

## CHAPTER 16

### SALE OF CONSUMER PRODUCTS AFFECTING THE ENVIRONMENT

#### §1601. Aerosol spray

After January 1, 1979, no person shall sell or offer to sell in this State any aerosol spray which contains a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen; provided that nothing in this Act shall prohibit the sale or use of any aerosol spray containing such a propellant if the product contains one or more drugs as defined by section 201(g)(1) of the Federal Food, Drug and Cosmetic Act and which aerosol spray is to be used for a generally recognized medical purpose, or is classified as an essential use exemption in 40 Code of Federal Regulations, subchapter R, section 762.21, paragraphs (a) to (g), 43 Federal Register, 11324, March 17, 1978, 43 Federal Register, 59500, December 21, 1978. [PL 1979, c. 153 (AMD).]

**1. Violation.** Violation of this section is a Class E crime.  
[PL 1977, c. 202 (NEW).]

#### SECTION HISTORY

PL 1977, c. 202 (NEW). PL 1979, c. 153 (AMD).

#### §1602. Chemical septic tank cleaners

No person may sell, offer to sell or commercially promote the use of any chemical solvent containing halogenated hydrocarbon compounds as septic tank cleaners or degreasers. [PL 1981, c. 249 (NEW).]

#### SECTION HISTORY

PL 1981, c. 249 (NEW).

#### §1603. Foam products

**1. Prohibition on extruded polystyrene foam sheets.** After January 1, 1989, no person may sell or offer to sell in this State any product composed in whole or in part of thermoformed extruded polystyrene foam sheets if the foam is manufactured using any fully halogenated chlorofluorocarbon found by the United States Environmental Protection Agency to be an ozone-depleting chemical.  
[PL 1987, c. 752, §3 (NEW).]

**2. Prohibition on foam board.** No person may sell or offer to sell in this State any product composed in whole or in part of foam board if:

A. The foam is manufactured using any fully halogenated chlorofluorocarbons found by the United States Environmental Protection Agency to be an ozone-depleting chemical; and [PL 1987, c. 752, §3 (NEW).]

B. A substitute for fully halogenated chlorofluorocarbon blowing agents is available and found to meet public health and safety standards by all applicable federal and state agencies. [PL 1987, c. 752, §3 (NEW).]

[PL 1989, c. 39 (AMD).]

**3. Compliance.** Compliance with this section shall be as follows.

A. All distributors engaged in the sale or distribution in the State of products covered under subsection 1 shall certify to the commissioner their compliance with subsection 1. [PL 1989, c. 39 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §274 (AMD).]

B. All distributors engaged in the sale or distribution in the State of products covered under subsection 2 shall certify to the commissioner by July 1, 1990, their compliance or scheduled compliance with subsection 2. [PL 1989, c. 39 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §274 (AMD).]

[PL 1989, c. 39 (AMD); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §274 (AMD).]

#### SECTION HISTORY

PL 1987, c. 752, §3 (NEW). PL 1989, c. 39 (AMD). PL 1989, c. 890, §§A40,B274 (AMD).

#### §1604. Lead-acid batteries

For the purposes of this section, "lead-acid battery" means a device designed and used to store electrical energy through chemical reactions involving lead and acid. [PL 1989, c. 583 (NEW); PL 1989, c. 585, Pt. E, §35 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

**1. Disposal.** No person may dispose of a lead-acid battery by burial, incineration, deposit or dumping so that the battery or any of its constituents may enter the environment or be emitted into the air or discharged into any waters.

[PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

**2. Lead-acid battery retailers.** A person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased; [PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and [PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(2) "A deposit of \$10 will be charged for each new lead-acid battery that is not exchanged with an old lead-acid battery."

(3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or other lead-acid battery."

(4) "Recycle your used batteries." [PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

[PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

**3. Lead-acid battery wholesalers.** Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries in reasonably clean and unbroken condition from customers. A person accepting lead-acid batteries in transfer from an automotive battery retailer shall be allowed a period, not to exceed 90 days, to remove batteries from the retail point of collection.

[PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

**4. Inspection and enforcement.** The Department of Environmental Protection shall produce, print and distribute notices required under subsection 2. The department shall enforce the provisions of this section and may inspect places, buildings or premises governed by this section.

[PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

**5. Violations.** Any person who does not abide by this section commits a civil violation subject to section 349.

[PL 1989, c. 583 (NEW); PL 1989, c. 878, Pt. A, §116 (RPR).]

#### SECTION HISTORY

PL 1989, c. 583 (NEW). PL 1989, c. 585, §E35 (NEW). PL 1989, c. 878, §A116 (RPR).

#### §1605. Plastic bags; recycling

**(REPEALED)**

#### SECTION HISTORY

PL 1989, c. 585, §E35 (NEW). PL 1991, c. 475, §1 (RPR). PL 2019, c. 346, §1 (RP).

#### §1606. Motor vehicle air conditioning

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

A. "Motor vehicle" has the same meaning as defined in Title 29-A, section 101, subsection 42. [PL 1995, c. 65, Pt. A, §150 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

B. "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115 and CFC-502. [PL 1989, c. 622 (NEW).]  
[PL 1995, c. 65, Pt. A, §150 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

**2. Service.** After January 1, 1992, a person may not perform service on motor vehicle air conditioners for compensation, unless that person uses equipment that is certified by the Underwriters' Laboratories or an institution determined by the commissioner to be comparable, as meeting the Society of Automotive Engineers standard applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners.

[PL 1989, c. 622 (NEW).]

**3. Recordkeeping.** After January 1, 1992, a commercial establishment servicing automobile air conditioners shall maintain records at the establishment of the following:

A. The number of automobile air conditioners serviced by the establishment; [PL 1989, c. 622 (NEW).]

B. The amount of CFC purchased by the establishment; and [PL 1989, c. 622 (NEW).]

C. The amount of CFC sold or used by the establishment. [PL 1989, c. 622 (NEW).]

The establishment shall maintain records for not less than 3 years and provide those records on request to the commissioner.

[PL 1989, c. 622 (NEW).]

**4. CFC coolant.** After October 1, 1991, a person may not sell any CFC coolant in a container containing less than 15 pounds of that coolant, unless it bears a warning label indicating the product's danger to ozone in the stratosphere. After January 1, 1992, a person may sell or offer for sale CFC coolant, suitable for use in motor vehicle air conditioners, only:

A. For commercial or industrial use; or [PL 1989, c. 622 (NEW).]

B. In containers containing more than 15 pounds of that coolant. [PL 1989, c. 622 (NEW).]  
[PL 1989, c. 622 (NEW).]

**5. Registration.** A motor vehicle with a model year of 1995 or later may not be registered in the State or sold to a consumer or dealer in the State if it contains air conditioning equipment that uses CFCs.

[PL 1993, c. 37, §1 (AMD).]

#### SECTION HISTORY

PL 1989, c. 622 (NEW). PL 1993, c. 37, §1 (AMD). PL 1995, c. 65, §A150 (AMD). PL 1995, c. 65, §§A153,C15 (AFF).

#### §1606-A. Wheel weights

**1. Tire service.** Beginning January 1, 2011, when replacing or balancing a tire on a motor vehicle required to be registered under Title 29-A, chapter 5, a person may not use a wheel weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[PL 2009, c. 125, §1 (NEW).]

**2. Sales ban.** Except as provided in subsection 3, beginning January 1, 2011, a person may not sell or offer to sell or distribute weights or other products for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[PL 2009, c. 125, §1 (NEW).]

**3. New motor vehicles.** Beginning January 1, 2012, a person may not sell a new motor vehicle that is equipped with a weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product. For purposes of this subsection, "new motor vehicle" means a motor vehicle that is required to be registered under Title 29-A, chapter 5 that has not been previously sold to any person except a distributor, wholesaler or motor vehicle dealer for resale.

[PL 2009, c. 125, §1 (NEW).]

#### SECTION HISTORY

PL 2009, c. 125, §1 (NEW).

#### §1607. Connectors

**(REPEALED)**

#### SECTION HISTORY

PL 1989, c. 878, §G9 (NEW). PL 1991, c. 415, §3 (RP).

#### §1608. Ozone-depleting products

After January 1, 1992, no person may sell or offer for sale in this State the following ozone-depleting products: [PL 1991, c. 11 (NEW).]

**1. Cleaning sprays.** CFC cleaning sprays for noncommercial or nonindustrial usage in cleaning electronic and photographic equipment;

[PL 1991, c. 11 (NEW).]

**2. Fire extinguishers.** Hand-held halon fire extinguishers for residential use; and

[PL 1991, c. 11 (NEW).]

**3. Party streamers and noisemakers.** Party streamers and noisemakers in aerosol containers that contain CFC.

[PL 1991, c. 11 (NEW).]

For purposes of this section, "CFC" has the same meaning as in section 1606. [PL 1991, c. 11 (NEW).]

#### SECTION HISTORY

PL 1991, c. 11 (NEW).

#### **§1609. Restrictions on sale and distribution of brominated flame retardants**

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation. [PL 2007, c. 296, §1 (NEW).]

**1. "Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers.** Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

[PL 2007, c. 296, §1 (AMD).]

**2. Review; report.**

[PL 2007, c. 296, §1 (RP).]

**3. Application.**

[PL 2007, c. 296, §1 (RP).]

**4. "Deca" mixture of polybrominated diphenyl ethers in home furniture.** Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; and [PL 2007, c. 655, §17 (AMD).]

B. Upholstered furniture intended for indoor use in a home or other residential occupancy. [PL 2007, c. 296, §1 (NEW).]

[PL 2007, c. 655, §17 (AMD).]

**5. "Deca" mixture of polybrominated diphenyl ethers in electronics.** Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing more than 0.1% of the "deca" mixture of polybrominated diphenyl ethers.

[PL 2009, c. 121, §17 (AMD).]

**5-A. "Deca" mixture of polybrominated diphenyl ethers in shipping pallets.** This subsection governs the manufacture and sale of shipping pallets and products made from shipping pallets containing the "deca" mixture of polybrominated diphenyl ethers, referred to in this subsection as "the "deca" mixture."

A. A person may not manufacture, sell or offer for sale or distribute for sale or use in the State a product that is manufactured from recycled shipping pallets containing the "deca" mixture, except that this prohibition does not apply to the manufacturing, selling or distribution of shipping pallets that are manufactured from recycled shipping pallets containing the "deca" mixture. [PL 2009, c. 610, §2 (NEW).]

B. Beginning January 1, 2012, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a shipping pallet containing the "deca" mixture, other than a shipping pallet made from recycled shipping pallets or described in subsection 11, paragraph A-1. [PL 2009, c. 610, §2 (NEW).]

C. By January 1, 2013, and annually thereafter, a manufacturer or owner of shipping pallets subject to the restrictions of this subsection shall submit a report to the department that certifies its compliance with the restrictions of this subsection. The report must include data on the bromine content of a representative number of shipping pallets and an interpretive analysis of the data sufficient to demonstrate compliance with this subsection. The board may adopt rules to implement the reporting requirements of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 610, §2 (NEW).] [PL 2009, c. 610, §2 (NEW).]

**5-B. Exemptions.** Notwithstanding subsection 5-A, paragraph B, a person may sell or distribute a shipping pallet containing the "deca" mixture of polybrominated diphenyl ethers for which an exemption is obtained pursuant to this subsection. A manufacturer or owner of a shipping pallet may apply for an exemption by filing a written petition with the commissioner. The petition must include a proposed duration for the exemption. The commissioner shall grant an exemption upon finding that:

- A. A safer alternative that meets the criteria of subsection 14 does not exist; [PL 2009, c. 610, §3 (NEW).]
- B. A shipping pallet containing a proposed safer alternative fails to meet applicable fire safety standards, approvals and tests or relevant performance standards; [PL 2009, c. 610, §3 (NEW).]
- C. Additional time is needed by the petitioner to complete testing or obtain approval to ensure that a shipping pallet containing a proposed safer alternative complies with applicable fire safety standards, approvals and tests; or [PL 2009, c. 610, §3 (NEW).]
- D. Additional time is needed by the petitioner to modify the manufacturing process in order to produce a shipping pallet containing the safer alternative. [PL 2009, c. 610, §3 (NEW).]

The commissioner may not grant an exemption pursuant to this subsection that extends beyond January 1, 2013.

[PL 2009, c. 610, §3 (NEW).]

**6. Exemptions.** The restrictions in subsections 4 and 5 do not apply to the following products containing the "deca" mixture of polybrominated diphenyl ethers:

- A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment; [PL 2007, c. 296, §1 (NEW).]
- B. Products or equipment used in industrial or manufacturing processes; or [PL 2007, c. 296, §1 (NEW).]
- C. Electronic wiring and cable used for power transmission. [PL 2007, c. 296, §1 (NEW).]

[PL 2007, c. 296, §1 (NEW).]

**7. Manufacturer responsibility.** Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer's product of the requirements of this section. Beginning January 1, 2013, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 5-A must notify persons that sell the manufacturer's product of the requirements of this section.

[PL 2009, c. 610, §4 (AMD).]

**8. Retailer assistance.** The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

[PL 2007, c. 296, §1 (NEW).]

**9. Interstate clearinghouse.** The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and

alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

[PL 2007, c. 296, §1 (NEW).]

**10. Review; report.**

[PL 2007, c. 643, §1 (RP).]

**11. Application.** This section does not prohibit the sale, distribution or use of:

A. Used products; [PL 2009, c. 121, §18 (NEW).]

A-1. Shipping pallets manufactured before January 1, 2012 that contain the "deca" mixture of polybrominated diphenyl ethers or shipping pallets for which an exemption has been granted under subsection 5-B; [PL 2009, c. 610, §5 (NEW).]

B. Except as provided in subsection 5-A, products if the presence of polybrominated diphenyl ether is due solely to the use of recycled material; or [PL 2009, c. 610, §5 (AMD).]

C. Replacement parts that contain the "octa" or "penta" mixtures of polybrominated diphenyl ether if the parts are for use in a product manufactured before January 1, 2006. [PL 2009, c. 121, §18 (NEW).]

[PL 2009, c. 610, §5 (AMD).]

**12. Enforcement.** If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or [PL 2007, c. 296, §1 (NEW).]

B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified. [PL 2007, c. 296, §1 (NEW).]

