

**10-144 Department of Health and Human Resources
Division of Environmental Health**

Chapter 293 Lead Poisoning Prevention Fee Rules

SUMMARY: These rules implement 22 M.R.S.A. § 1322-F, the Lead Poisoning Prevention Fee. The rules identify the persons subject to the fee, provide methods of fee calculation, establish a low quantity fee exemption, and describe reporting and payment requirements of persons subject to the fee.

1. Definitions:

- A. **Brand name owner.** “Brand name owner” means a person who is the owner or licensee of the intellectual property rights of a paint product sold, offered for sale, or otherwise distributed in Maine.
- B. **Commissioner.** “Commissioner” means the Commissioner of the Department of Health and Human Services.
- C. **Department.** “Department” means the State of Maine Department of Health and Human Services.
- D. **Fee.** “Fee” means the Lead Poisoning Prevention Fee established pursuant to 22 M.R.S.A. § 1322-F.
- E. **Fee payer.** “Fee payer” means those categories of manufacturers, brand name or private label owners, or importers of paint sold in the State of Maine, which are required to pay the Lead Poisoning Prevention Fee.
- F. **Manufacturer.** “Manufacturer” means a manufacturer of paint sold in the State of Maine, and includes any subsidiary or affiliate of such manufacturer.
- G. **Importer.** “Importer” means anyone who offers for sale, sells or distributes in Maine a paint product which has been manufactured outside of the United States.
- H. **Low quantity waiver.** “Low quantity waiver” means the amount of annual paint sales in the State of Maine established by the Department below which will exempt Fee payers from payment of the Lead Poisoning Prevention Fund fee.
- I. **Paint.** “Paint” means any substance applied to a surface as a coating for protective, decorative or functional purposes, identified by the U.S. Census Bureau as within the following segments of paint and coating manufacturing, as set forth on Table 2 of the 2004 Annual Report for Paint and Allied Products, issued September 2005, Publication MA325F(04)-1, available from the U.S. Census Bureau free of charge at <http://www.census.gov/cir/www/325/ma325f.html>.

1. **Architectural coatings.** “Architectural coatings” means any product formulated for normal environmental conditions and general applications which is used as, or usable as, a coating applied to the interior or exterior surfaces of stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs, such as interior and exterior house and trim paints, varnishes, stains, lacquers, and sealers.
 2. **Product finishes for original equipment manufacturers.** “Product finishes for original equipment manufacturers (OEM)” means coatings formulated specifically for original equipment manufacturers to meet product requirements during the manufacturing process, such as finishes for vehicles, appliances, furniture, and other industrial products.
 3. **Special purpose coatings.** “Special purpose coatings” includes stock type shelf goods formulated for environmental conditions such as extreme temperatures, fungi, chemicals, fumes or special application, such as high-performance maintenance paints, machinery refinish paints, marine coatings, and traffic marking paints.
- J. **Person.** “Person” means any individual, firm, corporation, association or partnership, and the State of Maine, or any political subdivision within the State.
- K. **Private label owner.** “Private label owner” means a person who is the owner or licensee of the intellectual property rights of a paint product sold, offered for sale, or otherwise distributed in Maine.
- L. **Responsible corporate official.** “Responsible corporate official” means one of the following:
1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation who is in charge of a principal business function, or any other person who performs similar policy or decision-making functions on behalf of the corporation;
 2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
 3. For a municipality, tribal, state, federal or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. General provisions

A. Purpose

The purpose of the Fee is to fund the Lead Poisoning Prevention Fund as established in 22 M.R.S.A. § 1322-E.

B. Application

The Fee applies only to the following persons according to the following sequence:

1. The manufacturer which offers for sale, sells, or distributes by any means paint under its own private label or brand name in the State of Maine;
2. The brand name or private label owner of paint who offers for sale, sells or distributes by any means paint produced by other suppliers under its own brand name or private label in the State of Maine;
3. The importer of paint into the United States who offers for sale, sells, or distributes by any means such imported paint in the State of Maine. However, if the manufacturer, or brand name or private label owner, of the imported paint has a presence in the United States and meets the criteria under (1) or (2) of this subsection, that person is the appropriate fee payer for the paint. For purposes of this subsection, "presence" means performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution.

C. Fee

Pursuant to 22 M.R.S.A. § 1322-F, persons subject to the Fee shall pay \$.25 per gallon of paint sold in Maine. The Fee shall be paid to the Department no later than April 1 for the preceding calendar year. For the initial year in which these rules are effective, the Fee shall be due April 1, 2007, based upon paint sales beginning July 1, 2006. The fee payer may compute the total amount of fee owed based upon either:

1. the actual volume of Maine paint sales (converted to gallons) in the previous year or
2. Maine's pro rata percentage of national paint sales volume (0.42% of national paint sales volume)(converted to gallons).

D. Low quantity waiver

Fee payers which sold fewer than 1800 gallons of paint in the State of Maine during the previous calendar year, based upon either actual sales volume or the Maine pro rata percentage of national paint sales volume, are exempt from payment of the fee.

E. Reporting Requirements

The Fee payer shall report its annual Maine paint sales to the Department on an approved form to be provided by the Department in a Department approved format. The report shall include the total volume of paint sold by gallon in Maine in the previous calendar year and identify the method of calculation of the total fee, whether by actual sales volume or pro rata share. The form shall be signed by a responsible corporate official who shall attest to the accuracy of the information. Reports shall be due on April 1 for the preceding calendar year. For the initial year in which these rules are effective, the report shall be due April 1, 2007, based upon paint sales beginning July 1, 2006.

F. Confidentiality of information

Subject to the provisions of Title 1 M.R.S.A. §§ 401-521, information submitted to the Department pursuant to these rules may be designated as confidential. The designation must be clearly indicated on the reporting form. The Commissioner shall establish procedures to insure that information so designated is segregated from public records of the Department. Upon receipt of a public access request for any of the information designated by the submitter as confidential, the Commissioner shall notify the data submitter within 10 days of the request. The Department may accommodate the public access request unless the data submitter notifies the Department within 10 days of being notified of its objection to the release of the data and institutes appropriate measures to safeguard the data from public release. The burden shall be upon the data submitter to demonstrate that any data claimed as confidential is not a public record and not subject to disclosure pursuant to 1 M.R.S.A. §§ 401-521.

G. Enforcement

The Attorney General shall enforce payment of the fee through an action in Superior Court in Kennebec County and may collect costs and attorney's fees, where authorized by the Court.

H. Expiration

The enabling legislation for these rules is repealed on July 1, 2011.

STATUTORY AUTHORITY: 22 M.R.S.A. § 1322-F

EFFECTIVE DATE: July 1, 2006