

**Chapter 887: DESIGNATION of ARSENIC AS A PRIORITY
CHEMICAL AND REGULATION OF ARSENIC in Children's
Products**

SUMMARY: This chapter designates arsenic as a priority chemical and requires reporting for certain product categories that contain arsenic.

1. Applicability

A. This chapter applies to manufacturers or distributors of children's products containing intentionally-added arsenic that are manufactured, sold, offered for sale or distributed 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 of children under three years of age.

(3) **Transportation.** The requirements of this chapter do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts, except that the use of cadmium in detachable car seats is not exempt.

2. Definitions. For terms not defined in this chapter, the definitions found in 06-096 CMR Chapter 880, *Regulation of Chemical Use in Children's Products*, section 1 apply. The following terms, as used in this chapter, have the following meanings:

A. Arsenic. "Arsenic" means the semi-metallic element symbolized as "As" and having a Chemical Abstract Service Registry Number (CAS RN) of 7440-38-2.

B. 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.

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

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

E. Cosmetics. "Cosmetics" means a product used on a child's body, typically on the skin, eyes, or nails, for the purpose of beautification or adornment.

F. 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.

G. Embellishment. "Embellishment" means a decorative detail meant to be worn by a child (i.e. in hair, on the skin, or on clothing).

H. Footwear. "Footwear" means an article intended to be worn on a child's feet, such as shoes or slippers.

I. Game. "Game" means a product sold for use by a child 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 person for adornment, such as a necklace, bracelet, earrings, or ring (see also "Embellishment").

K. Occasion Supply. "Occasion Supply" means items used as specialty supplies for an atypical event as either decoration on a person (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 an item worn on a person for the purpose of emphasizing a style.

M. Personal Care Product. "Personal Care Product" means a product intended to 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.

N. Safety Seat. "Safety Seat" means a device, except Type I or Type II seat belts, which meets the federal of child restraint system within 49 CFR section 571.213 (Oct. 1, 2013), and is designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 30 kilograms (kg) or less, and includes backless child restraint systems commonly referred to as a booster seat.

O. School Supply. "School Supply" means an item 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 consumer 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. "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.

3. Designation of arsenic as a priority chemical

A. Presence on chemicals of high concern list. Arsenic is present on the list of chemicals of high concern published by the department under 38 M.R.S.A. §1693-A.

NOTE: To view the full list, go to:
www.maine.gov/dep/safechem/highconcern/index.html .

B. Criteria for designation. The following criteria for designation of arsenic as a priority chemical, as set forth under 38 M.R.S.A. §1694, have been met:

(1) Arsenic is known to cause cancer in humans, is classified as a reproductive toxicant and has met the criteria listed in §§ 1693(1) and 1693-A(2) for listing as a chemical of concern and chemical of high concern respectively;

(2) Arsenic has been found through biomonitoring to be present in humans;

(3) Arsenic has been found through sampling and analysis to be present in household dust, indoor air, drinking water or elsewhere in the home environment; and

(4) Arsenic is present in a consumer product 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 bedding, childcare articles, clothing, cosmetics, craft supplies, footwear, games, jewelry and embellishments, safety seats,

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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 arsenic 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 arsenic, including the overall size of the product and/or the component of the product that contains arsenic and whether the product or arsenic -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;
 - (d) The amount of arsenic in the product reported;
 - (e) The function of arsenic 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 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 881(3).

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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, 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:

June 2, 2014 - filing 2014-109