

10-144

Chapter 293

STATE OF MAINE

LEAD POISONING PREVENTION FEE RULES



**DEPARTMENT OF HEALTH & HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL & PREVENTION
DIVISION OF ENVIRONMENTAL HEALTH
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AUGUSTA, MAINE 04333**

Last Amended: January 15, 2014

**10-144
Chapter 293**

**Environmental and Occupational Health Program
Division of Environmental Health
Maine Center for Disease Control and Prevention
Department of Health and Human Services**

**STATE OF MAINE
LEAD POISONING PREVENTION FEE RULES**

SUMMARY STATEMENT

These rules implement 22 M.R.S. §1322-F, the Lead Poisoning Prevention Fee. The rules identify the persons subject to the fee, provide methods of fee calculation, establish a low quantity fee exemption, and describe reporting and payment requirements of persons subject to the fee.

STATUTORY AUTHORITY

22 M.R.S. §1322-F

LAST AMENDED

January 15, 2014

SECTION 1. DEFINITIONS

- A. **Brand name owner.** “Brand name owner” means a person who is the owner or licensee of the intellectual property rights of a paint product sold, offered for sale, or otherwise distributed in Maine.
- B. **Commissioner.** “Commissioner” means the Commissioner of the Department of Health and Human Services.
- C. **Department.** “Department” means the State of Maine Department of Health and Human Services.
- D. **Fee.** “Fee” means the Lead Poisoning Prevention Fee established pursuant to 22 M.R.S. §1322-F.
- E. **Fee payer.** “Fee payer” means those categories of manufacturers, brand name or private label owners, or importers of paint sold in the State of Maine, which are required to pay the Lead Poisoning Prevention Fee.
- F. **Manufacturer.** “Manufacturer” means a manufacturer of paint sold in the State of Maine, and includes any subsidiary or affiliate of such manufacturer.
- G. **Importer.** “Importer” means anyone who offers for sale, sells or distributes in Maine a paint product which has been manufactured outside of the United States.
- H. **Low quantity waiver.** “Low quantity waiver” means the amount of annual paint sales in the State of Maine established by the Department below which will exempt Fee payers from payment of the Lead Poisoning Prevention Fund fee.
- I. **Paint.** “Paint” means any substance applied to a surface as a coating for protective, decorative or functional purposes, identified by the U.S. Census Bureau as within the following segments of paint and coating manufacturing, as set forth on Table 2 of the 2004 Annual Report for Paint and Allied Products, issued September 2005, Publication MA325F(04)-1. Table 2 is attached to these rules as Appendix A and is incorporated by reference.
 - 1. **Architectural coatings.** “Architectural coatings” means any product formulated for normal environmental conditions and general applications which is used as, or usable as, a coating applied to the interior or exterior surfaces of stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs, such as interior and exterior house and trim paints, varnishes, stains, lacquers, and sealers.
 - 2. **Product finishes for original equipment manufacturers.** “Product finishes for original equipment manufacturers (OEM)” means coatings formulated specifically for original equipment manufacturers to meet product requirements during the manufacturing process, such as finishes for vehicles, appliances, furniture, and other industrial products.

3. **Special purpose coatings.** “Special purpose coatings” includes stock type shelf goods formulated for environmental conditions such as extreme temperatures, fungi, chemicals, fumes or special application, such as high-performance maintenance paints, machinery refinish paints, marine coatings, and traffic marking paints.
- J. **Person.** “Person” means any individual, firm, corporation, association or partnership, and the State of Maine, or any political subdivision within the State.
- K. **Private label owner.** “Private label owner” means a person who is the owner or licensee of the intellectual property rights of a paint product sold, offered for sale, or otherwise distributed in Maine.
- L. **Responsible corporate official.** “Responsible corporate official” means one of the following:
 1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation who is in charge of a principal business function, or any other person who performs similar policy or decision-making functions on behalf of the corporation;
 2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
 3. For a municipality, tribal, state, federal or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

SECTION 2. GENERAL PROVISIONS**A. Purpose**

The purpose of the Fee is to fund the Lead Poisoning Prevention Fund as established in 22 M.R.S. §1322-E.