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement action in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

[PL 2007, c. 296, §1 (NEW).]

**13. Department rule-making authority; flame retardants.** If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention and the Department of Public Safety, Office of the State Fire Marshal, that a flame retardant is harmful to the public health and the environment or meets the criteria as a prohibited replacement pursuant to subsection 14, paragraph B and a safer alternative to the flame retardant as set forth in subsection 14 is available, the department may adopt rules to prohibit the manufacture, sale or distribution in the State of:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that contains that flame retardant; [PL 2009, c. 610, §6 (AMD).]

B. A television or computer that has a plastic housing containing that flame retardant; or [PL 2009, c. 610, §6 (AMD).]

C. A plastic shipping pallet that contains that flame retardant. [PL 2009, c. 610, §6 (NEW).]

The department's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

[PL 2019, c. 315, §14 (AMD).]

**14. Safer alternatives; policy.** It is the policy of the State that the "deca" mixture of polybrominated diphenyl ethers be replaced with safer alternatives as soon as practicable.

A. For the purposes of this subsection, "safer alternative" means a substitute process, product, material, chemical, strategy or any combination of these that:

- (1) When compared to the chemical to be replaced would reduce the potential for harm to human health or the environment or has not been shown to pose the same or greater potential for harm to human health or the environment as the chemical to be replaced;
- (2) Serves a functionally equivalent purpose that enables applicable fire safety standards, approvals and tests and relevant performance standards to be met;
- (3) Is commercially available on a national basis; and
- (4) Is not cost-prohibitive. [PL 2009, c. 610, §7 (NEW).]

B. Effective June 1, 2011, a person subject to the restrictions under this section may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical alternative that the commissioner, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines:

- (1) Has been identified as or meets the criteria for identification as a persistent, bioaccumulative and toxic chemical by the United States Environmental Protection Agency;
- (2) Is a brominated or chlorinated flame retardant, unless the person demonstrates to the satisfaction of the commissioner that the flame retardant is a safer alternative; or
- (3) Creates another chemical as a breakdown product through degradation or metabolism that meets the provisions of subparagraph (1).

A replacement to the "deca" mixture of polybrominated diphenyl ethers may contain an amount of the chemicals listed or described in subparagraphs (1), (2) and (3) equal to or less than 0.1%, except that a replacement may contain an amount of a halogenated organic chemical containing the element fluorine equal to or less than 0.2%.

Upon request by the commissioner, a person subject to the restrictions under this subsection shall provide the commissioner with all existing information about the hazard and exposure characteristics of the replacement chemical that is known to, in the possession or control of or reasonably ascertainable by the person. [PL 2011, c. 160, §1 (AMD).]

[PL 2011, c. 160, §1 (AMD).]

**15. Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions set forth in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

[PL 2009, c. 610, §8 (NEW).]

#### SECTION HISTORY

RR 2003, c. 2, §119 (RAL). PL 2003, c. 629, §1 (NEW). PL 2003, c. 661, §2 (NEW). PL 2007, c. 296, §1 (AMD). PL 2007, c. 643, §1 (AMD). PL 2007, c. 655, §§17, 18 (AMD). PL 2009, c.



121, §§17, 18 (AMD). PL 2009, c. 610, §§2-8 (AMD). PL 2011, c. 160, §1 (AMD). PL 2019, c. 315, §14 (AMD).

### **§1609-A. Residential upholstered furniture**

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

A. "Flame-retardant chemical" means a chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. "Flame-retardant chemical" includes, but is not limited to, halogenated, phosphorus-based, nitrogen-based and nanoscale flame retardants and any chemical or chemical compound for which "flame retardant" appears on the substance safety data sheet required under 29 Code of Federal Regulations, Section 1910.1200(g) (2015). [PL 2017, c. 311, §1 (NEW).]

B. "Upholstered furniture" means residential furniture intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials. [PL 2017, c. 311, §1 (NEW).]

[PL 2017, c. 311, §1 (NEW).]

**2. Sales prohibition.** Except as otherwise provided in section 1609, subsection 4, beginning January 1, 2019, a person may not sell or offer to sell or distribute for promotional purposes upholstered furniture containing in its fabric or other covering or in its cushioning materials more than 0.1% of a flame-retardant chemical or more than 0.1% of a mixture that includes flame-retardant chemicals.

[PL 2017, c. 311, §1 (NEW).]

**3. Exemptions.** The restrictions in subsection 2 do not apply to the following upholstered furniture products containing flame-retardant chemicals:

A. Used upholstered furniture; [PL 2017, c. 311, §1 (NEW).]

B. Upholstered furniture purchased for public use in public facilities, including, but not limited to, schools, jails and hospitals, that is required by the State of California to meet the flammability standard in California Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation Technical Bulletin 133, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies," dated January 1991; [PL 2021, c. 221, §1 (AMD).]

C. New upholstered furniture otherwise subject to the prohibition in subsection 2 that is sold, offered for sale or distributed for promotional purposes in the State by a retailer or wholesaler on or after January 1, 2019 and that was imported into the State or otherwise purchased or acquired by the retailer or wholesaler for sale or distribution in the State prior to January 1, 2019; and [PL 2021, c. 221, §2 (AMD).]

D. Electronic components and associated electronic component casings of upholstered furniture that is subject to the prohibition in subsection 2. [PL 2021, c. 221, §3 (NEW).]

[PL 2021, c. 221, §§1-3 (AMD).]

**3-A. Retailer indemnification.** If upholstered furniture delivered to a retailer in the State by the manufacturer of the upholstered furniture is subsequently determined to contain flame-retardant chemicals such that it is prohibited from sale or distribution in the State under subsection 2, the retailer is entitled to a full refund from the manufacturer with respect to that upholstered furniture, including shipping and other related costs.

[PL 2021, c. 221, §4 (NEW).]

**4. Rulemaking.** The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 311, §1 (NEW).]

## SECTION HISTORY

PL 2017, c. 311, §1 (NEW). PL 2021, c. 221, §§1-4 (AMD).

**§1610. Electronic waste**

**(REALLOCATED FROM TITLE 38, SECTION 1609)**

**1. Findings; purpose.** The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, consolidators, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.

[PL 2007, c. 292, §39 (AMD).]

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

A. [PL 2017, c. 391, §1 (RP).]

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph (1). [PL 2011, c. 250, §2 (AMD).]

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility. [PL 2007, c. 292, §41 (NEW).]

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school. [PL 2011, c. 250, §3 (NEW).]

C. "Covered electronic device" means a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment; other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act; or a cellular telephone subject to section 2143. [PL 2017, c. 391, §1 (AMD).]

C-1. "Desktop printer" means a device weighing 100 pounds or less that prints text or illustrations on paper or 3-dimensional objects and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile. [PL 2017, c. 391, §1 (AMD).]

D. "Manufacturer" means a person who:

- (1) Manufactures or has manufactured a covered electronic device under its own brand or label;
- (2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;
- (3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or
- (4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device. [PL 2007, c. 292, §42 (AMD).]

D-1. "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices. [PL 2009, c. 231, §1 (NEW); PL 2009, c. 231, §7 (AFF).]

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. [RR 2003, c. 2, §119 (RAL).]

F. [PL 2011, c. 250, §4 (RP).]

G. [PL 2017, c. 391, §1 (RP).]

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy recovery or energy generation by means of combustion. [RR 2003, c. 2, §119 (RAL).]

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling. [RR 2003, c. 2, §119 (RAL).]

J. "Retailer" means a person who sells or provides a platform for the sale of a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar

electronic means, but not including wholesale transactions with a distributor or other retailer. [PL 2017, c. 391, §1 (AMD).]

K. [PL 2017, c. 391, §1 (RP).]

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game. [PL 2009, c. 397, §6 (NEW).]

[PL 2017, c. 391, §1 (AMD).]

**3. Sales prohibition.** Beginning January 1, 2006 the following sales prohibitions apply to manufacturers and retailers.

A. A manufacturer not in compliance with this section is prohibited from offering a covered electronic device for sale in this State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's covered electronic devices are not offered for sale in this State. [RR 2003, c. 2, §119 (RAL).]

B. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this section. [RR 2003, c. 2, §119 (RAL).]

[RR 2003, c. 2, §119 (RAL).]

**4. Manufacturer label required.** Beginning January 1, 2005, a manufacturer may not offer for sale in this State a covered electronic device unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to it.

[RR 2003, c. 2, §119 (RAL).]

**5. Responsibility for recycling.** Municipalities, consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that covered electronic devices generated as waste from covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system. [PL 2017, c. 391, §2 (AMD).]

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices. [PL 2011, c. 250, §6 (NEW).]

B. A consolidator is subject to the requirements of this paragraph.

(1-A) A consolidator shall maintain a written log of the total weight of each type of covered electronic device delivered each month to the consolidator and identified as generated by a covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated on a basis proportional to the manufacturer's national market share of each type of covered electronic device sold in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport covered electronic devices to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall

maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department. [PL 2017, c. 391, §2 (AMD).]

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department. [PL 2007, c. 292, §43 (AMD).]

D. Covered electronic device manufacturers are subject to the requirements of this paragraph.

(1) Manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all covered electronic devices received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of each type of covered electronic device must be funded by allocating the cost of the program among the manufacturers selling covered electronic devices in the State on a basis proportional to the manufacturer's national market share of the type of covered electronic device. The department shall annually determine each manufacturer's recycling share based on readily available national market share data. If the department determines that a manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the manufacturers that have 1/10 of 1% or more of the market of each type of covered electronic device.

(2) Each manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator. [PL 2017, c. 391, §2 (AMD).]

E. Annually by January 1st the department shall provide manufacturers and consolidators with a listing of each manufacturer's proportional market share responsibility for the recycling of covered electronic devices for the subsequent calendar year. [PL 2017, c. 391, §2 (AMD).]

[PL 2017, c. 391, §2 (AMD).]

## **6. Manufacturer plan and reporting requirements.**

[PL 2009, c. 397, §8 (RP); PL 2009, c. 397, §14 (AFF).]

**6-A. Manufacturer registration.** Prior to offering a covered electronic device and by April 1st annually, a manufacturer that offers or has offered within the preceding calendar year a covered electronic device for sale in or into this State shall submit a registration to the department. The annual registration must include:

A. The name, contact and billing information of the manufacturer; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

B. The manufacturer's brand name or names and the type of covered electronic device on which each brand is used, including:

(1) All brands sold in the State in the preceding calendar year; and

(2) All brands currently being sold in the State; [PL 2017, c. 391, §3 (AMD).]

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

E. The method or methods of sale used in the State; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

F. Annual national sales data on the weight, number and type of covered electronic devices sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; [PL 2017, c. 391, §3 (AMD).]

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10; and [PL 2011, c. 250, §9 (AMD).]

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers. [PL 2017, c. 391, §3 (AMD).]

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351. [PL 2017, c. 391, §3 (AMD).]

**7. Enforcement; cost recovery.** The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201. [PL 2017, c. 391, §4 (AMD).]

**8. Reports to Legislature.** The department shall submit a report on the recycling of electronic waste in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters as part of each product stewardship report submitted in accordance with section 1772. The report may include an evaluation of the recycling rates in the State for covered electronic devices and recommendations for any changes to the system of collection and recycling of electronic devices in the State. [PL 2011, c. 250, §10 (AMD).]

**9. State procurement.** All vendors of electronic devices to the State shall provide take-back and management services for their products at the end of life of those products and must be in compliance

with all the requirements of this section. Vendors shall provide assurances that all take-back and management services will operate in compliance with all applicable environmental laws. Purchasing preference must be given to electronic devices that incorporate design for the preservation of the environment.

[RR 2003, c. 2, §119 (RAL).]

**10. Rulemaking.** The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of covered electronic devices.

[PL 2017, c. 391, §5 (AMD).]

**11. Interstate clearinghouse for electronic waste.** The department may participate in the establishment and implementation of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

[PL 2009, c. 397, §12 (NEW).]

#### SECTION HISTORY

RR 2003, c. 2, §119 (RAL). PL 2005, c. 330, §§37-40 (AMD). PL 2005, c. 561, §8 (AMD). PL 2007, c. 292, §§39-44 (AMD). PL 2009, c. 231, §§1-5 (AMD). PL 2009, c. 231, §7 (AFF). PL 2009, c. 397, §§2-12 (AMD). PL 2009, c. 397, §14 (AFF). PL 2011, c. 250, §§2-10 (AMD). PL 2017, c. 391, §§1-5 (AMD).

#### §1611. Plastic bag reduction

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

A. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable, and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified. [PL 2019, c. 346, §2 (NEW).]

B. "Point of sale" means a check-out stand, cash register or other point of departure from a retail establishment. [PL 2019, c. 346, §2 (NEW).]

C. "Post-consumer recycled material" means a recycled material that if not recycled would otherwise have been destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused in, an original manufacturing and fabrication process. [PL 2019, c. 346, §2 (NEW).]

D. "Recycled paper bag" means a paper bag that:

(1) Is 100% recyclable; and

(2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds, [PL 2019, c. 346, §2 (NEW).]

E. "Restaurant" means an establishment that sells prepared food directly to the consumer. [PL 2019, c. 346, §2 (NEW).]

F. "Retail establishment" means a store, a restaurant or a temporary business. [PL 2019, c. 346, §2 (NEW).]

G. "Reusable bag" means a bag with handles that:

(1) Is designed and manufactured to withstand a minimum of 75 repeated uses;

(2) Is machine washable or made from a material that can be cleaned and disinfected regularly;

(3) If made from plastic is at least 4 mils thick; and

(4) Has the capability of carrying a minimum of 18 pounds. [PL 2019, c. 346, §2 (NEW).]

H. "Single-use carry-out bag" means a bag that is made of plastic, paper or other material provided by a retail establishment within the retail establishment for the purpose of transporting merchandise away from the retail establishment or for packaging, protecting or otherwise containing merchandise within the retail establishment and that is not a recycled paper bag or a reusable bag. [PL 2019, c. 674, §1 (AMD).]

I. "Store" means a retail store that engages in the retail sale of merchandise, including food, goods, products and clothing. "Store" includes grocery stores primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and convenience stores engaged in the sale of a limited line of goods, including milk, bread, soda and snack foods, and prepared foods intended to be consumed off the premises. [PL 2019, c. 346, §2 (NEW).]

J. "Temporary business" means a seasonal or nonpermanent retail establishment such as a farmers' market or fair that sells merchandise including food, goods, products or clothing. [PL 2019, c. 346, §2 (NEW).]

[PL 2019, c. 674, §1 (AMD).]

**2. Prohibition; exemptions.** This subsection governs the use of single-use carry-out bags.

A. Except as otherwise provided in this subsection, beginning April 22, 2020, a retail establishment may not provide a single-use carry-out bag to a customer at the point of sale or otherwise make single-use carry-out bags available to customers. [PL 2019, c. 346, §2 (NEW).]

B. The prohibition in paragraph A does not apply to:

(1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store;

(2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag;

(3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants;

(4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses;

(5) Newspaper bags;

(6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste;

(7) Bags used to contain live animals, such as fish or insects sold in pet stores;

(8) Bags used for vehicle tires;

(9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment;

(10) Bags used by a hunger relief organization such as a food pantry or soup kitchen to distribute food directly to the consumer at no charge;

(11) Bags that customers bring to the retail establishment for their own use or for carrying away from the retail establishment goods that are not placed in a bag provided by the retail establishment. [PL 2019, c. 346, §2 (NEW).]



C. A retail establishment may make single-use carry-out bags made of plastic that are exempted in paragraph B available to customers to bag products within the retail establishment other than at the point of sale only if the retail establishment:

- (1) Locates inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and
- (2) Ensures that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics. [PL 2019, c. 346, §2 (NEW).]

[PL 2019, c. 346, §2 (NEW).]

**3. Recycled paper bag fees and reusable plastic bag fees; exemptions.** This subsection governs fees assessed on recycled paper bags and on reusable bags made of plastic.

A. Beginning January 15, 2021 a retail establishment may provide a recycled paper bag or a reusable bag made of plastic to bag products at the point of sale as long as the retail establishment charges a fee of at least 5¢ per bag.

- (1) All amounts collected pursuant to this paragraph are retained by the retail establishment and may be used for any lawful purpose.
- (2) A retail establishment may not rebate or otherwise reimburse a customer any portion of the fee charged pursuant to this paragraph. [PL 2021, c. 186, §18 (AMD).]

B. The requirement to charge a fee under paragraph A does not apply to:

- (1) Stores at which less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area;
- (2) Restaurants; or
- (3) Hunger relief organizations engaged in distributing food directly to consumers at no charge.

A retail establishment exempt from charging a fee under this paragraph may charge a fee for a recycled paper bag or a reusable bag made of plastic. [PL 2019, c. 346, §2 (NEW).]

[PL 2021, c. 186, §18 (AMD).]

**4. Violations.** A retail establishment that violates a provision of this section is subject to civil penalties under section 349.

[PL 2019, c. 346, §2 (NEW).]

**5. Preemption.** To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carry-out bags at retail establishments beginning March 17, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning January 15, 2021, any ordinance or regulation that violates this subsection is void and has no force or effect.

[PL 2019, c. 617, Pt. J, §2 (AMD).]

## SECTION HISTORY

PL 2019, c. 346, §2 (NEW). PL 2019, c. 617, Pt. J, §§1, 2 (AMD). PL 2019, c. 674, §1 (AMD). PL 2021, c. 186, §18 (AMD).

### §1612. Drug take-back stewardship program

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

A. "Authorized collector" means:

- (1) A person, company, corporation or other entity registered with the United States Department of Justice, Drug Enforcement Administration to collect controlled substances and noncontrolled substances for the purposes of safe disposal and destruction;
- (2) A law enforcement agency; or
- (3) A person, company, corporation or other entity authorized by the department to provide alternative collection methods for covered drugs that are household pharmaceutical waste and that are noncontrolled substances.

"Authorized collector" includes a mandatory pharmacy collector. [PL 2021, c. 94, §2 (NEW).]

B. [PL 2023, c. 504, §1 (RP).]

C. "Collection receptacle" means a secure box, kiosk or other container:

- (1) Into which a person may deposit for disposal covered drugs that are household pharmaceutical waste and that is prominently labeled in a manner indicating that only such types of covered drugs may be deposited for disposal;
- (2) That meets applicable federal standards for the use described in subparagraph (1); and
- (3) That is located on the premises of an authorized collector participating in a stewardship program under this section. [PL 2021, c. 94, §2 (NEW).]

D. "Covered drug" means any substance recognized as a drug under 21 United States Code, Section 321(g)(1), as amended, and any regulations adopted pursuant to that provision, that is sold, offered for sale or dispensed in the State, whether directly or through a wholesaler, in any form, including, but not limited to, prescription and nonprescription drugs, drugs in medical devices and combination products, brand name and generic drugs and drugs for veterinary use.

"Covered drug" does not include:

- (1) Vitamins or supplements;
- (2) Herbal-based remedies and homeopathic drugs, products or remedies;
- (3) Cosmetics, soap with or without germicidal agents, laundry detergent, bleach, household cleaning products, shampoo, sunscreen, toothpaste, lip balm, antiperspirant or other personal care products that are regulated as both cosmetics and nonprescription drugs under the Federal Food, Drug, and Cosmetic Act;
- (4) Pet pesticide products contained in pet collars, powders, shampoos, topical applications or other forms and prescription pet food;
- (5) Drugs that are biological products, as defined in 21 Code of Federal Regulations, Section 600.3(h), if the manufacturer provides a program to take back that drug;
- (6) Drugs for which a manufacturer provides a program to take back those drugs as part of a United States Department of Health and Human Services, Food and Drug Administration managed risk evaluation and mitigation strategy;
- (7) Emptied syringes or emptied medical devices or the component parts or accessories of those products or devices;
- (8) Drugs that are used solely in a clinical setting; and
- (9) Dialysate drugs required to perform home kidney dialysis. [PL 2023, c. 504, §2 (AMD).]

E. "Drug take-back stewardship organization" or "stewardship organization" means a corporation, nonprofit organization or other legal entity created by one or more manufacturers to implement a stewardship program under this section. [PL 2021, c. 94, §2 (NEW).]

F. "Drug take-back stewardship plan" or "plan" means a plan designed by a manufacturer or stewardship organization for the establishment of a stewardship program. [PL 2021, c. 94, §2 (NEW).]

G. "Drug take-back stewardship program" or "stewardship program" means a system implemented under this section for the collection, transportation and disposal of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

H. "Household pharmaceutical waste" means useless, unwanted, expired or discarded drugs generated by a household.

For the purposes of this paragraph, "household" includes, but is not limited to, a single residential unit, a multifamily residential unit, an apartment and an independent living community. "Household" does not include a hospital, health clinic, hospice facility, skilled nursing facility or other long-term care facility, physician's office, pharmacy or veterinary office or clinic. [PL 2021, c. 94, §2 (NEW).]

I. "Mail-back envelope" means a prepaid, preaddressed mailing envelope, as authorized by federal law and regulation, that is provided by or through a company or organization licensed or otherwise authorized to dispose of covered drugs that are household pharmaceutical waste received in such mailing envelopes and that is made available through a stewardship program to persons seeking to dispose of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

J. "Mandatory pharmacy collector" means a pharmacy licensed by the Maine Board of Pharmacy pursuant to Title 32, section 13751.

For the purposes of this paragraph, "pharmacy" has the same meaning as in Title 32, section 13702-A, subsection 24, except that "pharmacy" does not include a pharmacy that purchases drugs for and dispenses drugs to a limited, institutional patient population. [PL 2021, c. 94, §2 (NEW).]

K. "Manufacturer" means:

(1-A) Except as provided in subparagraph (2), a manufacturer of a covered drug that is sold or offered for sale in or into the State; or

(2) If the manufacturer of a covered drug that is sold or offered for sale in or into the State has no physical presence in the United States and is not a participant in a stewardship program, a person that imports a covered drug that is sold or offered for sale in or into the State.

"Manufacturer" does not include a wholesaler that sells or offers for sale in the State at wholesale a covered drug if the covered drug is manufactured by a manufacturer that is a participant in a stewardship program.

"Manufacturer" does not include a retailer that sells or offers for sale in the State at retail a covered drug under the retailer's store label if the covered drug is manufactured by a manufacturer that is a participant in a stewardship program. [PL 2023, c. 504, §3 (AMD).]

L. "Operator" means a manufacturer or a stewardship organization that implements and operates a stewardship program. [PL 2021, c. 94, §2 (NEW).]

M. "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. [PL 2021, c. 94, §2 (NEW).]

[PL 2023, c. 504, §§1-3 (AMD).]

**2. Manufacturer responsibility.** A manufacturer shall:

A. Individually or jointly with one or more manufacturers, implement, administer and operate a stewardship program pursuant to a plan that has been approved by the department; or [PL 2021, c. 94, §2 (NEW).]

B. Enter into an agreement with a stewardship organization to implement, administer and operate a stewardship program pursuant to a plan that has been approved by the department. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

**3. Submittal of plan.** A manufacturer, individually or jointly with one or more manufacturers, or a stewardship organization contracted by one or more manufacturers, shall submit to the department for approval a proposed plan. The plan must include, at a minimum:

A. A certification that the stewardship program will accept all covered drugs that are household pharmaceutical waste regardless of who manufactured the covered drugs; [PL 2021, c. 94, §2 (NEW).]

B. Contact information for the person submitting the plan to whom the department shall direct all related inquiries, a list of participating manufacturers and their covered drugs, contact information for each participating manufacturer and a list of the covered drugs manufactured by any participating manufacturer that are labeled for sale in the State by a retailer under the retailer's own store label; [PL 2023, c. 504, §4 (AMD).]

C. A description of how the stewardship program will make available free, convenient and ongoing collection opportunities for covered drugs that are household pharmaceutical waste to all persons seeking to dispose of such covered drugs and how the collection opportunities will be geographically distributed in a way to ensure access in rural and underserved areas, as determined based on geographic information systems modeling. The plan must include a list of authorized collectors and collection locations; [PL 2021, c. 94, §2 (NEW).]

D. A description of the collection methods to be used to ensure that only covered drugs that are household pharmaceutical waste will be collected by authorized collectors under the stewardship program and a description of how separation of those covered drugs from packaging by consumers will be encouraged to reduce transportation and disposal costs. The plan must ensure that collection methods used under the program include mail-back envelopes and collection receptacles and do not include home disposal methods involving packets, bottles or other containers that a person may use to render nonretrievable or destroy a covered drug that is household pharmaceutical waste by means of a chemical process; [PL 2021, c. 94, §2 (NEW).]

E. A certification that, upon implementation of the plan, the operator, jointly with the operators of other approved plans if any, will develop and administer a publicly accessible website that includes:

(1) A list of authorized collectors, collection locations and the collection methods available at each collection location available under each stewardship program, updated as necessary;

(2) General information regarding the purpose and scope of the stewardship program or programs and the opportunities available to consumers under the program or programs for the safe disposal of covered drugs that are household pharmaceutical waste; and

(3) A statement that the stewardship program or programs are designed for the collection of covered drugs that are household pharmaceutical waste only; [PL 2021, c. 94, §2 (NEW).]

F. Information on how covered drugs that are household pharmaceutical waste will be safely and securely tracked, handled and transported from collection through final disposition and policies to ensure security and compliance with all applicable federal and state laws, rules and regulations including, but not limited to, 21 Code of Federal Regulations, Section 1317.90 and 40 Code of Federal Regulations, Sections 239 to 282; [PL 2021, c. 94, §2 (NEW).]

G. A description of how the collection system will be designed and monitored to prevent tampering; [PL 2021, c. 94, §2 (NEW).]

H. A description of how the stewardship program will measure the amount of collected and disposed of covered drugs that are household pharmaceutical waste; [PL 2021, c. 94, §2 (NEW).]

I. A description of the education and outreach materials that will be used by the stewardship program to encourage consumer awareness and participation and to meet the performance goals established pursuant to paragraph J, including, but not limited to, a publicly accessible website with the information described in paragraph E and printed materials, including brochures and signage, containing similar information for use by authorized collectors and at collection locations. The plan must ensure that the program provides education and outreach materials to authorized collectors for distribution to consumers in accordance with subsection 8, paragraph E; [PL 2021, c. 94, §2 (NEW).]

J. A description of the performance goals to be established under the stewardship program to measure the success of the program and a description of how the program will be designed to achieve or exceed those goals. Performance goals must include, but are not limited to, the implementation of education and outreach efforts designed to:

- (1) Ensure awareness of the program by 60% of residents of the State after one year of stewardship program implementation, by 70% of residents of the State after 2 years of implementation and by 75% of residents of the State after 4 years of implementation; and
- (2) Discourage the use of improper disposal methods for covered drugs that are household pharmaceutical waste, such as flushing the drugs or placing them in the garbage; [PL 2021, c. 94, §2 (NEW).]

K. A description of how the manufacturer or stewardship organization will fund a representative survey of residents of the State by an independent 3rd party prior to implementation of the stewardship program to assess baseline public awareness regarding proper disposal methods for unwanted drugs; and [PL 2021, c. 94, §2 (NEW).]

L. Information on how the stewardship program will be financed in accordance with subsection 5. [PL 2021, c. 94, §2 (NEW).]

[PL 2023, c. 504, §4 (AMD).]

**4. Approval of plan; amendments to plan; program audits.** Within 120 business days of receipt of a plan submitted under subsection 3, the department shall review the plan and approve, approve with conditions or reject the plan. The department may hold a public hearing prior to deciding whether to approve, approve with conditions or reject a submitted plan. The department shall notify the person or persons that submitted the plan in writing of the department's determination and, if the plan is approved with conditions or rejected, include in the notification the basis for the department's determination.

A. A manufacturer or stewardship organization whose plan is rejected shall submit a revised plan to the department within 60 days after receiving a notice of rejection. If the department rejects the revised plan, the manufacturer or manufacturers that submitted the plan or that would have been participating under the plan are considered noncompliant with the requirements of this section. [PL 2021, c. 94, §2 (NEW).]

B. A manufacturer that begins to sell or offer for sale in the State a covered drug after the date that an approved plan is first implemented under subsection 6 shall, within 30 days after the manufacturer's initial sale or offer for sale in the State of that covered drug, demonstrate to the department that it is participating in an existing stewardship program under this section or submit a proposed plan consistent with subsection 3 for a new stewardship program to the department for approval. [PL 2021, c. 94, §2 (NEW).]

C. Prior to implementing an amendment to an approved plan, an operator shall submit the proposed amendment to the department for review. If the amendment is not substantive, such as the addition of or a change to a collection location or the addition of a manufacturer to the stewardship program, approval by the department is not needed, but the operator shall inform the department of the amendment within 14 days of implementing the amendment. The department shall review plan amendments in accordance with paragraphs A and B. [PL 2021, c. 94, §2 (NEW).]

D. At any time, the department may require an operator to implement amendments to its approved plan or to submit to an independent financial audit of its stewardship program. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

**5. Costs.** A manufacturer, individually or jointly with one or more manufacturers, shall pay all costs associated with the implementation, administration and operation of the manufacturer's stewardship program, including, but not limited to:

A. Costs of installing, managing and servicing collection receptacles at and collecting covered drugs that are household pharmaceutical waste from participating authorized collectors, transporting such covered drugs for disposal, disposing of such covered drugs and providing mail-back envelopes; [PL 2021, c. 94, §2 (NEW).]

B. Costs related to the development of, with input from authorized collectors and the department, a readily recognizable, consistent design for collection receptacles, as well as clear, standardized instructions for consumers regarding the use of collection receptacles; [PL 2021, c. 94, §2 (NEW).]

C. Costs incurred by the department in accordance with subsection 11 in the review of submitted plans and plan amendments, the review of annual reports and the administration and enforcement of this section; and [PL 2021, c. 94, §2 (NEW).]

D. Costs associated with the stewardship program assessments required under this section. [PL 2021, c. 94, §2 (NEW).]

When 2 or more manufacturers participate in a stewardship program, or if multiple stewardship programs exist, the costs of implementing, administering and operating the program or programs must be fairly and reasonably allocated between each participating manufacturer so that the share of the costs that is allocated to each manufacturer is reasonably related to the revenue-based market share of covered drugs that the manufacturer sells in the State.

[PL 2021, c. 94, §2 (NEW).]

**6. Implementation of plan.** A manufacturer or stewardship organization that submitted a plan under subsection 3 that was approved by the department under subsection 4 shall implement that plan no later than 180 days after the date the plan was approved.

[PL 2021, c. 94, §2 (NEW).]

**7. Confidential information.** Proprietary information submitted to the department in a drug take-back stewardship plan under this section, in an amendment to a plan or pursuant to the reporting requirements of this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

[PL 2021, c. 94, §2 (NEW).]

**8. Authorized collectors; collection locations.** This subsection governs the activities of authorized collectors and the operation of collection locations.

A. A mandatory pharmacy collector shall participate in a stewardship program and shall provide for the safe collection of covered drugs that are household pharmaceutical waste under that program through the use of:

- (1) Mail-back envelopes made available to consumers of covered drugs upon request;
- (2) Collection receptacles; or
- (3) Any other method of collection that complies with applicable United States Department of Justice, Drug Enforcement Administration regulations under 21 Code of Federal Regulations, Part 1300, 1301, 1304, 1305, 1307 or 1317 and that has been approved by the department as a method of collection for use in the stewardship program, except that the department may not approve for use in any stewardship program under this section a method of home disposal involving packets, bottles or other containers that a person may use to render nonretrievable or destroy a covered drug that is household pharmaceutical waste by means of a chemical process.

A mandatory pharmacy collector that is a pharmacy not located in the State that provides covered drugs to residents in the State by mail shall provide for the safe collection of covered drugs that are household pharmaceutical waste through the use of mail-back envelopes and shall ensure that consumers in the State purchasing covered drugs from the pharmacy are provided with information regarding the availability of such envelopes upon request and instructions regarding how the customer can request an envelope. [PL 2021, c. 94, §2 (NEW).]

B. An operator shall notify all authorized collectors that are not mandatory pharmacy collectors of the opportunity to serve on a voluntary basis as a collection location under the stewardship program and shall ensure that any such authorized collector that requests to participate in the program is added to the program within 90 days of the operator's receipt of the request. A participating authorized collector that is not a mandatory pharmacy collector may use any of the collection methods described under paragraph A. [PL 2021, c. 94, §2 (NEW).]

C. The operator shall ensure that all collection receptacles located at a collection location under the stewardship program are emptied and serviced as often as necessary to avoid the receptacles reaching storage capacity and to ensure proper operation. [PL 2021, c. 94, §2 (NEW).]

D. A mandatory pharmacy collector participating in a stewardship program shall provide information on covered drug collection and safe drug disposal options to a consumer upon dispensing a covered drug, including the availability of mail-back envelopes upon request. An authorized collector that is located in the State that is providing for the collection of covered drugs that are household pharmaceutical waste through the use of mail-back envelopes shall ensure that information regarding the availability of such envelopes upon request is prominently posted, displayed or otherwise provided to consumers purchasing covered drugs. [PL 2021, c. 94, §2 (NEW).]

E. As part of a stewardship program, all collection mechanisms, program information and other program services must be provided by the operator free of charge to authorized collectors, including, but not limited to, the installation, maintenance and emptying of collection receptacles; the provision of mail-back envelopes, educational materials, brochures and signage; and drug-disposal-specific surveillance. [PL 2021, c. 94, §2 (NEW).]

F. Collection of covered drugs that are household pharmaceutical waste at collection locations under a stewardship program must be made available to consumers free of charge. An operator and an authorized collector may not charge a point-of-sale fee to consumers, a fee that could be passed on to consumers or any other fee relating to the collection and disposal of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

**9. Education and outreach assessment.** During the 2nd and 3rd years of implementation of a stewardship program, and every 2 years after that 3rd year, the operator of the program shall fund an independent 3rd-party assessment of the effectiveness of the program's education and outreach efforts, including, but not limited to, progress achieving the consumer awareness goal described in subsection 3, paragraph J, subparagraph (1) and efforts under the program to discourage the use of improper disposal methods for covered drugs that are household pharmaceutical waste, as described in subsection 3, paragraph J, subparagraph (2). The methods and scope of the assessment under this subsection must be developed with input from the department. The operator shall implement changes as necessary to the stewardship program's education and outreach efforts if demonstrated by the results of the assessment.

[PL 2021, c. 94, §2 (NEW).]

**10. Annual stewardship program reporting.** Within 90 days after the first full year of implementation of a stewardship program, and annually thereafter, the operator of the program shall submit to the department a report describing the activities of the program during the prior calendar year, which must include, at a minimum:

A. A list of manufacturers participating in the stewardship program, including contact information; [PL 2021, c. 94, §2 (NEW).]

B. The amount by weight of material collected under the stewardship program in the prior calendar year, including the amount by weight from each collection method used, both in total and by county; [PL 2021, c. 94, §2 (NEW).]

C. Details regarding the stewardship program's collection system, including a list of authorized collectors and associated collection locations with addresses; a list of locations where mail-back envelopes were provided under the program; a list of collection locations where collection receptacles were made available under the program; dates and locations of collection events held under the program; and a list of the transporters and disposal facilities used under the program for the transportation and disposal of collected covered drugs that are household pharmaceutical waste; [PL 2021, c. 94, §2 (NEW).]

D. Information regarding any safety or security issues encountered in the collection, transportation or disposal of covered drugs that are household pharmaceutical waste under the program during the prior calendar year and, if such issues occurred, a description of completed or anticipated changes to program policies, procedures or tracking mechanisms to address those issues; [PL 2021, c. 94, §2 (NEW).]

E. A description of the public education, outreach and evaluation activities implemented in accordance with the approved plan pursuant to subsection 3, paragraph I. For the 2nd year and 3rd year of stewardship program implementation, and every 2 years after that 3rd year, the report must include the results of the 3rd-party assessment required under subsection 9; [PL 2021, c. 94, §2 (NEW).]

F. A description of how packaging collected under the program was recycled, to the extent feasible; [PL 2021, c. 94, §2 (NEW).]

G. A description of the methods used under the stewardship program to collect, transport and dispose of covered drugs that are household pharmaceutical waste, including information regarding efforts by the operator to ensure that only covered drugs that are household pharmaceutical waste were collected, and how the methods are consistent with the federal hazardous waste regulations identified in subsection 3, paragraph F; [PL 2021, c. 94, §2 (NEW).]

H. A summary of the stewardship program's achievement of its performance goals as set forth in the approved plan pursuant to subsection 3, paragraph J. If any performance goals were not



achieved, the report must include a description of the efforts that will be made to achieve those goals the following year; [PL 2021, c. 94, §2 (NEW).]

I. An analysis of the convenience of the collection system under the stewardship program for people living in various regions of the State, as determined based on geographic information systems modeling; [PL 2021, c. 94, §2 (NEW).]

J. The total cost of implementing, administering and operating the stewardship program in the prior calendar year, which must include an accounting of the program's expenditures in the prior calendar year, as verified through an independent 3rd-party audit; [PL 2021, c. 94, §2 (NEW).]

K. Any recommendations for changes to the stewardship program to improve the convenience of the collection system, to increase consumer awareness and education or to better evaluate program performance; and [PL 2021, c. 94, §2 (NEW).]

L. An analysis of the revenue-based market share of covered drugs sold by participating manufacturers in the State and any other information required by the department for determining appropriate cost allocation in accordance with subsection 5. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

**11. Administration and enforcement; rulemaking; fees.** The department shall administer and enforce this section and may adopt rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The department shall charge a reasonable fee to be paid by a manufacturer or stewardship organization for review of a plan or amendments to an approved plan submitted under subsection 4. The department may establish a reasonable annual fee to cover the department's actual costs for annual report review, oversight, administration and enforcement of a stewardship program, except that the fee may not exceed the greater of \$100,000 per year and 1% of total stewardship program costs, as verified through the independent 3rd-party audit required under subsection 10, paragraph J.

[PL 2021, c. 94, §2 (NEW).]

**12. Private right of action.** A manufacturer or stewardship organization implementing an approved plan under this section that is in compliance with all applicable requirements of this section may bring a civil action against a manufacturer for damages when:

A. The plaintiff manufacturer or stewardship organization has incurred more than \$3,000 in actual, direct costs in collecting, handling and disposing of covered drugs that are household pharmaceutical waste sold or offered for sale in the State by a defendant manufacturer or manufacturers that are not in compliance with all applicable requirements of this section; [PL 2021, c. 94, §2 (NEW).]

B. The defendant manufacturer or manufacturers can be identified as the manufacturer or manufacturers of the covered drugs described in paragraph A from a brand or marking on the covered drugs or from other information available to the plaintiff manufacturer or stewardship organization; [PL 2021, c. 94, §2 (NEW).]

C. The plaintiff manufacturer or stewardship organization has submitted a reimbursement request for the costs described in paragraph A to the defendant manufacturer or manufacturers; and [PL 2021, c. 94, §2 (NEW).]

D. The plaintiff manufacturer or stewardship organization has not received reimbursement for the costs described in paragraph A within:

- (1) Sixty days after the request for reimbursement under paragraph C, if the plaintiff manufacturer or stewardship organization did not request an independent audit under subparagraph (2); or

(2) Thirty days after completion of an independent audit, if the plaintiff manufacturer or stewardship organization requested an independent audit and the audit verified the validity of the reimbursement request. [PL 2021, c. 94, §2 (NEW).]

As used in this subsection, "damages" means the actual, direct costs a plaintiff manufacturer or stewardship organization incurs in collecting, handling and disposing of covered drugs that are household pharmaceutical waste reasonably identified as having originated from a defendant manufacturer or manufacturers that are not in compliance with all applicable requirements of this section; punitive or exemplary damages not exceeding 3 times those incurred costs; and the plaintiff manufacturer's or stewardship organization's attorney's fees and costs of bringing the action under this subsection.

[PL 2021, c. 94, §2 (NEW).]

**13. Annual report to Legislature.** The department shall annually report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters on the status of stewardship programs established pursuant to this section and shall recommend amendments to the provisions of this section as necessary. After reviewing the report under this subsection, the committee may report out legislation related to the report. The report under this subsection may be included in the report required pursuant to section 1772, subsection 1.

[PL 2021, c. 94, §2 (NEW).]

**14. Preemption.** To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of government-mandated, manufacturer-funded drug take-back, collection or disposal programs. A local government may not adopt an ordinance mandating a manufacturer-funded drug take-back, collection or disposal program and any ordinance or regulation that violates this subsection is void and has no force or effect.

[PL 2021, c. 94, §2 (NEW).]

**REVISOR'S NOTE:** §1612. Hydrofluorocarbon use restrictions (As enacted by PL 2021, c. 192, §1 is REALLOCATED TO TITLE 38, SECTION 1613)

**REVISOR'S NOTE:** §1612. Products containing PFAS (As enacted by PL 2021, c. 477, §1 is REALLOCATED TO TITLE 38, SECTION 1614)

**REVISOR'S NOTE:** §1612. Plastic beverage containers (As enacted by PL 2021, c. 742, §3 is REALLOCATED TO TITLE 38, SECTION 1615)

#### SECTION HISTORY

PL 2021, c. 94, §2 (NEW). PL 2023, c. 504, §§1-4 (AMD).

#### §1613. Hydrofluorocarbon use restrictions

(REALLOCATED FROM TITLE 38, SECTION 1612)

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

A. "Aerosol propellant" means a liquefied or compressed gas, including, but not limited to, a cosolvent that is used in whole or in part to expel a liquid or other material from a self-pressurized container containing that liquid or other material or from a separate container. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

B. "Air conditioning equipment" means chillers used exclusively for the comfort cooling of occupied spaces. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

C. "Built-in household refrigerator or freezer" means a refrigerator, refrigerator-freezer or freezer designed for residential use that:

- (1) Has 7.75 cubic feet, or 220 liters, or greater total refrigerated volume and 24 inches or less depth not including doors, handles and custom front panels;
  - (2) Has sides that are not finished and are not designed to be visible after installation;
  - (3) Is designed, intended and marketed exclusively to be installed completely encased by cabinetry or panels that are attached during installation and securely fastened to adjacent cabinetry, walls or flooring; and
  - (4) Is equipped with an integral factory-finished face or that accepts a custom front panel. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- D. "Capital cost" means an expense incurred in the production of goods or in the rendering of services, including, but not limited to, the cost of engineering; the cost of the purchase and installation of components or systems and instrumentation; and contractor and construction fees. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- E. "Centrifugal chiller" means air conditioning equipment that uses a centrifugal compressor in a vapor-compression refrigeration cycle and is designed for comfort cooling. "Centrifugal chiller" does not include air conditioning equipment used for industrial process cooling and refrigeration. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- F. "Cold storage warehouse" means a cooled facility designed to store meat, produce, dairy products and other products prior to the delivery of those products to other locations for sale to the ultimate consumer. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- G. "Compact household refrigerator or freezer" means a refrigerator, refrigerator-freezer or freezer designed for residential use that has a total refrigerated volume of less than 7.75 cubic feet or 220 liters. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- H. "Component" means a part of a refrigeration system, including, but not limited to, a condensing unit, compressor, condenser, evaporator or receiver and all of the refrigeration system's connections and subassemblies without which the refrigeration system would not properly function or would be subject to failure. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- I. "End use" means a process or class of specific applications within an industry sector. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- J. "Flexible polyurethane" means a nonrigid synthetic foam containing polymers of urethane radicals, including, but not limited to, foam used in furniture, bedding, chair cushions and shoe soles. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- K. "Foam" means a product with a cellular structure, or a substance used to produce a product with a cellular structure formed via a foaming process, including materials that undergo hardening via chemical reaction or phase transition. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- L. "Heat pump" means a device designed for the comfort heating or cooling of residential or commercial spaces, whether air sourced, water sourced or ground sourced, including, but not limited to, a mini-split heat pump. "Heat pump" does not include air conditioning equipment. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- M. "Household refrigerator or freezer" means a refrigerator, refrigerator-freezer, freezer or miscellaneous residential refrigeration appliance that is designed for residential use. "Household refrigerator or freezer" does not include a compact household refrigerator or freezer or a built-in household refrigerator or freezer. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

- N. "Integral skin polyurethane" means a self-skinning polyurethane foam, including, but not limited to, foam used in automobile steering wheels and dashboards. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- O. "Light duty vehicle" has the same meaning as "car" or "light duty truck" as defined in Title 5, section 1812-E. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- P. "Metered dose inhaler" means a device that delivers a measured amount of medication as a mist that an individual can inhale and that consists of a pressurized canister of medication in a case with a mouthpiece. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- Q. "Miscellaneous residential refrigeration appliance" means a residential refrigeration appliance that is smaller than a refrigerator, refrigerator-freezer or freezer and that is designed for residential use, including, but not limited to, a cooler, a cooler compartment and a combination cooler-refrigeration or cooler-freezer product. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- R. "New" means, with regard to a product or equipment:
- (1) A product or equipment that is manufactured after the date of an applicable prohibition under subsection 2; or
  - (2) Equipment that is substantially expanded or modified after the date of an applicable prohibition under subsection 2 such that the capital cost of the expansion or modification exceeds 50% of the cost of replacing the entire system of which that equipment is a part. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- S. "Phenolic insulation board" means phenolic insulation, including, but not limited to, insulation used for roofing and walls. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- T. "Phenolic insulation bunstock" means phenolic insulation that is a large solid box-like structure that can be cut into specific custom lengths and shapes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- U. "Polyolefin" means foam sheets and tubes made of polyolefin. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- V. "Polystyrene extruded boardstock and billet" means a foam formed from styrene polymers that is produced on extruding machines in the form of continuous foam slabs that can be cut and shaped into panels to be used for insulation of roofing, walls, flooring and pipes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- W. "Polystyrene extruded sheet" means polystyrene foam including foam used for packaging and buoyancy or flotation, including, but not limited to, foam made into food-service items, such as hinged polystyrene containers, food trays, plates, bowls and retail egg containers. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- X. "Positive displacement chiller" means a vapor compression cycle chiller that uses a positive displacement compressor and is typically used for commercial comfort air conditioning. "Positive displacement chiller" does not include a chiller used for industrial process cooling and refrigeration. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- Y. "Refrigerant gas" or "refrigerant" means a substance, including blends and mixtures of substances, that is used for heat transfer purposes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]
- Z. "Refrigerated food processing and dispensing equipment" means retail food refrigeration equipment that is designed to process and dispense food and beverages that are intended for immediate or near-immediate consumption, including, but not limited to, chilled and frozen

beverages, ice cream and whipped cream. "Refrigerated food processing and dispensing equipment" does not include water coolers or units designed to exclusively cool and dispense water. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

AA. "Refrigeration equipment" means a stationary device that is designed to contain and use refrigerant gas to establish or maintain colder than ambient temperatures in a confined space, including, but not limited to, retail food refrigeration equipment, a household refrigerator or freezer and a cold storage warehouse. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

BB. "Remote condensing unit" means retail food refrigeration equipment that has a central condensing portion and may consist of one or more compressors, condensers or receivers assembled into a single unit, which may be located outside a retail sales area, including, but not limited to, such units that are commonly installed in convenience stores, specialty shops such as bakeries or butcher shops, supermarkets, restaurants and other locations where food is stored, served or sold. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

CC. "Residential use" means use by an individual of a substance, or a product containing a substance, in or around a permanent or temporary household, during recreation or for any personal use or enjoyment. "Residential use" does not include use within a household for commercial or medical applications or use in automobiles, watercraft or aircraft. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

DD. "Retail food refrigeration equipment" means equipment designed to store and display chilled or frozen goods for commercial sale, including, but not limited to, stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems and vending machines. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

EE. "Retrofit" means to replace the refrigerant contained in refrigeration equipment with a different refrigerant, including, but not limited to, any related modifications to the refrigeration equipment required to maintain its operation and reliability following refrigerant replacement. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

FF. "Rigid polyurethane and polyisocyanurate laminated boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including, but not limited to, insulation for roofing and walls. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

GG. "Rigid polyurethane appliance foam" means polyurethane insulation foam used in domestic appliances. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

HH. "Rigid polyurethane high-pressure 2-component spray foam" means a liquid polyurethane foam system sold as 2 parts, such as an A side and a B side, in nonpressurized containers and that is field-applied or factory-applied in situ using high-pressure proportioning pumps, to 800 to 1,600 pounds per square inch, and an application gun to mix and dispense the chemical components. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

II. "Rigid polyurethane in commercial refrigeration" means polyurethane insulation for pipes, walls and metal doors in retail food refrigeration equipment. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

JJ. "Rigid polyurethane low-pressure 2-component spray foam" means a liquid polyurethane foam system sold as 2 parts, such as an A side and a B side, in containers that are pressurized to less than 250 pounds per square inch during manufacture for application without pumps and that is typically applied in situ relying upon a liquid blowing agent or gaseous blowing agent that also serves as a propellant. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

KK. "Rigid polyurethane marine flotation foam" means buoyancy or flotation foam used in boat and ship manufacturing for both structural and flotation purposes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

LL. "Rigid polyurethane one-component foam sealant" means a polyurethane foam typically packaged in aerosol cans that is applied in situ using a gaseous blowing agent that also serves as a propellant for the aerosol formulation. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

MM. "Rigid polyurethane sandwich panels" means a polyurethane foam sandwiched between outer structural layers and used to provide insulation in walls and doors, including for insulation in commercial refrigeration equipment and garage doors. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

NN. "Rigid polyurethane slabstock" means a rigid closed-cell polyurethane foam formed into slabstock insulation for panels and pipes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

OO. "Stand-alone low-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32 degrees Fahrenheit. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

PP. "Stand-alone medium-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures above 32 degrees Fahrenheit. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

QQ. "Stand-alone unit" means a retail refrigerator, freezer or reach-in cooler, whether open or with doors, that has fully integrated refrigeration components and a refrigeration circuit that may be completely brazed or welded and that is fully charged with refrigerant during manufacture and typically requires only an electricity supply to begin operation. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

RR. "Substance" means any chemical or blend of chemicals intended for an end use listed in subsection 2 or regulated by the department by rule adopted pursuant to subsection 6. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

SS. "Supermarket system" means a multiplex or centralized retail food refrigeration equipment system that is designed to cool or refrigerate and that operates using racks of compressors installed in a machinery room, including both a direct and an indirect system. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

TT. "Use," with regard to a substance, includes, but is not limited to, consumption, incorporation or inclusion in a manufacturing process or product in the State; consumption for an end use in the State; and consumption, incorporation or inclusion in an intermediate application in the State, such as formulation or packaging for other subsequent applications. "Use" does not include residential use but does include manufacturing for the purpose of residential use. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

UU. "Vending machine" means self-contained retail food refrigeration equipment that dispenses goods that must be kept cold or frozen. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**2. Prohibitions.** Except as provided in subsection 3 and in accordance with rules adopted by the department pursuant to this section, a person may not sell, lease, rent, install or enter into commerce in the State any product or equipment that uses or will use the following specified substances that are

hydrofluorocarbons with high global warming potential for the following specified air conditioning, refrigeration, foam or aerosol propellant end uses.

A. Beginning January 1, 2022:

- (1) For aerosol propellants in new products, the following substances are prohibited: HFC-125, HFC-134a, HFC-227ea and blends of HFC-227ea and HFC-134a;
- (2) For new compact household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;
- (3) For retrofitted supermarket systems, the following substances are prohibited: R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;
- (4) For new supermarket systems, the following substances are prohibited: HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;
- (5) For retrofitted remote condensing units, the following substances are prohibited: R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;
- (6) For new remote condensing units, the following substances are prohibited: HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;
- (7) For retrofitted stand-alone units, the following substances are prohibited: R-404A and R-507A;
- (8) For new stand-alone medium-temperature units, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;
- (9) For new stand-alone low-temperature units, the following substances are prohibited: HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A and RS-44 (2003 formulation);
- (10) For new refrigerated food processing and dispensing equipment, the following substances are prohibited: HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A and RS-44 (2003 formulation);
- (11) For retrofitted vending machines, the following substances are prohibited: R-404A and R-507A;
- (12) For new rigid polyurethane and polyisocyanurate laminated boardstock, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;
- (13) For new flexible polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;
- (14) For new integral skin polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

- (15) For new polystyrene extruded sheet, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (16) For new phenolic insulation board and new phenolic insulation bunstock, the following substances are prohibited: HFC-143a, HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;
- (17) For new rigid polyurethane slabstock and other new rigid polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (18) For new rigid polyurethane appliance foam, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (19) For new rigid polyurethane in commercial refrigeration and new rigid polyurethane sandwich panels, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (20) For new polyolefin, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (21) For new rigid polyurethane one-component foam sealants, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI;
- (22) For new household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;
- (23) For new vending machines, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-426A, R-437A, R-438A, R-507A, RS-24 (2002 formulation) and SP34E;
- (24) For new rigid polyurethane marine flotation foam, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;
- (25) For new polystyrene extruded boardstock and billet, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; Formacel B; and Formacel Z-6;
- (26) For new rigid polyurethane high-pressure 2-component spray foam, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI; and
- (27) For new rigid polyurethane low-pressure 2-component spray foam, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

B. Beginning January 1, 2023:



(1) For new cold storage warehouses, the following substances are prohibited: HFC-227ea, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-423A, R-424A, R-428A, R-434A, R-438A, R-507A and RS-44 (2003 composition); and

(2) For new built-in household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

C. Beginning January 1, 2024:

(1) For new centrifugal chillers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, HFC-236fa, HFC-245fa, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-423A, R-424A, R-434A, R-438A, R-507A, RS-44 (2003 composition) and THR-03; and

(2) For new positive displacement chillers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-424A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 composition), SP34E and THR-03. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**3. Exemptions.** In accordance with rules adopted by the department pursuant to this section, the following exemptions apply to the prohibitions in subsection 2.

A. Except in the case of retrofitted products or equipment regulated under this section, the prohibitions in this section do not apply to the use of a product or equipment regulated under this section that is acquired by a person prior to the date of an applicable prohibition under subsection 2 on the selling, leasing, renting, installing or entering into commerce in the State of that product or equipment. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

B. A product or equipment regulated under this section that is manufactured prior to the date of an applicable prohibition under subsection 2 on the selling, leasing, renting, installing or entering into commerce in the State of that product or equipment may be sold in, imported into, exported from, distributed in, installed in and used in the State after that date. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

C. The department may approve a waiver request submitted by a person to allow that person to sell, lease, rent, install or enter into commerce in the State for a period of not more than 2 years a product or equipment that is otherwise prohibited from sale, lease, rental, installation or entry into commerce pursuant to this section and the rules adopted pursuant to this section. The department shall adopt rules establishing the process by which a person may submit such a waiver request and the criteria to be used by the department in assessing and approving or denying such waiver requests. The department shall require a person submitting such a waiver request to pay to the department a reasonable fee to cover the department's costs in assessing and approving or denying such waiver requests. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

D. Heat pumps are not subject to the prohibitions in this section. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

E. The following end uses of the substance HFC-134a are not subject to the prohibitions in this section:

- (1) As an aerosol propellant in new cleaning products designed to remove grease, flux and other soils from electrical equipment;
- (2) For new refrigerant flushes;
- (3) In a new product for sensitivity testing of smoke detectors;
- (4) As a new lubricant or freeze spray for electrical equipment or electronics;
- (5) As a new spray for aircraft maintenance purposes;
- (6) As a new spray containing corrosion preventive compounds that is used in the maintenance of aircraft, electrical equipment, electronics or military equipment;
- (7) As a new pesticide for use near electrical wires, in aircraft, in total release insecticide foggers or in certified organic use pesticides for which the federal Environmental Protection Agency has specifically disallowed all other lower global warming potential propellants;
- (8) As a new mold release agent or mold cleaner;
- (9) As a new lubricant or cleaner for spinnerets for synthetic fabrics;
- (10) As a new duster spray specifically used for the removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes and energized electrical equipment;
- (11) As a new adhesive or sealant in canisters for commercial use;
- (12) As a new document preservation spray;
- (13) As a new wound care spray, new topical cooling spray for pain relief or new product for removing bandage adhesives from skin; and
- (14) As a new air conditioning refrigerant for military marine vessels when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

F. The substances HFC-134a and HFC-227ea and blends of HFC-227ea and HFC-134a are not subject to the prohibitions in this section when used as an aerosol propellant for new metered dose inhalers approved by the United States Department of Health and Human Services, Food and Drug Administration for medical purposes. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

G. The substances HFC-134a and R-404A are not subject to the prohibitions in this section when used as a new air conditioning refrigerant in spacecraft intended for human occupancy and related support equipment when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

H. Until January 1, 2025, the prohibitions in this section do not apply to:

- (1) New foams, excluding rigid polyurethane one-component foam sealants, when used in space-related and aeronautics-related applications when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements; and
- (2) New rigid polyurethane high-pressure 2-component spray foams and new rigid polyurethane low-pressure 2-component spray foams, when used in military or space-related

and aeronautics-related applications when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

I. Any product or equipment the end use of which is regulated under this section is exempt from the prohibitions in this section and the rules adopted pursuant to this section if such state regulation of the product or equipment is preempted by federal statute or regulation, so long as that federal preemption remains in effect. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]  
[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**4. Record keeping.** In accordance with rules adopted by the department pursuant to this section, a person that manufactures for sale or entry into commerce in the State a product or equipment regulated under this section shall maintain for 5 years, and shall make available to the department upon request, records sufficient to demonstrate that the product or equipment does not contain any substances prohibited for an applicable end use regulated under this section or that the product or equipment is exempt from the prohibitions in this section pursuant to subsection 3.  
[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**5. Venting prohibition.** In accordance with rules adopted by the department, a person may not intentionally or knowingly vent or otherwise release into the environment any prohibited substance identified pursuant to subsection 2 when maintaining, servicing, repairing or disposing of a product or equipment regulated under this section that was sold, leased, rented, installed or entered into commerce in the State prior to the date of an applicable prohibition under subsection 2 for that product or equipment. The prohibition under this subsection does not apply to a person who causes such a release if that release is de minimis and the person caused the release while engaged in a good faith attempt to recycle or recover the prohibited substance in a product or equipment regulated under this section.  
[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**6. Rulemaking.** The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. In its initial adoption of rules to implement this section, the department may not regulate a substance or end use not specifically identified in this section. Subsequent to that initial adoption of rules, the department may amend its adopted rules to regulate or exempt, consistent with this section, substances that are hydrofluorocarbons with high global warming potential and air conditioning, refrigeration, foam or aerosol propellant end uses that are not specifically identified in this section or for other purposes consistent with this section. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

B. Prior to adopting or amending rules to implement this section, the department shall consult with the Department of Public Safety, Office of the State Fire Marshal regarding the effects of any proposed rules on safety-related requirements and restrictions in state or local building codes and in other related state laws and rules. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

C. The department may not adopt by rule a prohibition pursuant to this section that is applicable to new light duty vehicles unless a substantially similar prohibition has been adopted in another state and is in effect in that other state. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

D. If, pursuant to the federal Clean Air Act, 42 United States Code, Section 7671k, the United States Environmental Protection Agency approves a hydrofluorocarbon blend with a global warming potential of 750 or less for foam blowing of polystyrene extruded boardstock and billet or rigid polyurethane low-pressure 2-component spray foam, the department may initiate

rulemaking to amend its rules adopted pursuant to this section to address that federal action. [PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]  
[PL 2021, c. 192, §1 (NEW); RR 2021, c. 1, Pt. A, §53 (RAL).]

**REVISOR'S NOTE:** §1613. Appliance and product efficiency standards (As enacted by PL 2021, c. 433, §1 is REALLOCATED TO TITLE 38, SECTION 1616)

#### SECTION HISTORY

PL 2021, c. 192, §1 (NEW). RR 2021, c. 1, Pt. A, §53 (RAL).

#### §1614. Products containing PFAS

#### (REALLOCATED FROM TITLE 38, SECTION 1612)

**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 consumer product made from natural or synthetic fabric intended to be used as a floor covering inside commercial or residential buildings. "Carpet or rug" includes, but is not limited to, a carpeted doormat, but does not include:

- (1) A carpet or rug intended solely for outdoor use;
- (2) A carpet or rug intended solely for use inside an aircraft, train, watercraft, automobile, light duty truck, van, bus or any other vehicle and any aftermarket or replacement part marketed solely for use in a vehicle;
- (3) A resilient floor covering;
- (4) Artificial turf;
- (5) A wall hanging or covering;
- (6) A table mat; or
- (7) A camping sleeping mat. [PL 2023, c. 630, §1 (AMD).]

A-1. "Adult mattress" means a mattress that is not a crib mattress or a toddler mattress. [PL 2023, c. 630, §1 (NEW).]

A-2. "Aerosol propellant" has the same meaning as in section 1613, subsection 1, paragraph A. [PL 2023, c. 630, §1 (NEW).]

A-3. "Air care product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to enhance or condition an indoor environment by eliminating odors or freshening the air. [PL 2023, c. 630, §1 (NEW).]

A-4. "Aircraft" means a contrivance operated by direct physical contact from a human that is used or designed for navigation of or flight in the air that requires certification and registration as prescribed by federal law or regulation. "Aircraft" does not include:

- (1) A lighter-than-air balloon operated by direct physical contact from a human; or
- (2) An ultralight vehicle, as defined in 14 Code of Federal Regulations, Part 103, regardless of whether the ultralight vehicle is certified by the United States Department of Transportation, Federal Aviation Administration. [PL 2023, c. 630, §1 (NEW).]

A-5. "Alternative" means a substance or chemical that, if used in place of a PFAS in a product, would result in a functionally equivalent product and would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential harm to human health or the environment as the PFAS. "Alternative" includes:

(1) A reformulated version of a product in which the intentionally added PFAS in the product has been removed; and

(2) Changes to a product's manufacturing process that result in the removal of the PFAS from the product. [PL 2023, c. 630, §1 (NEW).]

A-6. "Architectural fabric structure" means a permanent fabric structure that is intrinsic to the design or construction of a building. [PL 2023, c. 630, §1 (NEW).]

A-7. "Artificial turf" means an artificial product made from synthetic material that simulates the appearance of natural turf, grass, sod or lawn. [PL 2023, c. 630, §1 (NEW).]

A-8. "Automotive maintenance product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to maintain the appearance of a motor vehicle. "Automotive maintenance product" includes products for washing, waxing, polishing, cleaning or treating the exterior or interior surface of a motor vehicle, but does not include automotive paint or automotive paint repair products. [PL 2023, c. 630, §1 (NEW).]

A-9. "Cleaning product" means a finished product used primarily for domestic, commercial or institutional cleaning purposes, including, but not limited to, an air care product, an automotive maintenance product, a general cleaning product and a polish or floor maintenance product. [PL 2023, c. 630, §1 (NEW).]

A-10. "Cookware product" means a durable houseware product intended to be used to prepare, dispense or store food, foodstuffs or beverages, including, but not limited to, a pot, pan, skillet, grill, baking sheet, baking mold, tray, bowl and cooking utensil. [PL 2023, c. 630, §1 (NEW).]

A-11. "Cosmetic product" means a product intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering the appearance. "Cosmetic product" includes any product intended for use as a component of another cosmetic product, but does not include soap or a product that requires a prescription for distribution or dispensing. [PL 2023, c. 630, §1 (NEW).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

B-1. "Essential for health, safety or the functioning of society" means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in:

(1) A significant increase in negative health outcomes;

(2) An inability to mitigate significant risks to human health or the environment; or

(3) A significant disruption of the daily functions on which society relies. [PL 2023, c. 630, §1 (NEW).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

C-1. "Foam" has the same meaning as in section 1613, subsection 1, paragraph K. "Foam" does not include a firefighting or fire-suppressing foam or related product regulated under section 424-C. [PL 2023, c. 630, §1 (NEW).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

D-1. "Juvenile product" means a product designed or marketed for use by infants and children under 12 years of age including, but not limited to: a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; child restraint system for use in motor vehicles and aircraft; co-sleeper; crib mattress; highchair; highchair pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad or pillow; portable foam nap mat; portable infant sleeper; portable hook-on chair; soft-sided portable crib; stroller; and toddler mattress. "Juvenile product" does not include an adult mattress or an electronic product marketed for use by children under 12 years of age, including a personal computer, audio and video equipment, calculator, wireless telephone, game console, handheld device incorporating a video screen and any associated peripheral, such as a mouse, keyboard, power supply unit or power cord. [PL 2023, c. 630, §1 (NEW).]

D-2. "Known to or reasonably ascertainable by" means, with respect to a person, all information in the person's possession or control as well as all information that a reasonable person similarly situated might be expected to possess, control or know. [PL 2023, c. 630, §1 (NEW).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

E-1. "Medical device" has the same meaning as the term "device" as defined in 21 United States Code, Section 321(h). [PL 2023, c. 630, §1 (NEW).]

E-2. "Off-highway vehicle" means a vehicle designed to be or marketed as capable of off-highway operation, including, but not limited to:

- (1) A motorcycle or motor-driven cycle;
- (2) A snowmobile or other vehicle designed to travel over snow or ice;
- (3) A sand buggy, dune buggy or similar all-terrain vehicle;
- (4) A motor vehicle commonly referred to as a jeep; and
- (5) A recreational off-highway vehicle. [PL 2023, c. 630, §1 (NEW).]

E-3. "Outdoor apparel for severe wet conditions" means a clothing item that is an extreme and extended use product designed for outdoor sports experts for applications that provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions to protect the health and safety of the user and that are not marketed for general consumer use, including, but not limited to, such extreme and extended use products designed for offshore fishing, offshore sailing, whitewater kayaking and mountaineering. [PL 2023, c. 630, §1 (NEW).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

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. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

H. "Product component" means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

H-1. "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. [PL 2023, c. 630, §1 (NEW).]

I. "Publicly owned treatment works" has the same meaning as in section 361-A. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

J. "Refrigerant" has the same meaning as in section 1613, subsection 1, paragraph Y. [PL 2023, c. 630, §1 (NEW).]

K. "Single-use" means, with respect to a product, conventionally disposed of after one use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable. [PL 2023, c. 630, §1 (NEW).]

L. "Ski wax" means a lubricant applied to the bottom of snow runners, including, but not limited to, skis and snowboards, to improve grip or glide properties. "Ski wax" includes related tuning products. [PL 2023, c. 630, §1 (NEW).]

M. "Textile" means an item made in whole or in part from natural or synthetic fiber, yarn or fabric, including, but not limited to, leather, cotton, silk, jute, hemp, wool, viscose, nylon and polyester. "Textile" does not include a single-use absorbent hygiene product or a single-use paper hygiene product, including, but not limited to, toilet paper, paper towels or tissues. [PL 2023, c. 630, §1 (NEW).]

N. "Textile article" means a textile good of a type customarily and ordinarily used in households and businesses. "Textile article" includes, but is not limited to, apparel, accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins and tablecloths, but does not include:

- (1) A carpet or rug;
- (2) A treatment for use on converted textiles or leathers;
- (3) A textile used in or designed for laboratory analysis and testing;
- (4) A stadium shade or other architectural fabric structure; or
- (5) Filtration media or a filter product used in industrial applications, including, but not limited to, chemical or pharmaceutical manufacturing and environmental control technologies. [PL 2023, c. 630, §1 (NEW).]

O. "Upholstered furniture" means an article of furniture that is designed to be used for sitting, resting or reclining and that is wholly or partly stuffed or filled with any filling material. [PL 2023, c. 630, §1 (NEW).]

P. "Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a way but does not include such a device that is moved exclusively by human power or that is used exclusively upon stationary rails or tracks. [PL 2023, c. 630, §1 (NEW).]  
[PL 2023, c. 630, §1 (AMD).]

**2. Notification.** Except as provided pursuant to paragraph D or subsection 3, a manufacturer of a product for sale in the State that contains intentionally added PFAS and for which the department has determined that the use of PFAS in the product is a currently unavoidable use in accordance with subsection 5, paragraph F shall comply with the requirements of this subsection.

A. The manufacturer shall submit to the department a written notification that includes, to the extent known to or reasonably ascertainable by the manufacturer:

- (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 of the PFAS 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 or, if the manufacturer is unable to provide information regarding the amount of each of the PFAS in the product, the total weight of the product;
- (4) The name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer;
- (4-A) The identification of the applicable determination adopted by the department by rule pursuant to subsection 5, paragraph F that the use of PFAS in the product is a currently unavoidable use; and
- (5) Any additional information required by the department by rule. [PL 2023, c. 630, §1 (AMD).]

A-1. At the time the manufacturer submits to the department the written notice required in paragraph A, the manufacturer shall also pay to the department the applicable fee established by the department by rule pursuant to subsection 6. [PL 2023, c. 630, §1 (NEW).]

B. With the approval of the department, the manufacturer may supply the information required in paragraph A for a category or type of product rather than for each individual product. [PL 2023, c. 630, §1 (AMD).]

C. In accordance with rules adopted by the department, the 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. [PL 2023, c. 630, §1 (AMD).]

D. The requirements of this subsection do not apply to a manufacturer that employs 100 or fewer people. [PL 2023, c. 630, §1 (AMD).]

[PL 2023, c. 630, §1 (AMD).]

**3. Waiver of notification; coordination with other states.** 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.

[PL 2023, c. 630, §1 (AMD).]

**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; [PL 2023, c. 138, §3 (AMD).]

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. The exemption under this paragraph does not apply to the package of a product prohibited from sale, offer for sale or distribution for sale pursuant to subsection 5, paragraph B, B-1, D or E if that package is a fluorinated container or a container that otherwise contains intentionally added PFAS; [PL 2023, c. 630, §1 (AMD).]



