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Chapter 890: DESIGNATION OF PFOS AS PRIORITY CHEMICAL

SUMMARY: This chapter designates perfluorooctane sulfonic acid (“PFOS”) as a priority chemical and requires reporting for certain children’s products that contain PFOS.

1. Applicability.

A. This chapter applies to manufacturers or distributors of certain children’s products that are for sale in the State of Maine and contain intentionally added amounts of PFOS. In addition to applying to children’s products, this chapter also applies to consumer products that are sold for indoor use in a residence, child care facility or school, or outdoor residential use if a child under 12 years of age may have direct contact with the item.

B. Exemptions.

- (1) **Used products.** This chapter does not apply to PFOS 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. § 101(42) or watercraft as defined in 12 M.R.S. § 13001(28) or their component parts, except that the use of priority chemicals 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 C.M.R. ch. 880 § 1 apply. The following terms, as used in this chapter, have the following meanings:

- A. 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.
- B. Clothing.** “Clothing” means an article of cloth or fiber, woven or otherwise assembled, into a material suitable for wearing on the body and their component parts; examples include but are not limited to pants, shirts, and outerwear such as gloves, hats, or raingear, particularly items which are marketed as having water resistant or repellent properties.
- C. Footwear.** “Footwear” means an article intended to be worn on the feet, such as shoes, slippers, or boots.
- D. Sleepwear.** “Sleepwear” means any product of wearing apparel such as nightgowns, pajamas, or similarly related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping.
- E. Toy.** “Toy” means a product designed or intended by the manufacturer for use by a child when the child plays. “Toy” does not include helmets, goggles or other personal protective equipment designed to protect the wearer’s body from injury during sports and recreation

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activities.

- F. Cookware, tableware, and reusable food and beverage containers.** “Cookware, tableware, and reusable food and beverage containers” means a container with a lid, cover, cap or nipple that is manufactured or intended for storing, carrying or transporting food or beverages, including, but not limited to, baby bottles, spill-proof cups, sports bottles and thermoses, as well as reusable or disposable dishes, utensils and other articles used in setting a table and/or serving a meal, including, but not limited to: plates, bowls, cups/glasses, spoons, knives and forks; this category does not include a receptacle that contains food or beverage at the time of sale.
- G. Cosmetics and personal care products.** “Cosmetics and personal care products” means a product used on the body, typically on the skin, hair, eyes, or nails for the purpose of beautification or adornment, including a product 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, and sprays.
- H. Craft supplies.** “Craft supplies” means any art supply sold for the purpose of making something in a carefully skillful way using one’s hands, including but not limited to specialty papers, glue, writing utensils, and color enhancers.
- I. Electronic device.** “Electronic device” means a consumer product which displays information in the visual form, including but not limited to computers, television, cell phone, or a monitor, and also includes hand-held electronic devices.
- J. Household furniture and furnishings.** “Household furniture and furnishings” means consumer products that are large, movable items used to make a space livable, including but not limited to bed frames, upholstered couches or chairs, tables, desks, and storage units; and, other consumer products intended for use as decorative accessories for a house or room, including but not limited to bedding, textiles, ornaments, mirrors and frames, curtains and carpeting.

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

3. Designation of PFOS as a priority chemical.

- A. Presence on chemicals of high concern list.** PFOS is present on the list of chemicals of high concern published by the Department under 38 M.R.S. § 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 PFOS as a priority chemical, as set forth under 38 M.R.S. § 1694, have been met as documented in the basis statement accompanying this chapter in that PFOS has been found:

- (1) through biomonitoring to be present in human bodily tissues or fluids;

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- (2) through sampling and analysis to be present in household dust and indoor air; and,
- (3) to be present in consumer products which are used or present in the home.

4. Information submission required.

A. Product categories. Manufacturers or distributors of products that contain intentionally added amounts of PFOS, and fall into the categories in this section, must submit information to the Department pursuant to section 4(B) of this chapter:

- (1) Child care article;
- (2) Clothing;
- (3) Footwear;
- (4) Sleepwear;
- (5) Toy;
- (6) Cookware, tableware, reusable food and beverage containers;
- (7) Cosmetics and personal care products;
- (8) Craft supplies;
- (9) Electronic device; and
- (10) Household furniture and furnishings.

B. Information required. No later than 180 days after the effective date of this chapter, the manufacturer or distributor of a product, which falls within the categories listed in section 4 (A)(1 – 10) of this chapter, containing intentionally added PFOS shall report to the Department the following information:

- (1) the name and address of the manufacturer or distributor;
- (2) the name, address, and phone number of a contact person for the manufacturer or distributor;
- (3) a description of the manufacturer or distributor's product or products containing PFOS, including the overall size of the product and/or the component of the product that contains PFOS and whether the product or PFOS-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 PFOS in each unit of the product reported;
- (4) the function of PFOS in the product reported;

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- (5) the number of product units sold or distributed in Maine or nationally, in accordance with Department Rule 06-096 C.M.R. ch. 880 § 5(A)(2); and,
- (6) any other information the manufacturer or distributor deems relevant to the reporting of the PFOS for the Department's consideration, such as relevant independent scientific study on exposure specific to the amount of PFOS 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 or distributor of the availability, cost, feasibility and/or performance, including potential for harm to human health and the environment, of alternatives to PFOS and the reason PFOS is used in the manufacture or distributor of the reported product in lieu of identified alternatives.

C. Information not submitted within 180-day deadline. If the sale of the 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 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. § 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 C.M.R. ch. 880 § 5(C). Upon review of information submitted pursuant to this chapter the Commissioner may request that a manufacturer or distributor 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 C.M.R. ch. 880 § 5(D); see also 38 M.R.S. § 1695(2).

5. Reporting fee. A one-time reporting fee will be assessed in accordance with Department Rule, 06-096 C.M.R. 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 C.M.R. 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
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. §§ 1691 through 1699-B

EFFECTIVE DATE:
