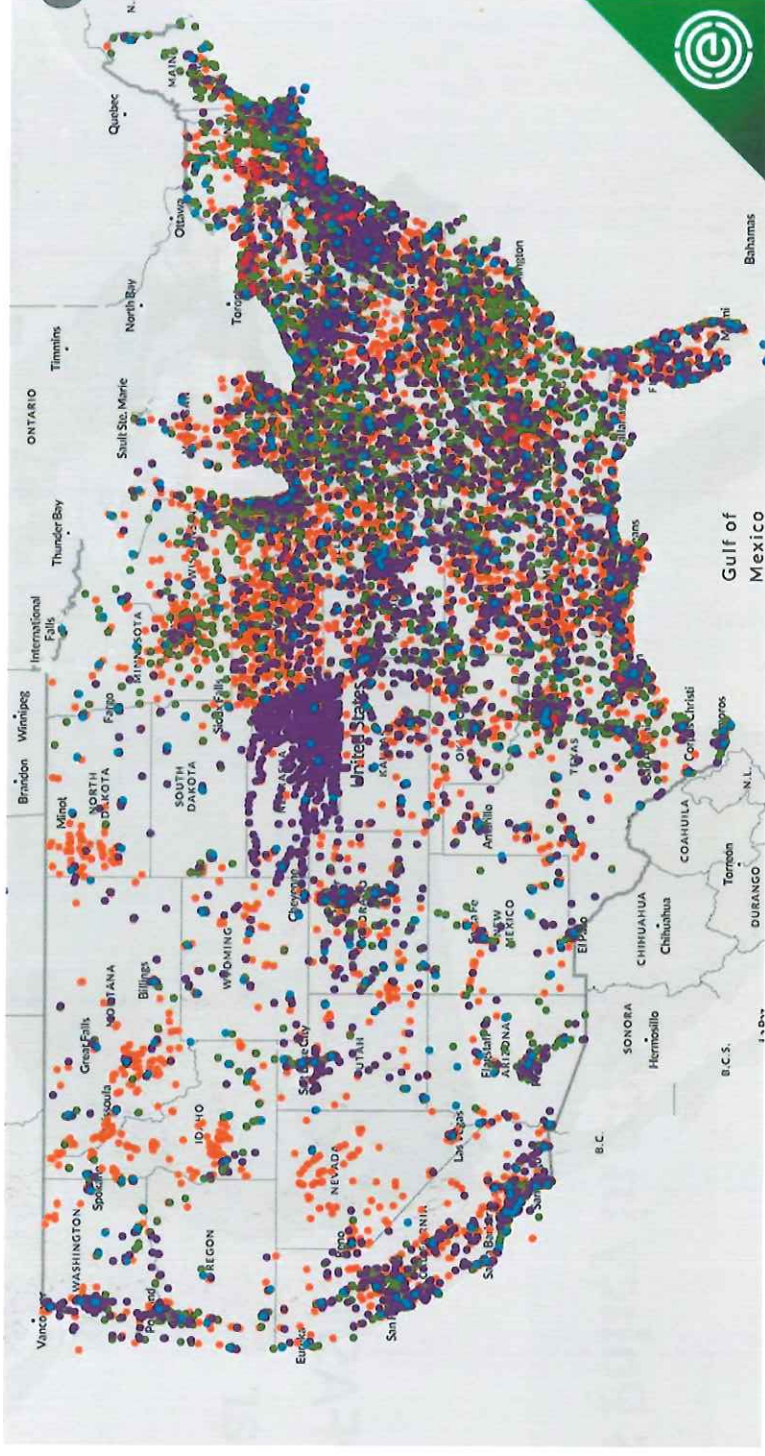
Adopted PFAS Policy in 2023

■ 16 states adopted PFAS policy so far this year



Why are States Acting?

- 1000s of impacted water systems serving millions of people
- Thousands of industrial release sites



PFAS regulation - early days




PFAS Restrictions to protect firefighters and drinking water

- 12 states have put in place **phase outs on the sale of firefighting foam containing PFAS** (CA, CO, CT, HI, IL, ME, MD, NH, NY, VT, and WA) July 2020
- Eight states require **disclosure of PFAS in firefighter turnout gear** (CA, CO, IN, MD, NH, NY, VT, WA) July 2018