- C. A used product or used product component; [PL 2023, c. 630, §1 (AMD).]
- D. A firefighting or fire-suppressing foam or related product regulated under section 424-C; [PL 2023, c. 630, §1 (NEW).]
- E. 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; [PL 2023, c. 630, §1 (NEW).]
- F. A veterinary product intended for use in or on animals, including diagnostic equipment or test kits and their 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 by or under the jurisdiction of:
- (1) The United States Food and Drug Administration;
  - (2) The United States Department of Agriculture pursuant to the federal Virus-Serum-Toxin Act; or
  - (3) The United States Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, except that any such products approved by the United States Environmental Protection Agency pursuant to that law for aerial or land application are not exempt from this section; [PL 2023, c. 630, §1 (NEW).]
- G. A product developed or manufactured for the purposes of public health, environmental or water quality testing; [PL 2023, c. 630, §1 (NEW).]
- H. A product required to meet standards or requirements of the United States Department of Transportation, Federal Aviation Administration, the National Aeronautics and Space Administration, the United States Department of Defense or the United States Department of Homeland Security, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2023, c. 630, §1 (NEW).]
- I. A motor vehicle or motor vehicle equipment regulated under a federal motor vehicle safety standard, as defined in 49 United States Code, Section 30102(a)(10), and any other motor vehicle, including an off-highway vehicle or specialty motor vehicle, such as an all-terrain vehicle, side-by-side vehicle, farm equipment or personal assistive mobility device, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2023, c. 630, §1 (NEW).]
- J. A watercraft, as defined in Title 12, section 13001, subsection 28, or a seaplane, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2023, c. 630, §1 (NEW).]
- K. A semiconductor, including semiconductors incorporated in electronic equipment, and equipment and materials used in the manufacture of semiconductors; [PL 2023, c. 630, §1 (NEW).]
- L. Nonconsumer electronics and nonconsumer laboratory equipment not ordinarily used for personal, family or household purposes; and [PL 2023, c. 630, §1 (NEW).]
- M. Equipment directly used in the manufacture or development of the products described in paragraphs E to L. [PL 2023, c. 630, §1 (NEW).]  
[PL 2023, c. 630, §1 (AMD).]

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

A. Except as provided pursuant to paragraph F or G, 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. The prohibition under this paragraph does not apply to the sale, offer for sale or distribution for sale of any carpet or rug in used condition. [PL 2023, c. 630, §1 (AMD).]

B. Except as provided pursuant to paragraph F or G, 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.

The prohibition under this paragraph applies to a 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. The prohibition under this paragraph does not apply to the sale, offer for sale or distribution for sale of any fabric treatment in used condition. [PL 2023, c. 630, §1 (AMD).]

B-1. Except as provided pursuant to paragraph F or G, effective January 1, 2026, a person may not sell, offer for sale or distribute for sale in this State:

- (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 subparagraph 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 prohibition under this paragraph applies to any of the products listed in subparagraphs (1) to (9) 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 prohibition under this paragraph does not apply to any of the products listed in subparagraphs (1) to (9) that are sold, offered for sale or distributed for sale in used condition. [PL 2023, c. 630, §1 (NEW).]

B-2. Except as provided pursuant to paragraph F or G, effective January 1, 2029, a person may not sell, offer for sale or distribute for sale in this State:

- (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 subparagraph applies to all sales, offers for sale or distributions for sale in this State of outdoor apparel for severe wet conditions containing intentionally added PFAS, including those conducted using the Internet.

The prohibition under this paragraph does not apply to any of the products listed in subparagraphs (1) and (2) that are sold, offered for sale or distributed for sale in used condition. [PL 2023, c. 630, §1 (NEW).]

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. The department may not prohibit by rule pursuant to this paragraph the sale, offer for sale or distribution for sale of products in used condition.

Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 630, §1 (AMD).]

D. Except as otherwise provided in this paragraph or pursuant to paragraph F or G, effective January 1, 2032, a person may not sell, offer for sale or distribute for sale in this State any product that contains intentionally added PFAS that is not already prohibited from sale, offer for sale or distribution for sale pursuant to paragraph A, B, B-1, B-2 or C, unless the department has determined by rule in accordance with paragraph F that the use of PFAS in the product is a currently unavoidable use.

The prohibition under this paragraph 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 prohibition under this paragraph does not apply to:

- (1) Any such products sold, offered for sale or distributed for sale in used condition;
- (2) Cooling, heating, ventilation, air conditioning and refrigeration equipment, including parts and other servicing needs for such equipment; or
- (3) Refrigerants, foams and aerosol propellants that are 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 Policy program, 40 Code of Federal Regulations, Part 82, Subpart 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. [PL 2023, c. 630, §1 (AMD).]

E. Except as provided pursuant to paragraph F or G, effective January 1, 2040, a person may not sell, offer for sale or distribute for sale in this State:

- (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 prohibition under this paragraph applies to any of the products listed in subparagraphs (1) and (2) 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 prohibition under this paragraph 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 the servicing of 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 Policy program, 40 Code of Federal Regulations, Part 82, Subpart G and sold, offered for sale or distributed for sale for the use for which the refrigerant is listed pursuant to that program. [PL 2023, c. 630, §1 (NEW).]

F. The department may by rule identify specific products or product categories containing intentionally added PFAS for which it has determined the use of PFAS in the product is a currently unavoidable use. If the department determines by rule that the use of PFAS in a product or product category is a currently unavoidable use:

(1) The product is exempt from the otherwise applicable prohibition in this subsection, or in the rules adopted pursuant to paragraph C, on the sale, offer for sale or distribution for sale of the product for one of the following periods of time, whichever provides a longer period of exemption:

(a) Five years from the effective date of the rule determining that the use of PFAS in the product or product category is a currently unavoidable use; or

(b) Five years from the effective date of the otherwise applicable prohibition in this subsection or in the rules adopted pursuant to paragraph C; and

(2) A manufacturer of the product that sells, offers for sale or distributes for sale the product in this State shall comply with the notification requirement of subsection 2. [PL 2023, c. 630, §1 (NEW).]

G. The prohibitions in this subsection do not apply to a retailer in the State unless the retailer sells, offers for sale or distributes for sale a product containing intentionally added PFAS in the State for which the retailer has received a notification pursuant to subsection 8, paragraph B that the sale of the product is prohibited. [PL 2023, c. 630, §1 (NEW).]  
[PL 2023, c. 630, §1 (AMD).]

**6. Fees.** The department may establish by rule and assess a fee payable by a manufacturer that is required to comply with the notification requirement of subsection 2 to cover the department's reasonable costs in administering the requirements of this section. Notwithstanding Title 5, section 8071, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
[PL 2023, c. 630, §1 (AMD).]

**7. Failure to provide notice.** Beginning January 1, 2032, a person may not sell, offer for sale or distribute for sale in the State a product containing intentionally added PFAS for which the department has determined that the use of PFAS in the product is a currently unavoidable use pursuant to subsection 5, paragraph F if the manufacturer of the product has failed to provide the information required under subsection 2. This prohibition does not apply to a retailer in the State unless the retailer sells, offers for sale or distributes for sale a product containing intentionally added PFAS in the State for which the retailer has received a notification pursuant to subsection 8, paragraph B that the sale of the product is prohibited.

A. [PL 2023, c. 630, §1 (RP).]

B. [PL 2023, c. 630, §1 (RP).]

C. [PL 2023, c. 630, §1 (RP).]

D. [PL 2023, c. 630, §1 (RP).]

E. [PL 2023, c. 630, §1 (RP).]

[PL 2023, c. 630, §1 (AMD).]

**8. Certificate of compliance.** 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 subsections 5 or 7, the department may direct the manufacturer of the product to, within 30 days:

A. Provide the department with a certificate attesting that the product does not contain intentionally added PFAS; or [PL 2023, c. 630, §1 (AMD).]

B. Notify persons that sell, offer for sale or distribute for sale the product in this State that the sale of the product is prohibited in this State and provide the department with a list of the names and addresses of those persons notified. [PL 2023, c. 630, §1 (AMD).]

[PL 2023, c. 630, §1 (AMD).]

**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 alternatives to and the proper management of materials containing PFAS. The program may include:

A. Information resources targeted to industrial or commercial users of PFAS; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

B. Education of the general public; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

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; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

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 [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

E. Other efforts determined by the department to be prudent to achieve the program's purpose. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

[PL 2023, c. 630, §1 (AMD).]

**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.

[PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

**11. Report.** By January 1, 2026, and biennially thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report regarding the implementation of this section and other state and federal laws governing the presence of PFAS in products, including any recommendations for necessary legislative changes to this section. After reviewing the report, the committee may report out legislation relating to the report. [PL 2023, c. 630, §1 (NEW).]

**12. Proprietary information.** Proprietary information submitted to the department by a manufacturer pursuant to the requirements of this section that is identified by the manufacturer as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

[PL 2023, c. 630, §1 (NEW).]

#### SECTION HISTORY

PL 2021, c. 477, §1 (NEW). RR 2021, c. 1, Pt. A, §54 (RAL). PL 2023, c. 138, §§1-4 (AMD). PL 2023, c. 630, §1 (AMD).

#### §1615. Plastic beverage containers

(REALLOCATED FROM TITLE 38, SECTION 1612)

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

- A. "Beverage" has the same meaning as in section 3102, subsection 1. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- B. "Beverage container" means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. "Beverage container" does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents and the container is filled with a nonalcoholic beverage. "Beverage container" does not include a container composed of cardboard in combination with a plastic liner. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- C. "Beverage manufacturing industry association" means an association that represents the interests of companies that manufacture beverages. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- D. "Dealer" has the same meaning as in section 3102, subsection 6. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- E. "Distributor" means a person that engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer that engages in such sales. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- F. "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person that initiates or is required to initiate under section 3103 a deposit on a plastic beverage container containing a beverage other than spirits. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- G. "Manufacturer" means a person, partnership, association, corporation or other entity that, through its own action or through contract or control of another entity, is primarily responsible for the production of a beverage contained in a plastic beverage container for sale or distribution in the State. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- H. "Nonrefillable beverage container" means a beverage container that, after being used by a consumer, is not to be reused as a beverage container by a manufacturer. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- I. "Plastic" means a synthetic material made from fossil fuel or organic-based polymers, such as polyethylene, polystyrene, polypropylene and polycarbonate, that can be molded or blown into specific shapes. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- J. "Plastic beverage container" means a nonrefillable beverage container that is composed wholly or in large part of plastic. "Plastic beverage container" does not include a beverage label or a beverage cap that may be screwed onto or otherwise affixed to a nonrefillable beverage container. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- K. "Post-consumer recycled plastic" means plastic produced from the recovery, separation, collection and reprocessing of plastic that was originally sold for consumption and that would otherwise be disposed of or processed as waste. "Post-consumer recycled plastic" does not include post-industrial plastic or pre-consumer plastic. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- L. "Proprietary information" has the same meaning as in section 1771, subsection 6-A. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- M. "Spirits" has the same meaning as in Title 28-A, section 2, subsection 31. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]
- N. "Spirits manufacturer" means a person that is:

- (1) An in-state rectifier, distillery or small distillery licensed under Title 28-A, section 1355-A that produces spirits contained in a plastic beverage container; or
- (2) An out-of-state spirits supplier that transports spirits contained in a plastic beverage container into the State or causes such spirits to be transported into the State and has been issued a certificate of approval under Title 28-A, section 1381.

As used in this paragraph, "rectifier" has the same meaning as in Title 28-A, section 2, subsection 25 and "out-of-state spirits supplier" has the same meaning as in Title 28-A, section 1381, subsection 1. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]  
[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**2. Post-consumer recycled plastic requirement.** Except as provided in subsection 7, beginning January 1, 2026 and ending December 31, 2030, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

Except as provided in subsection 7, beginning January 1, 2031, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**3. Determination of compliance with post-consumer recycled plastic requirement; advisory committee.** For the purposes of determining an initiator of deposit's or spirits manufacturer's compliance with the post-consumer recycled plastic requirement in subsection 2, an initiator or spirits manufacturer may rely on Maine-specific data regarding plastic beverage container sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory in the United States that includes the State.

A. If an initiator of deposit or spirits manufacturer elects to rely on data regarding plastic beverage container sales and material use derived from data applicable to a region or territory in the United States that includes the State, the initiator or spirits manufacturer shall:

- (1) Prorate that regional or territorial data to determine Maine-specific figures based on market share or population in a manner that ensures that the percentage of post-consumer recycled plastic calculated for plastic beverage containers sold in the State is the same percentage as calculated for that larger region or territory; and
- (2) Document the methodology used to determine those Maine-specific figures calculated under subparagraph (1) in the report required under subsection 4. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The department may form an advisory committee composed of stakeholders to determine the ability of initiators of deposit and spirits manufacturers to measure and report the Maine-specific information required under this subsection and to develop any recommendations for improving the data determination and reporting process. The department may, as necessary, contract with a qualified 3rd-party entity to assist the advisory committee in developing recommendations under this paragraph. Any costs to the department associated with this paragraph may be offset through any fees collected by the department pursuant to this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**4. Initiator of deposit and spirits manufacturer reporting; payment of fees; product removal for noncompliance.** On or before April 1, 2024, and annually thereafter, an initiator of deposit or spirits manufacturer that has in the prior calendar year sold, offered for sale or distributed for sale in the State a plastic beverage container shall submit a report to the department identifying, by resin type when applicable, the amount by weight in pounds of post-consumer recycled plastic, the amount by weight in pounds of plastic that is not post-consumer recycled plastic and the percentage of post-consumer recycled plastic in the total weight of all plastic beverage containers the initiator or spirits manufacturer sold, offered for sale or distributed for sale in the State in that prior calendar year.

A. If the initiator of deposit or spirits manufacturer has determined the data required to be reported under this subsection using regional or territorial data, the initiator or spirits manufacturer shall describe in the report the methodology used to determine the Maine-specific figures. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. At the time that an initiator of deposit or spirits manufacturer submits a report required under this subsection, the initiator or spirits manufacturer shall pay to the department an annual registration fee and, on or after January 1, 2026, any fee required by subsection 5. The department shall set the amount of the annual registration fee, which may not exceed \$500 and which must be designed to offset the costs to the department of administering and overseeing this section. Any fees received by the department pursuant to this section must be deposited in the Maine Environmental Protection Fund established in section 351.

