

Chapter 885: DESIGNATION OF FORMALDEHYDE AS A PRIORITY CHEMICAL AND REGULATION OF FORMALDEHYDE IN CHILDREN'S PRODUCTS

SUMMARY: This chapter designates formaldehyde as a priority chemical and requires reporting for certain children's products that contain intentionally added formaldehyde.

1. Applicability

A. This chapter applies to manufacturers or distributors of children's products containing intentionally added formaldehyde that are for sale in the State of Maine.

B. Exemptions

(1) **Used products.** This chapter does not apply to the chemical 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 the 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 formaldehyde 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. Bedding. "Bedding" means materials used to provide a designated space for a child to sleep, including but not limited to bed linen such as a sheet or pillow, vital bed components such as a mattress and mattress cover, and bed framing.

B. Child care article. "Child care article" means a children's product designed or intended by the manufacturer to facilitate sleep or the feeding of children or to help children with sucking or teething.

C. Clothing. "Clothing" means an article of cloth or fiber, woven or otherwise assembled, into a material suitable for wearing on a child's body, and their component parts (examples include but are not limited to sleepwear, pants, shirts, and outerwear such as gloves or hats).

D. Cosmetics. "Cosmetics" means a 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.

E. 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.

F. Embellishment. "Embellishment" means a decorative detail meant to be worn by a child under the age of 12 years (i.e. in hair, on the skin, or on clothing).

G. Footwear. "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.

- H. Formaldehyde.** “Formaldehyde” means the chemical compound symbolized as “CH₂O” and having a CAS RN (Chemical Abstract Service Registry Number) of 50-00-0.
- I. Game.** “Game” means a children’s product sold for use by a child under the age of 12 years which is either for entertainment or educational purposes and requires that the user touch various components.
- J. Jewelry.** “Jewelry” means decorative objects or ornament worn on a child under the age of 12 years for adornment, such as a necklace, bracelet, earrings, or ring (see also “Embellishment”).
- K. Occasion Supply.** “Occasion Supply” means a children’s product used as specialty supplies for an atypical event as either decoration on a child under the age of 12 years (i.e. costume) or as party favors (such as souvenirs, noise makers or party hats used at juvenile events such as birthday parties) intended to be touched by the user.
- L. Personal Accessory.** “Personal Accessory” means a children’s product worn on a child under the age of 12 years for the purpose of emphasizing a style.
- M. Personal Care Product.** “Personal Care Product” means a children’s product intended to be applied to the body of a child under the age of 12 years 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.
- N. Safety Seat.** “Safety Seat” means a device, except Type I or Type II seat belts, which meets the federal definition within 49 CFR section 571, and is designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 36 kilograms (kg) or less, and includes backless child restraint systems commonly referred to as a booster seat.
- O. School Supply.** “School Supply” means children’s product commonly used by a student in the course of their education such as pencil cases, rulers, specialty bags, or lunchboxes.
- P. Toy.** “Toy” means a children’s product designed or intended by the manufacturer for a child under 12 years of age for use when the child plays. “Toy” does not include helmets, masks, goggles or other personal protective equipment designed to protect the wearer’s body from injury during sports and recreation activities.

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 formaldehyde as a priority chemical

- A. Presence on chemicals of high concern list.** Formaldehyde is 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 formaldehyde as a priority chemical, as set forth under 38 M.R.S.A. §1694, have been met:

- (1) Formaldehyde is known to cause cancer in humans and has met the criteria listed in 38 M.R.S.A § 1693(1) and 1693-A(2) for listing as a chemical of concern and chemicals of high concern respectively;
- (2) Formaldehyde has been found through sampling and analysis to be present in household dust and indoor air; and
- (3) Formaldehyde is present in consumer products used or present in the home.

4. Information submission required

A. Bedding, Childcare Articles, Clothing, Cosmetics, Craft Supplies, Footwear, Games, Jewelry and Embellishments, Safety Seat, Occasion Supplies, Personal Accessories, Personal Care Product, School Supplies, Toys

- (1) No later than 180 days after the effective date of this chapter, the manufacturer of any of the following: bedding, childcare articles, clothing, cosmetics, craft supplies, footwear, games, jewelry and embellishments, safety seats, occasion supplies, personal accessories, personal care products, school supplies, or toys, any of which are intended for use by a child under the age of 12 years and that contain intentionally added formaldehyde shall report to the Department the following information:
 - (a) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;
 - (b) A description of the product or products containing formaldehyde, including the overall size of the product and/or the component of the product that contains formaldehyde and whether the product or formaldehyde-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);
 - (c) The number of items sold or distributed in Maine or nationally in accordance with Department rule 06-096 CMR ch.880(5)(A)(2);
 - (d) The amount of formaldehyde in the product reported;
 - (e) The function of formaldehyde in the product reported; and
 - (f) Any other information the manufacturer deems relevant to the reporting of the chemical, such as relevant independent scientific study on exposure specific to the amount of chemical present in the finished product reported or product of similar functionality.
- (2) 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(A)(1) must be made within 30 days of the sale of the children's product within the State of Maine.
- (3) 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: Upon review of information submitted pursuant to section 4 of 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 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 correspondence to the Department:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Safer Chemicals Program
17 State House Station
Augusta, ME04333

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:

July 26, 2015 – filing 2015-134