

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

SUMMARY: This chapter designates four members of the chemical class phthalates as priority chemicals and requires reporting for certain children's products 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 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 chapter, the definitions found in *Regulation of Chemical Use in Children's Products*, 06-096 CMR ch. 880(1) apply. The following terms, as used in this chapter, have the following meanings:

A. Clothing and footwear. "Clothing" 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, hats, or raingear. "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. Craft Supplies. "Craft Supplies" means 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.

C. Building and home maintenance products. "Building and home maintenance products" means a children's product used in the construction, 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

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

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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.

- E. Household and commercial cleaning products.** "Household and commercial cleaning products" means soaps, detergents and other children's products designed for fabric care, dish and other ware washing or surface cleaning in a residence, child care facility or school.
- F. Household furniture and furnishings.** "Household furniture and furnishings" means children's products that are large, movable-products used to make a space livable, including but not limited to beds, mattresses, couches, tables, desks, chairs, and storage units, 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.
- G. Personal accessories and jewelry.** "Personal accessories and jewelry" means children's products 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.
- H. Regulated Phthalates.** For the purposes of this chapter, "regulated phthalates" means any one of the following: 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.

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 ch. 880(1)(G).

3. Designation of four regulated phthalates as priority chemicals

- A. Presence on chemicals of high concern list.** The regulated phthalates are present 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. §1694, have been met as documented in the basis statement accompanying this chapter:

- (1) Regulated phthalates have been found through biomonitoring to be present in human bodily tissues or fluids;
- (2) Regulated phthalates have been found through sampling and analysis to be present in household dust and indoor air; and
- (3) Regulated phthalates have been found to be present in consumer products which are used or present in the home.

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4. Information submission required

A. Product categories. Manufacturers of 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 and footwear;
- (2) Craft-Supplies;
- (3) Building and home maintenance products;
- (4) Cosmetic and personal care products;
- (5) Household and commercial cleaning products;
- (6) Household furniture and furnishings; and
- (7) Personal accessories and jewelry.

B. Information required. No later than 180 days after the effective date of this chapter, the manufacturer of a 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, in accordance with Department rule 06-096 CMR ch. 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

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phthalates and the reason regulated phthalates are used in the manufacture of the reported children's product in lieu of identified alternatives.

- C. Information Not Submitted within 180-day Deadline.** 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. Failure to provide the required information to the Department by the date required may result in enforcement action consistent with 38 M.R.S.A. §1699-A.

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 ch. 880(5)(C). Upon review of information submitted pursuant to this chapter 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 Department to complete its evaluation of the priority chemical. See Department rules, 06-096 CMR ch. 880(5)(D); see also 38 M.R.S.A. §1695(2).

- 5. Reporting Fee.** A one-time reporting fee will be assessed in accordance with Department rule, 06-096 CMR ch. 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 Department invoice and file a petition in writing with the commissioner requesting a refund. See Department rules, 06-096 CMR ch. 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 Department:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Safer Chemicals 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

EFFECTIVE DATE:

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