

MEMORANDUM

To: Board of Environmental Protection
 From: Cynthia Bertocci, Executive Analyst
 Date: July 19, 2012
 Subject: Citizen Petition to Initiate Rulemaking to Require Safer Alternatives to Bisphenol A (BPA) in Food and Beverage Packaging for Young Children (Amendment to Chapter 882)

Background:

In 2011, the Board adopted Chapter 882 *Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products*. The rule designated bisphenol A (BPA) a priority chemical and prohibited any person from selling, offering for sale, or distributing for sale in Maine any reusable food or beverage container that contained intentionally added BPA after January 1, 2012. The rule also required, among other things, that the manufacturer of infant formula or baby food that is sold in a plastic container, jar or can that contains intentionally added BPA submit certain information to the Department within 180 days of the effective date of the rule.

Petition for Rulemaking:

The petition for rulemaking was submitted by 869 registered Maine voters. The petition seeks to amend Chapter 882 to:

1. add a definition of "toddler food";
2. extend the existing prohibition on the sale of children's products containing BPA to include containers of infant food and baby formula, effective January 1, 2013, and containers of toddler food, effective January 1, 2014; and
3. specify 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 epoxy resin containing BPA.

The Board packet contains the Petition and Exhibits 1 through 11. The technical documents submitted by the petitioners are posted on the Board's webpage and will be provided to Board members under separate cover.

Statutory Criteria:

The Maine Administrative Procedure Act, 5 M.R.S.A. § 8055, states that "any person may petition an agency for the adoption or modification of any rule." Further, "whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the agency shall initiate appropriate rulemaking proceedings within 60 days after receipt of the petition."

Under provisions of 38 M.R.S.A. § 1696, the Board may adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical if the Board finds that certain criteria are met. Any such prohibition would be a

major substantive rule. In addition to the proposed prohibition, the petition contains language that calls for routine technical rulemaking, which by statute is the responsibility of the Commissioner. Therefore, the hearing will be a joint hearing before the Board and the Commissioner or her designee, and ultimately the Board and the Commissioner will each act on those portions of the petition that are within their respective jurisdictions.

The Board is being asked to post the proposed rule as submitted by the petitioners for a public hearing. The proposed hearing date is Thursday, September 6, 2012, with a comment deadline of Friday, September 28, 2012.

Estimated time of agenda item: 20 minutes.