

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Draft

Chapter 888: DESIGNATION OF FOUR MEMBERS OF THE CHEMICAL CLASS PHTHALATES AS PRIORITY CHEMICALS

SUMMARY: This ~~rule~~ chapter designates four members of the chemical class phthalates as priority chemicals and requires reporting for certain children's products categories that contain one or more of these regulated phthalates.

1. Applicability.

A. This chapter applies to manufacturers or distributors of certain children's products containing intentionally-added di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), or diethyl phthalate (DEP), that are ~~manufactured, sold, offered for sale or distributed for sale~~ in Maine.

B. Exemptions

(1) Used products. This chapter does not apply to regulated phthalates in used products.

(2) Food and beverage packaging. A container or packaging for a food or beverage product is exempt from the requirements of this chapter, unless that product is intentionally marketed or intended for use by children under three years of age.

(3) Transportation. The requirements of this chapter do not apply to motor vehicles as defined in 29-A M.R.S.A. § 101(42) or watercraft as defined in 12 M.R.S.A. § 13001(28) or their component parts, except that the use of regulated phthalates in detachable car seats is not exempt.

2. Definitions. For terms not defined in this ~~rule~~ chapter, the definitions found in *Regulation of Chemical Use in Children's Products*, 06-096 CMR Chapter-880(1), *Regulation of Chemical Use in Children's Products*, section 1, apply. The following terms, as used in this ~~rule~~ chapter, have the following meanings:

A. Apparel Clothing and footwear. "Apparel Clothing and footwear" means a consumer product worn to cover the body or feet, including but not limited to jackets, shirts, pants, raincoats, headwear, gloves, neckwear, dresses, skirts, protective wear, sleepwear, sportswear, shoes, boots and sandals. means an article of cloth or fiber, woven or otherwise assembled, into a material suitable for wearing on the body of a child under the age of 12 years, and their component parts; examples include but are not limited to sleepwear, pants, shirts, and outerwear such as gloves or hats. "Footwear" means an article intended to be worn on the feet of a child under the age of 12 years, such as shoes or slippers.

B. Arts and e-Crafts products Supplies. "Arts and e-Crafts products Supplies" means a consumer product used for the creation of decorative designs or handicrafts, including but not limited to paints, dyes, brushes, easels, canvases, basketry craft supplies, candle and soap craft supplies, glasswork and enameling craft supplies, jewelry craft supplies, clay, pottery wheels, and weaving supplies. any art supply sold for the use of a child under the age of 12 years for the purpose of making something in a carefully skillful way using one's hands.

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- C. Building products and home maintenance products.** “Building products and home maintenance products” means a ~~consumer~~ children’s product used in the construction, ~~or finishing repair, or maintenance of the inside of a residence, child care facility or school;~~ or such products used for outdoor residential use, if a child under 12 years of age may have direct contact with the product, including but not limited to bricks, cement, coloring, flooring, insulation, mortar, siding, wall covering, carpeting and tiling.
- D. Cosmetics and personal care products.** “Cosmetics and personal care products” means a children’s product used on the body of a child under the age of 12 years, typically on the skin, eyes, or nails, for the purpose of beautification or adornment and a children’s product intended to be applied to a child’s body for hygienic care or treatment (such as skin, hair, eyes, ears, mouth, or nails), including but not limited to creams, soaps, oils, bath additives, mouthwash, powders, or sprays. ~~consumer product intended to be rubbed, poured, sprinkled, or sprayed on, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles.~~ “Cosmetics and personal care products” includes but is not limited to fragrances, hair products, nail products, skin products, personal intimacy products, make-up and personal hygiene products.
- E. Home maintenance products.** “Home maintenance products” means a consumer product used for the repair or maintenance of the inside or outside of a residence, child care facility or school, including, but not limited to adhesives, caulking, grouts, fillers, sealants, paints and other finishes.
- F. Household and commercial cleaning products.** “Household and commercial cleaning products” means soaps, detergents and other ~~chemically formulated consumer~~ children’s products designed for fabric care, dish and other ware washing or surface cleaning in a residence, child care facility or school.
- G. Household furniture and furnishings.** “Household furniture and furnishings” means children’s products that are large, movable ~~consumer~~ products used to make a space liveable, including but not limited to beds, mattresses, couches, tables, desks, chairs, and storage units, and ~~consumer products used as fittings and other~~ children’s products intended for use as decorative accessories for a house or room, including but not limited to bedding, textiles, clocks, ornaments, pictures, mirrors and frames.
- H. Personal accessories and jewelry.** “Personal accessories and jewelry” means children’s product worn on a child under the age of 12 years for the purpose of emphasizing a style, including decorative objects or ornament worn for adornment, such as a necklace, bracelet, earrings, or rings. ~~consumer products that are articles or sets of articles that add completeness, convenience, and/or attractiveness to an outfit, including but not limited to backpacks, bags, purses, wallets, cases, jewelry and watches.~~
- I. Regulated Phthalates.** For the purposes of this chapter, “regulated phthalates” means any one of the following ~~four members of a class of chemical compounds known as esters of phthalic acid, and used as plasticizers or for other purposes.~~ Regulated phthalates include: di(2-ethylhexyl) phthalate (DEHP), with a CAS number of 117-81-7; dibutyl phthalate (DBP), with a CAS number of 84-74-2; benzyl butyl phthalate (BBP), with a CAS number of 85-68-7; and diethyl phthalate (DEP), with a CAS number of 84-66-2.

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NOTE: For the definition of “children’s product” see *Toxic Chemicals in Children’s Products*, 38 M.R.S.A. § 1691(7) or Department rule, 06-096 CMR 880(1)(G).

3. Designation of four regulated phthalates as priority chemicals

A. Presence on chemicals of high concern list. The ~~four chemicals that are regulated~~ phthalates are present subject to this rule are on the list of chemicals of high concern published by the Department under 38 M.R.S.A. § 1693-A, as of the effective date of this chapter.

NOTE: To view the full list of chemicals of high concern, go to:
<http://www.maine.gov/dep/safechem/highconcern/index.html>

B. Criteria for designation. The following criteria for designation of the four regulated phthalates as priority chemicals, as set forth under 38 ~~M.R.S.A.~~ M.R.S.A. § 1694, have been met as documented in the basis statement accompanying this chapter:

- (1) Regulated phthalates ~~or their metabolites~~ have been found through biomonitoring to be present in human ~~blood, including umbilical cord blood, breast milk, urine or other bodily tissues or fluids;~~
- (2) Regulated phthalates ~~or their breakdown products~~ have been found through sampling and analysis to be present in household dust and indoor air ~~or drinking water or elsewhere in the home environment;~~ and
- (3) Regulated phthalates ~~are~~ have been found to be present in a consumer products which are used or present in the home.

4. Information submission required

A. Product categories. Manufacturers of ~~the following~~ children’s products that contain intentionally-added regulated phthalates, and which fall into the following categories, must submit information to the ~~Department~~ pursuant to section 4(B) of this chapter:

- (1) Clothing Apparel and footwear;
- (2) Arts and e Crafts-Supplies products;
- (3) Building products and home maintenance products;
- (4) Cosmetic and personal care products;
- (5) ~~Home maintenance products;~~
- (6) Household and commercial cleaning products;
- (7) Household furniture and furnishings; and

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(8) Personal accessories and jewelry.

B. Information required. ~~Subject to the deadlines for reporting in section 4(C) of this chapter, No later than 180 days after the effective date of this chapter,~~ the manufacturer of a ~~consumer~~ children's product, which falls within the categories listed in section 4(A) of this chapter, that contains intentionally-added regulated phthalates shall report to the Department the following information:

- (1) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;
- (2) A description of the manufacturer's product or products containing regulated phthalates, including the overall size of the product and/or the component of the product that contains the regulated phthalate and whether the product or regulated phthalate-containing component of the product can be placed in the mouth (if a reportable item is smaller than 5 centimeters in one dimension, it is regarded as mouthable);
- (3) The amount of regulated phthalates in each unit of the product reported;
- (4) The function of regulated phthalates in the product reported;
- (5) The number of product units sold or distributed in Maine or nationally, ~~expressed as a range in accordance with Department rule 06-096 CMR 880 (5)(A)(2);~~
- (6) Any other information the manufacturer deems relevant to the reporting of the regulated phthalates, such as relevant independent scientific study on exposure specific to the amount of regulated phthalates present in the finished product reported or product of similar functionality. Such information may include an assessment that has already been performed by the manufacturer of the availability, cost, feasibility and/or performance, including potential for harm to human health and the environment, of alternatives to regulated phthalates and the reason regulated phthalates are used in the manufacture of the reported children's product in lieu of identified alternatives; and
- ~~(7) Other information the manufacturer deems relevant to the reporting of the chemical.~~
- (7) If the sale of the regulated children's product does not commence until after the 180-day reporting period ends, the written notice required under section 4(B) must be submitted within 30 days of the sale of the children's product within the State of Maine.
- (8) Failure to provide the required information to the Department by the date required may result in enforcement action consistent with 38 M.R.S. § 1699-A.

