Chapter 881: FEES; CHEMICAL USE IN CHILDREN'S PRODUCTS

SUMMARY: This rule establishes the fees that may be assessed by the Department of Environment Protection to cover costs incurred in administering the provisions of Title 38, chapter 16-D, §§1691-1699-B of the Maine Revised Statutes Annotated.

1. **Definitions.** The following terms, as used in this rule, have the following meanings:

   A. **Board.** "Board" means the Board of Environmental Protection.

   B. **Children's product.** "Children's product" means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child's or a fetus's being exposed to that chemical.

   C. **CMR.** "CMR' means the Code of Maine Rules.

   D. **Consumer product.** "Consumer product" means any item sold for residential or commercial use, including any component parts and packaging. "Consumer product" does not include a food or beverage or an additive to a food or beverage, a tobacco product or paper or forest products or a pesticide regulated by the federal Environmental Protection Agency. "Consumer product" also does not include a drug or biologic regulated by the federal Food and Drug Administration or the packaging of a drug or biologic regulated by the federal Food and Drug Administration if the packaging is regulated by the federal Food and Drug Administration.

   E. **Department.** "Department" means the Department of Environmental Protection, which includes both the Board and the Commissioner.

   F. **Distributor.** "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

   G. **Manufacturer.** "Manufacturer" means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

   H. **MRSA.** "MRSA" means the Maine Revised Statutes Annotated.

   I. **Priority chemical.** "Priority chemical" means a chemical identified as such by the board under chapter 880, section 2, of department rules, 06-096 CMR 880.

2. **Applicability.** The requirements of this chapter apply to manufacturers and distributors of children's products that contain a priority chemical.

3. **Reporting fee.** A manufacturer or distributor required under 06-096 CMR 880 to provide information on its use of a priority chemical shall, within 30 days of receipt of an invoice from the department, pay a fee to cover the administrative costs incurred by the department to collect and manage the information. The department shall set the total amount of the fees to recover costs incurred by the department to collect, evaluate for completeness and sufficiency and otherwise

manage the information. The total fees as determined by the department will be divided equally among the entities that submitted information.

4. **Fee for alternatives assessment.** If a manufacturer or distributor fails to submit an acceptable alternatives assessment as defined in chapter 880, section 3(B)(3), of department rules [06-096 CMR 880] by the deadline specified by the board or commissioner, the commissioner may assess a fee on the manufacturer or distributor to cover the costs incurred to hire a contractor of the department's choice to prepare an independent report on the availability of safer alternatives. The manufacturer or distributor shall pay the fee within 30 days of receipt of the invoice from the department.

   The total fees assessed for failure to submit an acceptable alternatives assessment will be calculated to recover the contracting and other costs incurred by the department to arrange for preparation of an independent report on the availability of safer alternatives. The total fees will be divided equitably among manufacturers and distributers of children's product that contain the priority chemical. Manufacturers and distributers who have submitted an~~d~~ acceptable alternatives assessment are exempt from the fee.

5. **Remittance; deposit.** Fees assessed under this chapter must be paid by check payable to "Treasurer, State of Maine." The department shall deposit the check in the Maine Environmental Protection Fund as established under 38 MRSA §351.

6. **Appeal.** 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. The petition must state the name of the petitioner; the date and the amount paid; the amount of the fee that is contested; and any reasons why the commissioner may not impose the fee. The commissioner may grant or deny the petition. If denied in whole or part, the commissioner shall provide the petitioner with a written decision explaining the basis for denial. The decision may be appealed to the board as provided in the department *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective April 1, 2003).

AUTHORITY: 38 MRSA §341-D(1-B); and

38 MRSA §1695(4)

EFFECTIVE DATE: