

Text of Modified Rule

Proposed by the Qualified Voters of the State of Maine to the Maine Board of Environmental Protection to Prohibit the Sale of Certain Children's Products Containing Bisphenol A (BPA)

The Maine Department of Environmental Protection rule entitled "Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products" (06-096 CMR Ch. 882) shall be modified to:

1. Add a definition of "Toddler food" to mean any food or beverage other than baby food or infant formula that is intentionally marketing to children under 3 years of age;
2. Extend the existing prohibition on the sale of children's products containing BPA to include containers of infant formula and baby food, effective January 1, 2013, and containers of toddler food, effective January 1, 2014; and
3. Clarify that BPA is intentionally added to a product or product packaging whenever a component of that product or product packaging is made from polycarbonate plastic or an epoxy resin containing BPA.

The modified rule will improve environmental public health protection by significantly reducing exposure to children under age 3 to bisphenol A, the first priority chemical designated by the State of Maine. The Maine Center for Disease Control and Prevention stated that: "The current consensus of most scientists, as well as U.S. and international government agencies, is that there is sufficient evidence that BPA produces adverse effects at environmentally relevant exposures." The proposed rule change will further fulfill "the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible" (38 M.R.S.A Section 1692).

Text of the Proposed Rule Modification:

The requested modification to the BPA rule is shown below using underline and strike-out format to indicate proposed new or deleted text.

Amend Section 2 of 06-096 CMR Ch. 882 to read as follows:

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. **Baby food.** "Baby food" means a prepared solid food consisting of a soft paste or an easily chewed food that is intended for consumption by children two years of age or younger and is commercially available.
 - B. **Bisphenol A or BPA.** "Bisphenol A" or "BPA" means a chemical compound having a CA (Chemical Abstract) Index Name of "Phenol, 4,4'-(1-methylethylidene)bis-" a chemical formula of $C_{15}H_{16}O_2$ and a CAS RN (Chemical Abstract Service Registry Number) of 80-05-7.
 - 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 age 3 and younger, or to help such children with sucking or teething.
 - D. **Exposure or exposed.** "Exposure or exposed" in reference to a priority chemical means that a person is subjected in the course of daily life to a priority chemical from a product that enters the body in any quantity from any route of entry, including but not limited to inhalation, ingestion, skin contact or absorption.
 - E. **Food and beverage packaging.** "Food and beverage packaging" means containers, packaging, and packaging materials that contain and/or protect processed and raw foods and beverages at the point of sale. "Food and beverage packaging" does not include containers intended for storage or preparation of food that do not contain food or beverage when sold or purchased.
 - F. **Infant formula.** "Infant formula" means a liquid that purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

- G. Reusable food or beverage container.** "Reusable food or beverage container" 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. "Reusable food or beverage container" does not include a receptacle that contains food or beverage when sold or purchased.
- H. Tableware.** "Tableware" means reusable or disposable dishes, utensils and other articles used in setting a table and/or serving a meal. "Tableware" includes but is not limited to: plates, bowls, cups/glasses, spoons, knives and forks.
- I. Toddler food.** "Toddler food" means any food or beverage, other than baby food or infant formula, that is intentionally marketed or intended for the use of children under 3 years of age. "Toddler food" includes but is not limited to canned foods with labels or related marketing materials that prominently display animated characters from television shows or films that include preschool children among their target audience.
- L. Toy.** "Toy" means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger 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.

Amend Section 5 of 06-096 CMR Ch. 882 to read as follows:

5. Sales prohibition of children's products containing bisphenol A

- A. Sales Prohibition.** Except as provided in section 1(B) of this chapter, no person shall sell, offer for sale or distribute for sale in Maine any:

(1) reusable food or beverage container containing intentionally-added bisphenol A after January 1, 2012;

(2) infant formula and baby food that is sold in a plastic container, jar or can that contains intentionally-added bisphenol A after January 1, 2013; and

(3) toddler food that is sold in a plastic container, jar or can that contains intentionally-added bisphenol A after January 1, 2014.

A product or product packaging subject to the requirements of this chapter is considered to contain intentionally-added bisphenol A whenever bisphenol A is added during the manufacture of a component of that product or product packaging, including but not limited to food and beverage packaging made with polycarbonate plastic or an epoxy resin lining.

B. Compliance plan required. The manufacturer of a reusable food or beverage container, infant formula, baby food or toddler food subject to the sales prohibition of subsection A shall file, or cause all of its distributors to file, a compliance plan with the department no later than 180 days prior to the effective date of a sales prohibition under this section, unless the manufacturer receives a time extension in writing from the department. The compliance plan must:

- (1) Identify the manufacturer's products subject to the sales prohibition;
- (2) Specify whether compliance will be achieved by discontinuing the sale of the children's product in Maine or by substituting a safer alternative in the product;
- (3) If compliance is achieved by substitution of a safer alternative in the product, identify the safer alternative and the timetable for substitution; and
- (4) Confirm that the manufacturer has notified all persons that offer the product for sale or distribution in Maine of the sales prohibition, as required by 38 MRSA §1696(4).
 - (a) Confirmation shall include a copy of the notice and a list of the persons to whom it was sent.
 - (b) A retailer is exempt from the sales prohibition requirements of this section if the manufacturer failed to notify the wholesaler and retailer in accordance with this subsection, and the department did not notify the retailer of the sales prohibition.