State Action on PFAS in specific products

- 12 states have enacted phase-outs of **PFAS in food packaging** (CA, CO, CT, HI, ME, MD, MN, NY, OR, RI, VT, and WA) (Jan 2022)
 - Multiple states have restricted PFAS in textiles including CA broadly
 - 8 states have adopted restrictions on **PFAS in carpets, rugs, and aftermarket treatments** (CA, CO, MD, ME, MN, NY, VT and WA) (July 2023)
 - Two restrict PFAS in **apparel** (CA, NY, WA*) (Jan 2025)
 - Four (CA, CO, MN, WA) restrict PFAS in **indoor furniture** and all but WA restrict in **outdoor furniture**.
- 

State action on PFAS in specific products

- Six states are taking action to eliminate **PFAS in cosmetics** (CA, CO, MD, MN, OR, WA). (Jan 2025)
- CA, CO and MN are phasing out **PFAS in children's products** (July 2023)
- MN and VT are phasing out **PFAS in ski wax** (July 2023)
- MN is phasing out in **menstrual products, cleaning ingredients, cookware and dental floss**. (Jan 2025)
- CO adopted restrictions on **oil and gas products**.



Three approaches PFAS legislation



Colorado approach- Checklist

- Mattresses
- Carpets and Rugs
- Children's products
- Cosmetics
- Fabric treatments
- Food packaging
- Oil and gas operations
- Textile furnishings





Washington Approach - Safer Alternatives

Authority to Agency to ban following classes

- PFAS
 - Phenolic Compounds
 - Phthalates
 - Flame Retardants
- 

Maine Approach – Essential Uses Framework

- Disclosure
- Ban Currently Unavoidable uses
 - No safer alternative
 - Necessary for health or safety or societal function

Maine becomes first state to ban toxic 'forever chemicals' in nearly all products

Nearly all PFAS products will be prohibited for sale in the state by 2030.
By: Suzanne Schwartz | July 16, 2022



Minnesota combines approaches

PFAS and Emerging Contaminants


Minnesota Statute Takes a Robust Approach to PFAS Regulation, Including Reporting Requirements for Manufacturers and a Sales Ban



Fox Rothschild ^{LLP}
ATTORNEYS AT LAW




Definitions

- 22 states have adopted this definition into law “PFAS chemicals means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom”.
 - Consumer Product Definition
 - Identical in ME and MN, very similar in WA.
 - All cover residential and industrial use
- 



Federal Actions

EPA Roadmap

- Largely focused on clean up efforts
 - CERCLA designations, national drinking water standards, funding for clean up to states
 - Disclosure effort announced but limited
- 



Why we are here



PFAS Products Policy – Comparison of State Laws

A dozen U.S. states have passed laws restricting the use of per- and polyfluoroalkyl substances (PFAS) – the ‘forever chemicals’ – in products and by industry.

Policy Element	Maine	Minnesota	10 Other States
REPORTING All PFAS uses must be disclosed	YES by Jan. 1, 2025	YES by Jan. 1, 2026	Not Yet
PROHIBITED Targeted uses of PFAS are no longer allowed	YES by Jan. 1, 2025 Carpet and Rugs Fabric Treatment Firefighting Foam (2022 w/ exceptions) Food Packaging (<i>proposed</i>)	YES by Jan. 1, 2026 Food Packaging (2024) Carpet and Rugs Cleaning Products Cookware Cosmetics Dental Floss Fabric Treatments Juvenile Products Menstruation Products Textile Furnishings Ski Wax Upholstered Furniture	YES (dates vary) Clothing & Apparel Carpet and Rugs Children’s Products Cosmetics Fabric Treatments Firefighting Foam Food Packaging Food Service Ware Oil & Gas Products Ski Wax
AUTHORITY Other uses may be phased out	YES	YES	YES (in WA state)
PHASE-OUT All non-essential uses must end	YES by Jan. 1, 2030	YES by Jan. 1, 2032	Not Yet
Sources:	38 MRS A §1614	Ch. 60, §21 (2023)	SaferStates.org



Effective Changes to the PFAS in Products Program

The Sustainable PFAS Action Network (SPAN) is a coalition of PFAS users and producers that are committed to sustainable, risk-based PFAS management. Our members advocate for responsible policies grounded in science that provide assurance of long-term human health and environmental protection while recognizing the critical need for certain PFAS materials for US economic growth and global competitiveness.

Throughout this year, SPAN has met and worked with numerous legislators and regulators handling the PFAS issue in Maine. LD217 contained helpful changes to the law that will make it more effective, but further changes can be made that will allow Maine to lead the nation in effective and sustainable PFAS management. In order to target the most high-risk and high-emissive compounds, SPAN recommends considering the following changes during the upcoming work sessions:

1) Definition of PFAS

The definition of PFAS as “a class of fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom” is thought to contain over 14,000 compounds, while there is likely to be less than 1,000 commercially-active PFAS. This definition also encompasses several substances that have been deemed to be low risk by the relevant regulating bodies. The breadth of this current definition has caused significant confusion in the implementation of the PFAS in Products program, and has led to significant noncompliance. This factor has led to the adoption of the “two fully fluorinated carbon atom” definition in Delaware, Virginia and West Virginia, as well as a more targeted definition in use at the federal level by U.S. EPA. A more targeted definition of PFAS was also recently adopted in draft PFAS legislation by the U.S. Senate Environment & Public Works Committee.

2) Federally-Approved Uses

Many of the compounds essential to modern life that are to be regulated under the current PFAS in Products program

have undergone modern toxicological testing, and have been deemed acceptable for their intended use by federal government agencies. To increase noncompliance and to make Maine's program more effective, SPAN recommends language that exempts chemicals regulated under the following federal programs from any eventual state-level reporting requirements or use controls:

- Clean Air Act of 1963 (CAA) (most recently amended in 2022 by IRA)
- Toxic Substances Control Act of 1976 (TSCA) (most recently amended in 2016)
- Safe Drinking Water Act of 1974 (SDWA) (amended in 2016 and 2018)
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
- Resource Conservation and Recovery Act of 1976 (RCRA)
- Federal Insecticide, Fungicide and Rodenticide Act of 1972 (FIFRA)
- U.S. Food & Drug Administration Development & Approval Process
- Substances approved as substitutes for ozone-depleting substances under the EPA Significant New Alternatives Policy (SNAP) program

3) Risk-Based Approach

Any state-level PFAS program must prioritize management based on risk to the environment and human health, and greater consideration needs to be given to the complexity of PFAS usage along the supply chain. The reporting program currently required by the program will be duplicative of the forthcoming U.S. Environmental Protection Agency program, final rules for which are expected this year. In addition, EPA announced in a [notice](#) published last November that they were increasing the estimated social cost of the this rule from the \$10.8 million estimated in 2021 to \$875 million. In light of these considerations, SPAN recommends that Maine's reporting program be amended to take place in phases, with the greatest focus on high-risk articles and high-emissive uses. Allowing for reporting based on article size and emissive uses, based on findings incurred during the identification and remediation process, would most effectively utilize limited funding resources and target reporting to the most harmful compounds. Language prioritizing high-risk compounds

was recently adopted in Minnesota's PFAS legislation.

4) Strengthening of Remediation & Education Plan

Greater focus needs to be put on targeting and reducing high-risk and high-emissive compounds. An effective source reduction program will have a longer-term outlook that adequately addresses the expansive use of certain PFAS compounds. SPAN recommends language requiring the Department of Environmental Protection to develop, within 24 months, a plan for identification of high-risk PFAS and remediation plans between 2025 and 2050, including estimated budgets and recommendations.

2111 Wilson Boulevard, 8th Floor, Arlington VA 22201 • 703 841 0626

• info@SPAN.org • SPAN.org

2023 State Level PFAS Management

The 2023 state legislative sessions saw progress toward responsible PFAS management, and an increasing acknowledgement that the one-size-fits-all approach to this complex issue is unsustainable and ineffective. In 2023, over 170 PFAS-related bills were introduced. As of July, 25 have become law. Of these, 10 have regulated PFAS usage in consumer products. Due to SPAN's advocacy and commitment to collaboration with legislators and regulators, these laws reflect a greater commitment to risk-based management with a focus on high-risk and high-emissive uses. In 2023, there was a general trend toward:

- Targeted Definitions
- Federal-Use Consideration
- Prioritization Language & Greater Remediation Focus
- Improved Effective Dates & Collaborative Approaches

Some examples of this in the 2023 state legislative sessions include:

- Class-wide legislation has been deferred in New York, New Jersey, Rhode Island, Vermont, and New Hampshire
- In Minnesota, consumer product legislation was passed that contains improved effective dates, a currently unavoidable use process, and prioritization language instructing regulators to focus on high-risk and high-emissive uses (this prioritization language was also adopted in New Jersey).
- Greater consideration of federal uses – amendments in New Jersey were proposed to exempt medical products regulated under the Food, Drug & Cosmetics Act, Federal Insecticide, Fungicide, and Rodenticide Act, US FDA and the Department of Agriculture
- The “two fully-fluorinated carbon atom” definition was adopted in West Virginia and Virginia

2111 Wilson Boulevard, 8th Floor, Arlington VA 22201 • 703 841 0626

• info@SPAN.org • SPAN.org