B. Application

The Fee applies only to the following persons according to the following sequence:

1. The manufacturer which offers for sale, sells, or distributes by any means paint under its own private label or brand name in the State of Maine;
2. The brand name or private label owner of paint who offers for sale, sells or distributes by any means paint produced by other suppliers under its own brand name or private label in the State of Maine;
3. The importer of paint into the United States who offers for sale, sells, or distributes by any means such imported paint in the State of Maine. However, if the manufacturer, or brand name or private label owner, of the imported paint has a presence in the United States and meets the criteria under (1) or (2) of this subsection, that person is the appropriate fee payer for the paint. For purposes of this subsection, "presence" means performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution.

C. Fee

Pursuant to 22 M.R.S. §1322-F, persons subject to the Fee shall pay \$0.25 per gallon of paint sold in Maine. The Fee shall be paid to the Department no later than April 1 for the preceding calendar year. For the initial year in which these rules are effective, the Fee shall be due April 1, 2007, based upon paint sales beginning July 1, 2006. The fee payer may compute the total amount of fee owed based upon either:

1. The actual volume of Maine paint sales (converted to gallons) in the previous year; or
2. Maine's pro rata percentage of national paint sales volume (0.42% of national paint sales volume)(converted to gallons).

D. Low quantity waiver

Fee payers which sold fewer than 1,800 gallons of paint in the State of Maine during the previous calendar year, based upon either actual sales volume or the Maine pro rata percentage of national paint sales volume, are exempt from payment of the fee.

E. **Reporting Requirements**

The Fee payer shall report its annual Maine paint sales to the Department on an approved form to be provided by the Department in a Department approved format. The report shall include the total volume of paint sold by gallon in Maine in the previous calendar year and identify the method of calculation of the total fee, whether by actual sales volume or pro rata share. The form shall be signed by a responsible corporate official who shall attest to the accuracy of the information. Reports shall be due on April 1 for the preceding calendar year. For the initial year in which these rules are effective, the report shall be due April 1, 2007, based upon paint sales beginning July 1, 2006.

F. **Confidentiality of information**

Subject to the provisions of Maine's Public Records and Proceedings Statute, 1 M.R.S. Chapter 13 (§§ 401-521), information submitted to the Department pursuant to these Rules may be designated as confidential. The designation must be clearly indicated on the reporting form. The Commissioner shall establish procedures to insure that information so designated is segregated from public records of the Department. Upon receipt of a public access request for any of the information designated by the submitter as confidential, the Commissioner shall notify the data submitter within 10 days of the request. The Department may accommodate the public access request unless the data submitter notifies the Department within 10 days of being notified of its objection to the release of the data and institutes appropriate measures to safeguard the data from public release. The burden shall be upon the data submitter to demonstrate that any data claimed as confidential is not a public record and not subject to disclosure pursuant to 1 M.R.S. §408-A.

G. **Enforcement**

The Attorney General shall enforce payment of the fee through an action in Superior Court in Kennebec County and may collect costs and attorney's fees, where authorized by the Court.

H. **Expiration**

The enabling legislation for these rules is repealed when the Commissioner of Health and Human Services certifies that a period of 24 months has elapsed since the Department of Health and Human Services identified a child with an elevated blood lead level through screening by health care providers under section 1317-C. The Commissioner of Health and Human Services shall provide notice to the Secretary of the Senate, the Clerk of the House of Representatives and the Office of the Revisor of Statutes when this condition has been met. For the purposes of this subsection, "elevated blood lead level" means a confirmed level of blood lead of 10 micrograms per deciliter or a level of blood defined by the federal Department of Health and Human Services, Centers for Disease Control and Prevention, whichever is lower.

STATUTORY AUTHORITY: 22 M.R.S.A. §1322-F

EFFECTIVE DATE:

July 1, 2006 – filing 2006-272

AMENDED:

January 15, 2014 – filing 2014-005

APPENDIX A

Table 2 of the
2004 Annual Report for Paint and Allied Products
Publication MA325F(04)-1
Issued September 2005

**Childhood Lead Poisoning Prevention Program
Environmental and Occupational Health Program
Division of Environmental Health
Maine Center for Disease Control and Prevention
Department of Health and Human Services**

Table 2. Quantity and Value of Shipments of Paint and Allied Products: 2004 and 2003
 [Quantity in thousand of gallons. Value in thousand of dollars]

