

Adopt Env-Sw 2300 to read as follows:

CHAPTER Env-Sw 2300 PER- AND POLYFLUOROALKYL SUBSTANCES PRODUCTS CONTROL PROGRAM

Statutory Authority: RSA 149-M:64, VI

PART Env-Sw 2301 PURPOSE AND APPLICABILITY

Env-Sw 2301.01 Purpose. The purpose of this chapter is to implement the provisions of RSA 149-M:64, relative to prohibiting certain PFAS-added consumer products from being sold, offered for sale, or distributed for sale or promotional purposes in New Hampshire.

Env-Sw 2301.02 Applicability. This chapter shall apply to consumer products sold, offered for sale, or otherwise distributed in New Hampshire that are subject to the product ban in RSA 149-M:64, IV.

PART Env-Sw 2302 DEFINITIONS

Env-Sw 2302.01 “Consumer product” means “consumer product” as defined in RSA 149-M:64, I(d).

Env-Sw 2302.02 “Department” means the department of environmental services.

Env-Sw 2302.03 “Intentionally added PFAS” means “intentionally added PFAS” as defined in RSA 149-M:64, I(j).

Env-Sw 2302.04 “Manufacturer” means “manufacturer” as defined in RSA 149-M:64, I(l).

Env-Sw 2302.05 “PFAS” means “per- and polyfluoroalkyl substances” as defined in 40 CFR 705.3.

Env-Sw 2302.06 “PFAS-added consumer product” means “PFAS-added consumer product” as defined in RSA 149-M:64, I(o).

Env-Sw 2302.07 “Product” means “product” as defined in RSA 149-M:64, I(q).

Env-Sw 2302.08 “Supplier” means “supplier” as defined in RSA 149-M:64, I(s).

PART Env-Sw 2303 CERTIFICATE OF COMPLIANCE

Env-Sw 2303.01 Certificate of Compliance.

(a) Upon request by the department, a manufacturer or supplier subject to this chapter shall provide a certificate of compliance, or a copy thereof, stating that the product is in compliance with RSA 149-M:64.(b) Each certificate of compliance shall be sent electronically by email to PFASConsumerProducts@des.nh.gov and shall include the following:

- (1) Name and description of the consumer product;
- (2) Manufacturer or supplier name;
- (3) Manufacturer or supplier address;
- (4) Name, title, phone number, and email address of:
 - a. An authorized official of the manufacturer or supplier; and
 - b. An authorized individual who can answer questions regarding the composition of the consumer product;
- (5) Date the certificate of compliance is completed; and
- (6) A statement, signed by an authorized official, certifying that:
 - a. The consumer product is not a PFAS-added consumer product; or

b. For a consumer product for which an exemption has been granted under RSA 149-M:64, II, a statement identifying the applicable exemption.

(c) In accordance with RSA 149-M:64, V(e), a manufacturer or supplier who receives a request for a certificate of compliance from the department shall within 30 days:

(1) Provide a certificate of compliance as specified in paragraph (b) above; or

(2) Notify persons who sell the PFAS-added consumer product that the sale of the product is prohibited in New Hampshire and provide a copy of the notice to the department with a list of the names, addresses, and phone numbers of those notified.

(d) If a manufacturer or supplier reformulates a product for which a certificate of compliance was requested, they shall provide a certificate of compliance pursuant to Env-Sw 2303.01(b) above for the reformulated product prior to offering for sale or distribution.

(e) If a manufacturer or supplier produces a new product to replace a product for which a certificate of compliance was requested, they shall provide a certificate of compliance pursuant to Env-Sw 2303.01(b) above for the new product prior to offering for sale or distribution.

(f) By signing a certificate of compliance, the party signing the certificate is certifying that:

(1) The information provided is true, not misleading, and as complete as practicable, to the best knowledge and belief of the signer; and

(2) The signer is aware that they might be subject to penalties for any false statements made in the certification, including those penalties specified in RSA 641:3 for unsworn falsification.

PART Env-Sw 2304 ADMINISTRATIVE FINE SCHEDULE

Env-Sw 2304.01 Purpose. The purpose of Env-Sw 2304 is to establish a schedule of fines which may be imposed under the authority of RSA 149-M:64 VII and RSA 149-M:38 for violations of RSA 149-M:64 or of any rule adopted to implement RSA 149-M:64.

Env-Sw 2304.02 Schedule of Fines.

(a) For selling, offering for sale, or distributing PFAS-added products in violation of RSA 149-M:64 IV, the proposed fine shall be \$2,000 for each violation.

(b) For submitting false or misleading information relating to any certificate of compliance required pursuant to RSA 149-M:64 V and Env-Sw 2300, the proposed fine shall be \$2,000 for each violation.

(c) For failing to provide the department with a certificate of compliance within 30 days of receipt of a request, in violation of RSA 149-M:64 V(e)(1), the proposed fine shall be \$1,750 per violation.

(d) For failing to notify persons who sell the product containing chemicals regulated under RSA 149-M:64 that the sale of the product is prohibited, and provide the department with a copy of the notice and a list of the names and addresses of those notified, within 30 days of receipt of a request, in violation of RSA 149-M:64 V(e)(2), the proposed fine shall be \$1,750 per violation.

Env-Sw 2304.03 Fines Amounts for Violations with No Previously Scheduled Fine.

(a) For the purposes of this section, the following definitions shall apply:

(1) "Major deviation from requirement" means the violator deviated from a requirement of a statute or rule to such an extent that there is substantial non-compliance;

(2) "Major potential for harm" means a substantial likelihood of causing harm to human health or the environment;

(3) "Minor deviation from requirement" means the violator deviated partially from a requirement of a statute or rule such that most of the requirement was met;

(4) "Minor potential for harm" means a small likelihood of causing harm to human health or the

environment;

(5) “Moderate deviation from requirement” means the violator significantly deviated from a requirement of a statute or rule but some requirements were implemented as intended, such that approximately half the requirements were met; and

(6) “Moderate potential for harm” means a moderate likelihood of causing harm to human health or the environment.

(b) For violating the requirements of, or refusing to comply with, any of the provisions of Env-Sw 2300 et seq. or RSA 149-M:64, not identified in in this part, the proposed fine for each violation shall be calculated pursuant to Table 2304-1, below, based on the extent of deviation from the requirement and the potential for harm.

Table 2304-1: Matrix for Calculated Fines – Maximum Fine \$2,000

	Minor Deviation from Requirement	Moderate Deviation from Requirement	Major Deviation from Requirement
Minor Potential for Harm	range: \$100 to \$500 default: \$250	range: \$500 to \$1,000 default: \$750	range: \$1,000 to \$1,500 default: \$1,250
Moderate Potential for Harm	range: \$500 to \$1,000 default: \$750	range: \$1,000 to \$1,500 default: \$1,250	range: \$1,500 to \$2,000 default: \$1,750
Major Potential for Harm	range: \$1,000 to \$1,500 default: \$1,250	range: \$1,500 to \$2,000 default: \$1,750	\$2,000

Env-Sw 2304.04 Administrative Fine Hearings. Env-C 200 shall apply to all administrative fine hearings and adjudication of the total proposed fine shall be in accordance with Env-C 204.24.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statute(s)	Federal Regulation(s)
Env-Hw 2300	RSA 149-M:64	15 U.S.C. §§2607(a)(7); 40 CFR 705
Env-Sw 2304	RSA 149-M:38; RSA 149-M:64	