

PRELIMINARY DRAFT: March 13, 2009

The preliminary draft rules/Strawman language below has been developed by the DEP to inform stakeholder meeting discussion. Rule language will not be finalized until completion of formal Board of Environmental Protection rulemaking later this year. At that time, the board will be asked to begin formal rule adoption proceedings in accordance with the requirements of the Maine Administrative Procedures Act, 5 MRSA §§ 8052 through 8057-A. The rule adoption process will include a public hearing, with additional opportunity to comment on the proposed rule, during those proceedings.

Chapter 881: FEES; CHEMICAL USE IN CHILDREN’S PRODUCTS

SUMMARY: This rule establishes the fees that may be assessed by the Department of Environment Protection to cover costs incurred in administering the provisions of Title 38, chapter 16-D, §§1691-1699-B of the Maine Revised Statutes.

1. Definitions. The following terms, as used in this rule, have the following meanings:

- A. Board.** “Board” means the Board of Environmental Protection.
- B. Children’s product.** “Children’s product” means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child’s or a fetus’s being exposed to that chemical.
- C. CMR.** “CMR” means the Code of Maine Rules.
- D. Consumer product.** “Consumer product” means any item sold for residential or commercial use, including any component parts and packaging. “Consumer product” does not include a food or beverage or an additive to a food or beverage, a tobacco product or paper or forest products or a pesticide regulated by the federal Environmental Protection Agency. “Consumer product” also does not include a drug or biologic regulated by the federal Food and Drug Administration or the packaging of a drug or biologic regulated by the federal Food and Drug Administration if the packaging is regulated by the federal Food and Drug Administration.
- E. Department.** “Department” means the Department of Environmental Protection, which includes both the Board and the Commissioner.
- F. Distributor.** “Distributor” means a person who sells consumer products to retail establishments on a wholesale basis.
- G. Manufacturer.** “Manufacturer” means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, “manufacturer” includes the importer or first domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.
- H. MRSA.** “MRSA” means the Maine Revised Statutes Annotated.

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- 1. Priority chemical.** “Priority chemical” means a chemical identified as such by the board under chapter 880, section 2, of department rules, 06-096 CMR 880.
- 2. Applicability.** The requirements of this chapter apply to manufacturers and distributors of children’s products that contain a priority chemical.
- 3. Fee for data collection.** A manufacturer or distributor required by board rule to provide information on its use of a priority chemical shall, if requested by the department, pay a fee to cover costs incurred by the department to manage the information. The department may assess a one-time fee of up to \$500 to be paid concurrent with submission of the required information. The fee must be paid by check payable to “Treasurer, State of Maine.” The department shall deposit the check in the Maine Environmental Protection Fund as established under 38 MRSA §351.
- 4. Fee for alternatives assessment.** If, within 6 months of being directed to so by board order or requested to do so by the commissioner, a manufacturer or distributor fails to submit an acceptable alternatives assessment as defined in chapter 880, section 3(B)(3), of department rules, the commissioner may assess a fee on the manufacturer or distributor to cover the costs incurred to hire a contractor of the department’s choice to prepare an independent report on the availability of safer alternatives.

The manufacturer or distributor shall remit the fee by check payable to “Treasurer, State of Maine” within 30 days of receipt of the invoice from the department. The department shall deposit the fee in the Maine Environmental Protection Fund as established under 38 MRSA §351.