Product code	Product description	2004		2003	
		Quantity	Value	Quantity	Value
325510	Paint and allied products 1/.....	1,570,689	19,524,029	1,479,504	18,152,769
3255101	Architectural coatings.....	822,186	8,768,106	774,364	8,136,396
	Exterior solvent-type.....	81,554	965,299	74,979	892,875
3255101111	Solvent thinned paints and tinting bases, including barn and roof paints.....	22,359	242,002	19,867	215,109
3255101115	Solvent thinned enamels and tinting bases, including exterior-interior floor enamels.....	16,774	248,554	16,186	241,535
3255101119	Solvent thinned undercoaters and primers.....	10,331	117,248	8,528	100,539
3255101121	Solvent thinned clear finishes and sealers.....	5,894	76,248	5,590	71,125
3255101125	Solvent thinned stains, including shingle and shake.....	15,992	199,979	15,134	187,009
3255101129	Other exterior solvent thinned coatings, including bituminous paints.....	10,204	81,268	9,674	77,558
	Exterior water-type.....	202,668	2,248,599	186,403	2,037,304
3255101131	Water thinned paints and tinting bases, including barn and roof paints.....	121,800	1,414,222	107,434	1,245,124
3255101135	Water thinned exterior-interior deck and floor enamels.....	3,741	39,236	3,616	37,235
3255101139	Water thinned undercoaters and primers.....	27,720	294,460	24,749	265,081
3255101141	Water thinned stains and sealers.....	22,337	266,971	21,961	255,813
3255101145	Other exterior water thinned coatings.....	27,070	233,710	28,643	234,051
	Interior solvent-type.....	65,778	747,328	60,369	660,705
3255101211	Flat solvent thinned wall paint and tinting bases, including mill white paints.....	2,848	71,775 r/	2,423	61,974
3255101215	Gloss and quick drying enamels and other gloss solvent thinned paints and enamels.....	3,312	47,245	3,333	46,443
3255101219	Semigloss, eggshell, satin solvent thinned paints, and tinting bases.....	13,874	181,452	11,403	153,248
3255101221	Solvent thinned undercoaters and primers.....	27,746	263,136 r/	26,314	229,490
3255101225	Solvent thinned clear finishes and sealers.....	(D)	(D)	(D)	(D)
3255101229	Solvent thinned stains.....	1,820	19,131	1,839	19,026
3255101231	Other interior solvent thinned coatings.....	(D)	(D)	(D)	(D)
	Interior water-type.....	463,459	4,715,546	443,884	4,455,464
3255101235	Flat water thinned paints and tinting bases.....	181,230	1,550,792	177,437	1,471,464
3255101239	Semigloss, eggshell, satin, and other water thinned paints and tinting bases.....	197,333	2,270,731	188,003	2,178,169
3255101241	Water thinned undercoaters and primers.....	46,008	387,705	40,912	334,883
3255101245	Other interior water thinned coatings, stains, and sealers.....	38,888	506,318	37,532	470,948
3255101249	Architectural lacquers.....	6,286	63,012	6,360	62,491
3255101YVV	Architectural coatings, n.s.k.....	2,441	28,322	2,369	27,557
3255104	Product finishes for original equipment manufacturers (OEM), excluding marine coatings.....	424,812	5,895,952	395,688	5,502,922
3255104111	Automobile, light truck, van, and sport utility vehicle finishes.....	49,789	987,604	45,625	978,714
3255104121	Automobile parts finishes.....	4,953	148,451	4,855	148,952
3255104131	Heavy duty truck, bus, and recreational vehicle finishes.....	15,652	375,266	12,055	290,232
3255104141	Other transportation equipment finishes, including aircraft and railroad.....	8,676	130,839	8,995	126,938
3255104211	Appliance, heating equipment, and air-conditioner finishes.....	8,881	95,158	7,995	87,472
3255104215	Wood furniture, cabinet, and fixture finishes.....	44,649	507,612	42,468	461,370
3255104219	Wood and composition board flat stock finishes.....	11,830	124,369	9,932	116,141
3255104221	Metal building product finishes, including coatings for aluminum extrusions and siding.....	38,575	689,254	35,909	547,649
3255104225	Container and closure finishes.....	38,643	416,571	34,195	442,759
3255104229	Machinery and equipment finishes, including road building equipment and farm implements.....	22,611	533,037	18,217	507,956
3255104231	Nonwood furniture and fixture finishes, including business equipment finishes.....	44,261	463,767	41,859	402,160
3255104235	Paper, paper board, film, and foil finishes, excluding pigment binders.....	15,995	130,806	14,007	124,203
3255104239	Electrical insulating coatings.....	920	16,295	4,015	25,840
	Powder coatings.....	73,946	829,176	72,404	798,264
3255104241	Appliance powder coatings 2/.....	9,763	173,818	10,837	182,976
3255104245	Automotive powder coatings 2/.....	5,714	97,479	9,024	106,886
3255104249	Architectural powder coatings (such as aluminum extrusions) 2/.....	1,808	20,053 r/	1,827	20,684
3255104251	Lawn and garden powder coatings 2/.....	1,799	33,129	1,544	28,624
3255104255	General metal finishing powder coatings 2/.....	21,491	349,893	19,417	307,334
3255104259	Thermoset functional powder coatings (for pipe, rebar, electrical insulation, etc.) 2/.....	(D)	(D)	(D)	(D)

