

Economic Impact Statement for Rulemaking

as required under the Maine Administrative Procedures Act, 5 MRS §8052, sub-§5-A

Rule chapter # and name: Chapter 880 - Regulation of Chemical Use in Children's Products

Posting date: November 19, 2009

1. Could the proposed rule have an adverse impact on businesses that have 20 or fewer employees?

It is possible. The rule (and the legislation that the rule implements) authorizes the Board of Environmental Protection to designate priority chemicals from a list of about 1700 hundred chemicals of high concern. Upon designation, a small business that uses the priority chemical in the manufacture of a children's product, or that makes a product with a component that uses the priority chemical, may be required to disclose information on its use of the chemical.

If this proposed rule is adopted, the board will be required to exercise its authority to designate priority chemicals through the adoption of a separate, routine technical rule. It is then and only then, in the context of that rulemaking when the chemical targeted for designation is known, that the department be a position to identify possible impacts on small business.

That said, this rule does include a couple of provisions that could be useful in minimizing the burden of disclosure on small businesses. First, the rule in section 3(C) authorizes the Commissioner of Environmental Protection to waive the disclosure of information on uses of a chemical that are minor in volume. Second, the rule in section 3(E) gives manufacturers several options for complying with the disclosure requirement, including reliance on information submitted by a trade association, chemical manufacturer or other third party.

2. What are the types and estimated numbers of small businesses likely to be affected by the rule?

We will not know until a specific chemical has been proposed for designation as a priority chemical. This rule does not itself designate specific priority chemicals; it lays out the protocol that the board will follow for its designation decision. A key feature of the protocol is that the board must designate priority chemicals through the adoption of a routine technical rule.

3. What are the projected reporting, record-keeping and other administrative costs of complying with the proposed rule? What types of professional skills are needed to prepare required reports or records?

This rule itself does not impose any reporting, record-keeping or other administrative requirements. Rather, it lays out the protocol by which the Board of Environmental Protection will designate priority chemicals for regulatory scrutiny. The protocol, among other things, requires the board to designate priority chemicals via adoption of a routine technical rule in accordance with the Maine Administrative Procedures Act.

Upon designation of a priority chemical, manufacturers may be required to provide information on their use of the chemical in children's products. The range and type of information required is expected to vary depending on the chemical and will be specified by the board in its designation rule. In most cases, the requested information (e.g., what is the product the chemical is used in; what is the

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

purpose of the chemical in the product; how much of the chemical do you use) presumably will be known to the manufacturer in that it relates to use of the chemical in a product that the business makes and therefore presumably can be readily produced without need to retain professional skills that the business does not possess. It is possible, however, that the board could require an assessment of alternatives to the priority chemical. Some aspects of an alternative could require professional skills in chemical hazard assessment.

4. Describe the probable economic impact of rule compliance on affected small businesses.

Again, because this rule lays out the process for naming and collecting data on a priority chemical and does not itself name a priority chemical, the rule does not have an economic impact on small business. Small Maine product manufacturers could be impacted economically if and when the board names one or more priority chemicals but those impacts cannot be identified until the chemical is named. As noted earlier the Commissioner may waive the disclosure requirements for uses that are minor in volume.

5. Are there any less intrusive or less costly alternative methods of achieving the purposes of the proposed rule?

As mentioned in item 1 above, section 3(E) of the rule gives manufacturers of children's products several options for complying with the requirement to disclose information on their use of priority chemicals. A less intrusive regulatory approach has not been identified so far in the rulemaking process.