An initiator of deposit or spirits manufacturer that in the prior calendar year sold, offered for sale or distributed for sale in the State less than 10,000 plastic beverage containers or, in the aggregate, less than 200 pounds of plastic that is not post-consumer recycled plastic is not required to pay an annual registration fee under this paragraph but shall otherwise comply with all applicable requirements of this section, including, but not limited to, submission of the report required under this subsection and payment of any fee required by subsection 5. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. The department may conduct audits or take other necessary actions to verify the accuracy of initiator of deposit or spirits manufacturer data reported under this subsection. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. Proprietary information submitted to the department in a report required under this subsection or submitted to the department as part of an audit or other action taken by the department under paragraph C that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

E. The department shall make available on its publicly accessible website all reports submitted under this subsection, except that the department shall redact or remove from such reports any proprietary information identified pursuant to paragraph D. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

F. An initiator of deposit may submit the report required under this subsection using information provided to the initiator by a manufacturer. An initiator of deposit or a spirits manufacturer may contract with a 3rd party to submit the report on the initiator's behalf. The submission of the report required under this subsection by an initiator of deposit using information provided by a manufacturer or by a 3rd party on an initiator's or spirits manufacturer's behalf does not relieve the initiator or spirits manufacturer from complying with the other requirements of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

G. Not more than once every 5 years, the department may require initiators of deposit and spirits manufacturers to fund a 3rd-party verification of accuracy of the information submitted under this



subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the initiators of deposit and spirits manufacturers.

An initiator of deposit or spirits manufacturer may elect to satisfy the requirements of this paragraph by submitting to the department a 3rd-party verification, or, in the case of an initiator of deposit, a manufacturer's verification, of the accuracy of substantially similar information to that required to be reported under this subsection that was submitted to another state with a post-consumer recycled plastic content requirement that is substantially similar to the requirements of this section as long as that other state is included in the region or territory identified by the initiator or spirits manufacturer under paragraph A. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

H. Except as provided in paragraph I, if an initiator of deposit or spirits manufacturer fails to submit the report and pay all applicable fees required under this subsection within 60 days of the reporting deadline, the department may prohibit the initiator or spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container.

(1) If, pursuant to this paragraph, the department prohibits an initiator of deposit from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to any manufacturer whose plastic beverage containers are sold, offered for sale or distributed for sale in the State by the initiator and to dealers and distributors in the State. A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of the initiator commits a violation of this section.

(2) If, pursuant to this paragraph, the department prohibits a spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, which shall ensure that the plastic beverage containers of the spirits manufacturer are promptly removed from sale in the State.

(3) An initiator of deposit or spirits manufacturer prohibited by the department pursuant to this paragraph from selling, offering for sale or distributing for sale in the State any plastic beverage container that subsequently sells, offers for sale or distributes for sale in the State a plastic beverage container commits a violation of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

I. Notwithstanding any provision of this section to the contrary, if an initiator of deposit lacks the information necessary to submit the report required under this subsection by the reporting deadline and calculate the fee required under subsection 5 due to the failure of one or more manufacturers whose plastic beverage containers the initiator sold, offered for sale or distributed for sale in the State during the prior calendar year to provide such information to the initiator, the department may:

(1) Allow the initiator to submit the required report and calculate and pay the required fee based only on the manufacturer information available to the initiator and to thereby be deemed in full compliance with those requirements;

(2) Allow the initiator to sell, offer for sale or distribute for sale in the State any plastic beverage container of any manufacturer that provided the initiator with the information necessary to satisfy the reporting requirement and calculate the required fee but prohibit the initiator from selling, offering for sale or distributing for sale in the State any plastic beverage container of any manufacturer that failed to provide such information to the initiator. If the initiator of deposit sells, offers for sale or distributes for sale in the State a plastic beverage

container subject to a prohibition imposed under this subparagraph, the initiator commits a violation of this section; and

(3) Provide written notification of a prohibition imposed under subparagraph (2) to manufacturers, dealers and distributors in the same manner as in paragraph H, subparagraph (1). A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of an initiator of deposit subject to a prohibition imposed under subparagraph (2) commits a violation of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**5. Post-consumer recycled plastic content fee.** Pursuant to the provisions of this subsection, an initiator of deposit or spirits manufacturer shall calculate the amount of a post-consumer recycled plastic content fee and shall remit such amount to the department pursuant to subsection 4, paragraph B as follows:

A. The initiator of deposit or spirits manufacturer shall add the total amount by weight in pounds of post-consumer recycled plastic and the total amount by weight in pounds of plastic that is not post-consumer recycled plastic used by the initiator in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year. The initiator of deposit or spirits manufacturer shall calculate the figure under this paragraph based on the information reported by the initiator or spirits manufacturer pursuant to subsection 4; [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph A by the minimum post-consumer recycled plastic percentage required under subsection 2 during the prior calendar year; [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. The initiator of deposit or spirits manufacturer shall subtract from the figure calculated under paragraph B the total amount by weight in pounds of post-consumer recycled plastic used by the initiator or spirits manufacturer in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year; and [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph C by 20¢. If the figure calculated under this paragraph is less than or equal to zero, the initiator of deposit or spirits manufacturer is not required to pay a post-consumer recycled plastic content fee to the department pursuant to subsection 4, paragraph B. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**6. Waiver.** At the request of an initiator of deposit or spirits manufacturer or a manufacturer as provided in paragraph A, and in accordance with the provisions of this subsection, the department may grant a one-year waiver from payment of the fee that would otherwise be required pursuant to subsection 5 if the initiator, spirits manufacturer or manufacturer demonstrates to the department's satisfaction that it was unable to meet the applicable post-consumer recycled plastic requirement of subsection 2 due to anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic.

A. A manufacturer may on its own initiative request a waiver from the department pursuant to this subsection with respect to a plastic beverage container of the manufacturer for which an initiator of deposit is required pursuant to subsection 4 to submit a report and pay to the department an annual registration fee and the fee required pursuant to subsection 5. If a manufacturer requests a waiver pursuant to this paragraph, both the initiator of deposit and the manufacturer are responsible

for responding to any requests for information made by the department pursuant to paragraph C. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. A waiver request submitted under this subsection by an initiator of deposit or spirits manufacturer must be submitted with the report required under subsection 4 and must include payment to the department by the initiator of a \$100 waiver processing fee. A waiver request submitted under this subsection by a manufacturer pursuant to paragraph A must be submitted on or before the reporting deadline under subsection 4 and must include payment to the department by the manufacturer of a \$100 waiver processing fee. A waiver request must include sufficient information to demonstrate the anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic causing the initiator of deposit, spirits manufacturer or manufacturer to be unable to meet the applicable post-consumer recycled plastic requirement of subsection 2. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. An initiator of deposit, spirits manufacturer or manufacturer that submits a waiver request to the department shall promptly respond to any request from the department for additional information relating to the waiver request. The department may return a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer as incomplete for processing if the initiator, spirits manufacturer or manufacturer fails to provide sufficient information for the department to review the waiver request or fails to promptly respond to a request from the department for additional information relating to the waiver request. A determination by the department under this paragraph to return a submitted waiver request as incomplete for processing does not constitute a final agency action as defined in Title 5, section 8002, subsection 4 and may not be appealed to the board or to the Superior Court. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. As a condition of granting a waiver request under this subsection, the department may require an initiator of deposit, spirits manufacturer or manufacturer to submit a corrective action plan describing the actions the initiator, spirits manufacturer or manufacturer intends to implement to ensure its compliance with the requirements of subsection 2 during the current calendar year. If the initiator of deposit, spirits manufacturer or manufacturer has been granted 2 consecutive waiver requests pursuant to this subsection, the department shall require the initiator, spirits manufacturer or manufacturer to submit a corrective action plan pursuant to this paragraph as a condition of granting a 3rd waiver request.

(1) The department may approve the corrective action plan as submitted, approve the plan with required changes or reject the plan.

(2) The department may require the initiator of deposit, spirits manufacturer or manufacturer to demonstrate implementation of an approved corrective action plan before the department grants the waiver request submitted by the initiator, spirits manufacturer or manufacturer under this subsection.

(3) If the department rejects a corrective action plan required under this paragraph or if the department determines that the initiator of deposit, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan, the department shall require the initiator or spirits manufacturer to pay the fee required pursuant to subsection 5 within 45 days of the date of the department's rejection of the corrective action plan or within 45 days of the department's determination that the initiator, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

E. If the department denies a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer pursuant to this subsection, the initiator or spirits manufacturer shall pay to the department the fee required pursuant to subsection 5 within 45 days of the date of the

department's denial of the waiver request. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**7. Review of post-consumer recycled plastic requirements.** Beginning January 1, 2026, and not more than annually thereafter, the department, on its own initiative or at the petition of a beverage manufacturing industry association, may initiate a review of the applicable post-consumer recycled plastic requirement under subsection 2 to determine whether that requirement should be reduced due to market conditions for post-consumer recycled plastic, including the demand for such plastic for food-grade applications, and a review of recycling rates, progress made by initiators of deposit, spirits manufacturers and manufacturers in complying with the post-consumer recycled plastic requirement under subsection 2 and any other factors reviewed by the department.

A. A petition for review submitted pursuant to this subsection by a beverage manufacturing industry association must be evaluated by the department based on information provided by the association and any other information available to the department. The department may require the beverage manufacturing industry association to fund a 3rd-party verification of the accuracy of information submitted by the association under this subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the beverage manufacturing industry association.

The department may reject the petition for review if the beverage manufacturing industry association fails to provide sufficient information, as determined by the department, for the department to make a determination under this subsection regarding the need for a reduction in the post-consumer recycled plastic requirement under subsection 2 or if the association fails to reach an agreement with the department regarding the selection of a 3rd party to verify the accuracy of submitted information. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. After conducting the review authorized by this subsection, the department may adopt rules reducing the applicable post-consumer recycled plastic content requirement under subsection 2. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**8. Department reporting.** Beginning February 15, 2025, and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding the requirements of this section and including any recommendations for changes to those requirements. The report must describe, in the aggregate, the data submitted to the department by initiators of deposit and spirits manufacturers under subsection 4.

A. Beginning February 15, 2028, and annually thereafter, the report under this subsection must include information regarding initiator of deposit and spirits manufacturer compliance with the requirements of subsection 2, including, at a minimum, information on the number of noncompliant initiators and spirits manufacturers, the number of waiver requests received and granted or rejected by the department under subsection 6 and the total funds generated from payment of the annual registration fee under subsection 4 and the payment of the post-consumer recycled plastic content fee as calculated under subsection 5. The report must include any recommendations by the department regarding whether the requirements of this section should be amended to better ensure initiator of deposit and spirits manufacturer compliance. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The report under this subsection may be included in the report required pursuant to section 1772, subsection 1. After reviewing the report under this subsection, the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters may report out legislation relating to the report. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**9. Administration and enforcement; rules.** The department shall administer and enforce this section and may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department may, as necessary, contract with qualified 3rd-party entities to assist in the implementation of this section and the development of any rules to be adopted pursuant to this subsection.

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**10. Violations.** A person that violates a provision of this section is subject to civil penalties under section 349.

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

**11. Preemption.** Beginning April 1, 2024, the State intends to occupy the whole field of regulation of the amount of post-consumer recycled plastic contained in plastic beverage containers. A local government may not adopt an ordinance regulating the amount of post-consumer recycled plastic contained in plastic beverage containers and, beginning April 1, 2024, any ordinance or regulation that violates this subsection is void and has no force or effect.

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

## SECTION HISTORY

PL 2021, c. 742, §3 (NEW). RR 2021, c. 2, Pt. A, §134 (RAL).

### §1616. Appliance and product efficiency standards

#### (REALLOCATED FROM TITLE 38, SECTION 1613)

**1. Sale prohibition; appliances and products.** The following provisions apply to the sale or offering for sale in the State of certain new appliances and products.

A. Except as provided in subsection 2, beginning January 1, 2023, a person may not sell or offer for sale in the State any of the following appliances and products manufactured on or after January 1, 2023 that are prohibited from sale in rules adopted by the department in accordance with subsection 3:

- (1) Computers and computer monitors;
- (2) General service lamps;
- (3) Commercial hot food holding cabinets;
- (4) Plumbing fittings that are showerheads, lavatory faucets, kitchen faucets, public lavatory faucets, metering faucets, kitchen replacement aerators and lavatory replacement aerators;
- (5) Plumbing fixtures that are water closets and urinals;
- (6) Portable electric spas;
- (7) Spray sprinkler bodies; and
- (8) Water dispensers.

For the purposes of this paragraph, the appliances and products listed in subparagraphs (1) to (8) have the same meanings as in rules adopted by the department under subsection 3, except that "general service lamps" means medium-base incandescent light bulbs that are: reflector lamps that are ER30, BR30, BR40 or ER40 lamps rated at 50 watts or less; reflector lamps that are BR30, BR40 or ER40 lamps rated at 65 watts; reflector lamps that are R20 lamps rated at 45 watts or less; B, BA, CA, F and G shape lamps as defined in American National Standards Institute standard C79.1-2002 with a lumen output greater than or equal to 200 and rated at 40 watts or less; A and C shape lamps as defined in American National Standards Institute standard C79.1-2002 with a lumen

output greater than or equal to 200 and less than 310; shatter-resistant lamps; and 3-way lamps. [PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]

B. In determining a person's compliance with paragraph A, the department shall, to the greatest extent practicable and where consistent with the requirements of this subsection, use information available from other states that regulate the same appliances and products. [PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]

C. A person who violates paragraph A commits a civil violation for which a fine of not more than \$100 may be adjudged. [PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]  
[PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]

**2. Exclusions; federal preemption.** This section does not apply to any appliances and products listed in subsection 1, paragraph A, subparagraphs (1) to (8) that are manufactured before January 1, 2023 or that are sold or offered for sale in the State in used condition. An appliance or product listed in subsection 1, paragraph A is exempt from the prohibitions in this section and the rules adopted pursuant to this section if state regulation of the appliance or product is preempted by federal statute or regulation, for as long as that federal preemption remains in effect. [PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]

**3. Rules.** The department may adopt rules to prohibit the sale or offering for sale in the State of appliances or products described in subsection 1, paragraph A. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 433, §1 (NEW); RR 2021, c. 2, Pt. A, §135 (RAL).]

#### SECTION HISTORY

PL 2021, c. 433, §1 (NEW). RR 2021, c. 2, Pt. A, §135 (RAL).

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