Table 2. Quantity and Value of Shipments of Paint and Allied Products: 2004 and 2003
 [Quantity in thousand of gallons. Value in thousand of dollars]

Product code	Product description	2004		2003	
		Quantity	Value	Quantity	Value
3255104261	Thermoplastic powder coatings (all) 2/.....	(D)	(D)	(D)	(D)
3255104265	Other industrial product finishes.....	40,318	415,354	38,117	410,439
3255104YWV	Product finishes for original equipment manufacturers (OEM), excluding marine coatings, n.s.k.	3,109	32,393	3,037	33,833
3255107	Special-purpose coatings, including all marine coatings.....	173,087	3,685,255 r/	164,930	3,365,680
	Industrial new construction and maintenance paints (especially formulated coatings for special conditions of industrial plants and/or facilities requiring protection against extreme temperatures, fungi, chemicals, fumes, etc.):				
3255107111	Interior.....	22,492	271,264 r/	24,510 r/	258,786
3255107115	Exterior.....	35,167	640,447 r/	34,999	596,030
3255107121	Traffic marking paints (all types; shelf goods and highway department).....	35,907	245,730 r/	32,217	226,367
3255107131	Automotive, other transportation and machinery refinish paints and enamels, including primers.....	54,473	2,114,375	50,763	1,880,518
3255107141	Marine paints, ship and off-shore facilities and shelf goods for both new construction and marine refinish and maintenance, excludes spar varnish.....	12,342	246,723	11,557	242,582
3255107151	Marine paints for yacht and pleasure craft, new construction, refinish, and maintenance.....	100	2,238	91	2,214
3255107161	Aerosol-paint concentrates produced for packaging in aerosol containers.....	11,728	144,250	9,608	133,521
3255107YWV	Special-purpose coatings, n.s.k.	878	20,228 r/	1,185 r/	25,662
3255108	Miscellaneous allied paint products.....	150,604	1,174,716	144,522	1,147,771
3255108111	Paint and varnish removers.....	5,329	58,193	5,067	53,756
3255108121	Thinners for lacquers and other solvent based paint products.....	32,586	170,739	26,929	144,942
3255108131	Pigment dispersions.....	31,748	464,943 r/	30,185 r/	439,689
3255108141	Other miscellaneous allied paint products, including brush cleaners, ink vehicles, putty and glazing compounds, etc.	80,521	456,833	81,970	484,674
3255108YWV	Miscellaneous allied paint products, n.s.k.	420	24,008 r/	371 r/	24,710

D Withheld to avoid disclosing data for individual companies; data are included in higher level totals. n.s.k. Not specified by kind.
 r/ Revised by 5 percent or more from previously published data.

1/Represents total shipments for those establishments producing paint and allied products that have 20 or more employees. These establishments represent approximately 95 percent of the total value of shipments for NAICS industry 325510, Paint, varnishes, lacquers, enamels, and allied products, based on relationships observed in the 2002 Economic Census, Manufacturing sector's final report.

2/Data for powder coatings are collected in pounds and converted to gallons by using a conversion factor of 5 (5 lbs. = 1 gallon). Data collected in pounds amounted to 369,730 thousand pounds in 2004 and 362,020 thousand pounds in 2003.