C. Deadline for reporting. ~~To provide sufficient time for a manufacturer to comply with the submission requirement, the deadlines for submission of information required in section 4(B) of this chapter are staggered by size of manufacturer, as provided below. The manufacturer of a consumer product listed in section 4(A) of this chapter that contains intentionally added regulated phthalates shall report to the department no later than the number of months specified below after the effective date of this rule. The notice will be considered delinquent if not received by the department by the last day of the month indicated.~~

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- ~~(1) For a largest manufacturer, the deadline is 12 months;~~
- ~~(2) For a larger manufacturer, 18 months; _____~~
- ~~(3) For a medium manufacturer, 24 months;~~
- ~~(4) The department shall establish reporting deadlines for small manufacturers after evaluating the submission of information by medium manufacturers.~~

D. ~~Categories of Manufacturers.~~ For the purpose of this rule, the size of a manufacturer shall be defined as:

- ~~(1) “Largest manufacturer” means any manufacturer of children’s products with annual aggregate gross sales, both within and outside of Maine, of more than one billion dollars, based on the manufacturer’s most recent tax year filing.~~
- ~~(2) “Larger manufacturer” means any manufacturer of children’s products with annual aggregate gross sales, both within and outside of Maine, of more than two hundred fifty million but less than or equal to one billion dollars, based on the manufacturer’s most recent tax year filing.~~
- ~~(3) “Medium size manufacturer” means any manufacturer of children’s products with annual aggregate gross sales, both within and outside of Maine, of more than one hundred million but less than or equal to two hundred fifty million dollars, based on the manufacturer’s most recent tax year filing.~~
- ~~(4) “Small manufacturer” means any manufacturer of children’s products with annual aggregate gross sales, both within and outside of Maine, of less than or equal to one hundred million dollars, based on the manufacturer’s most recent tax year filing.~~

E. ~~Waiver of Disclosure For Products Where Substantially Equivalent Information is Already Publicly Available.~~ The reporting requirements in section 4 of this chapter are waived for any children’s product that contains intentionally added regulated phthalates that is subject to reporting to the state of Washington under Chapter 173-334 WAC if the manufacturer has provided substantially equivalent information to the information required by this rule to the state of Washington and if that information is publically available from the state of Washington’s searchable online database. A manufacturer may petition the Commissioner for an individual waiver based on a demonstration that substantially equivalent information as that required by this rule is already publicly available.

NOTE: A regulated entity may request a waiver of the reporting requirements in this chapter for reasons set forth in Department rule 06-096 CMR 880(5)(C). Upon review of information submitted pursuant to this chapter ~~or substantially equivalent information provided to another jurisdiction that is already publicly available,~~ the commissioner may request that a manufacturer clarify the submittal, supplement incomplete information or provide additional information not specified in this chapter if the commissioner determines that the information is needed for the ~~d~~Department to complete its evaluation of the priority chemical. See ~~d~~Department rules, 06-096 CMR 880(5)(D); see also 38 M.R.S.A. § 1695(2).

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- 5. Reporting Fee.** A one-time reporting fee ~~which~~ will be assessed in accordance with Department rule, 06-096 CMR 881(3).

NOTE: Any person wishing to contest the amount of a fee imposed under this section must pay the fee by the due date specified in the ~~d~~Department invoice and file a petition in writing with the commissioner requesting a refund. See ~~d~~Department rules, 06-096 CMR 881(6).

- 6. Department Address.** Information submissions may be made by regular or electronic mail. The department may provide electronic or paper reporting forms. Use the following address to send all non-electronic correspondence to the ~~d~~Department:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Safer Chemicals ~~in Children's Products~~ Program
17 State House Station
Augusta, ME 04333

NOTE: Electronic reporting forms and/or email addresses for reporting will be provided at:
<http://www.maine.gov/dep/safechem/index.html>

STATUTORY AUTHORITY: 38 M.R.S.A. §§ 1691 through 1699-B