

**§1696. Sales prohibition; rules; safer alternatives to priority chemicals**

**1. Authority.** The board may adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical in an amount greater than a de minimis level if the board finds, after consideration of information filed under section 1695 and other relevant information submitted to or obtained by the board, that:

- A. Distribution of the children's product directly or indirectly exposes children and vulnerable populations to the priority chemical; and [PL 2007, c. 643, §2 (NEW).]
- B. One or more safer alternatives to the priority chemical are available at a comparable cost. [PL 2007, c. 643, §2 (NEW).]

If there are several available safer alternatives to a priority chemical, the board may prohibit the sale of children's products that do not contain the safer alternative that is least toxic to human health or least harmful to the environment.

A rule established pursuant to this subsection must specify the effective date of the prohibition, which may not be sooner than 12 months after notice of the proposed rule is published as required under Title 5, section 8053, subsection 5. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 319, §7 (AMD).]

**2. Alternatives assessment; presumptions.** For the purpose of determining whether a safer alternative is available under subsection 1, paragraph B, the board may, in the absence of persuasive evidence to the contrary:

- A. Presume that an alternative is a safer alternative if the alternative is not a chemical of concern; [PL 2011, c. 319, §8 (AMD).]
- B. Presume that a safer alternative is available if the sale of the children's product containing the priority chemical has been banned by another state within the United States based on the availability of a safer alternative; [PL 2011, c. 319, §8 (AMD).]
- C. Presume that a safer alternative is available if the children's product containing the priority chemical is an item of apparel or a novelty; and [PL 2007, c. 643, §2 (NEW).]
- D. Presume that a safer alternative is available if the alternative is sold in the United States. [PL 2007, c. 643, §2 (NEW).]

[PL 2011, c. 319, §8 (AMD).]

**3. Implementation.** No later than 180 days prior to the effective date of a prohibition adopted under subsection 1, the manufacturer or distributor of a children's product that contains the priority chemical and that is subject to the prohibition at the time of adoption shall file a compliance plan with the commissioner or seek a waiver under subsection 5. A compliance plan must:

- A. Identify the children's product that contains the priority chemical; [PL 2007, c. 643, §2 (NEW).]
- B. Specify whether compliance will be achieved by discontinuing the sale of the children's product in the State or by substituting a safer alternative in the product; and [PL 2007, c. 643, §2 (NEW).]
- C. If compliance is achieved by substitution of a safer alternative in the product, identify the safer alternative and the timetable for substitution. [PL 2007, c. 643, §2 (NEW).]

[PL 2007, c. 643, §2 (NEW).]

**4. Responsibility.** A manufacturer or distributor of a children's product containing a priority chemical shall notify persons that offer the product for sale or distribution in the State of the requirements of this chapter.

[PL 2007, c. 643, §2 (NEW).]

**5. Waiver for specific uses.** The manufacturer or distributor of a children's product that contains a priority chemical and that is subject to a prohibition adopted pursuant to subsection 1 may apply to the commissioner for a waiver for one or more specific uses of the priority chemical. The waiver application must, at a minimum:

- A. Identify the specific children's product use or uses for which the waiver is sought; [PL 2007, c. 643, §2 (NEW).]
- B. Identify the alternatives considered for substitution of the priority chemical; [PL 2007, c. 643, §2 (NEW).]
- C. Explain the basis for concluding that the use of an alternative is not feasible; and [PL 2007, c. 643, §2 (NEW).]
- D. Identify the steps that have and will be taken to minimize the use of the priority chemical. [PL 2007, c. 643, §2 (NEW).]

The commissioner may grant a waiver with or without conditions upon finding that there is a need for the children's product in which the priority chemical is used and there are no technically or economically feasible alternatives for the use of the priority chemical in the children's product. Waivers may be granted for a term not to exceed 5 years and may be renewed for one or more additional 5-year terms upon written application demonstrating that technically or economically feasible alternatives remain unavailable. The commissioner shall deny or grant waiver requests within 60 days after receipt of a completed waiver application.

[PL 2007, c. 643, §2 (NEW).]

**6. Petitions.** If rulemaking to prohibit the sale of a children's product containing a priority chemical is initiated by petition under Title 5, section 8055, the department shall consider the information submitted in support of the petition but is not obligated to conduct a search of other sources of information on the chemical or its uses. The petitioner bears the burden of demonstrating that the criteria under subsection 1 for adoption of rules are met.

[PL 2007, c. 643, §2 (NEW).]

#### SECTION HISTORY

PL 2007, c. 643, §2 (NEW). PL 2011, c. 319, §§7, 8 (AMD).

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