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Chapter 889: DESIGNATION OF TWO FLAME RETARDANTS AS PRIORITY CHEMICALS

SUMMARY: This chapter designates two similarly used chemicals of high concern as priority chemicals and requires reporting for certain children's products that contain one or more of these regulated chemicals.

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 decabromodiphenyl ether (deca BDE) and/or hexabromocyclododecane (HBCD), which are used in the non-polymeric, additive form.

B. Exemptions

(1) **Used products.** This chapter does not apply to Regulated Flame Retardants 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 two 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 Regulated Flame Retardants 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:

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.

Children's Clothing. "Children's 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 pants, shirts, and outerwear such as gloves, hats, or raingear.

Children's Footwear. "Children's 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.

Children's Sleepwear. "Children's Sleepwear" means any product of wearing apparel (in sizes 0-14), such as nightgowns, pajamas, or similarly related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping.

Children's Toy. "Children's Toy" means a children's product designed or intended by the manufacturer for a child under the age of 12 years for use by the child when the child plays. "Children's Toy" does not include helmets, goggles or other personal protective equipment.

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designed to protect the wearer's body from injury during sports and recreation activities.

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 marketed to or intended for use by a child under the age of 12 years.

Household Furniture and Furnishings. "Household Furniture and Furnishings" means consumer products that are large, movable-products used to make a space livable, including but not limited to bed frames, upholstered couches or chairs, tables, desks, 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.

Mattress. "Mattress" means ticking filled with a resilient material used alone or in combination with other products intended or promoted for sleeping upon, including portable crib mattresses.

Mattress Pad. "Mattress Pad" means a thin, flat mat or cushion, and/or ticking filled with resilient material intended or promoted for use on top of a mattress.

Regulated Flame Retardants. "Regulated Flame Retardants" means any one of the following: decabromodiphenyl ether with a CAS number of 1163-19-5; hexabromocyclododecane with a CAS number of 25637-99-4.

Ticking. "Ticking" means the outermost layer of fabric or related material that encloses the core and upholstery materials of a mattress or mattress pad.

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 two Regulated Flame Retardants as priority chemicals

- A. Presence on chemicals of high concern list.** The Regulated Flame Retardants are 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 the two Regulated Flame Retardants as priority chemicals, as set forth under 38 M.R.S. §1694, have been met as documented in the basis statement accompanying this chapter:

- (1) The regulated Flame Retardants have been found through biomonitoring to be present in human bodily tissues or fluids;
- (2) The regulated Flame Retardants have been found through sampling and analysis to be present in household dust and indoor air; and

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- (3) The regulated Flame Retardants have been found to be present in consumer products which are used or present in the home.

4. Information submission required

A. Product categories. Manufacturers of children's products that contain intentionally added amounts of the Regulated Flame Retardants specified in this chapter, and which fall into the following categories, must submit information to the Department pursuant to section 4(B) of this chapter:

- (1) Child Care Article;
- (2) Children's Sleepwear;
- (3) Children's Toy;
- (4) Children's Clothing;
- (6) Children's Footwear;
- (7) Electronic Device;
- (8) Household Furniture and Furnishings;
- (9) Mattress;
- (10) Mattress Pad.

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 Flame Retardants 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 Flame Retardants, including the overall size of the product and/or the component of the product that contains the Regulated Flame Retardant and whether the product or Regulated Flame Retardant-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 Flame Retardant in each unit of the product reported;
- (4) The function of Regulated Flame Retardant in the product reported;
- (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);
- (6) Any other information the manufacturer deems relevant to the reporting of the Regulated

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Flame Retardant, such as relevant independent scientific study on exposure specific to the amount of Regulated Flame Retardant 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 Flame Retardant and the reason Regulated Flame Retardant 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. §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 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: