

**Title 38: WATERS AND NAVIGATION**  
**Chapter 16: SALE OF CONSUMER**  
**PRODUCTS AFFECTING THE ENVIRONMENT**

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**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 16: SALE OF CONSUMER**  
**PRODUCTS AFFECTING THE ENVIRONMENT**

**§1601. AEROSOL SPRAY**

After January 1, 1979, no person shall sell or offer to sell in this State any aerosol spray which contains a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen; provided that nothing in this Act shall prohibit the sale or use of any aerosol spray containing such a propellant if the product contains one or more drugs as defined by section 201(g)(1) of the Federal Food, Drug and Cosmetic Act and which aerosol spray is to be used for a generally recognized medical purpose, or is classified as an essential use exemption in 40 Code of Federal Regulations, subchapter R, section 762.21, paragraphs (a) to (g), 43 Federal Register, 11324, March 17, 1978, 43 Federal Register, 59500, December 21, 1978. [1979, c. 153, (AMD).]

**1. Violation.** Violation of this section is a Class E crime.

[ 1977, c. 202, (NEW) .]

SECTION HISTORY

1977, c. 202, (NEW). 1979, c. 153, (AMD).

**§1602. CHEMICAL SEPTIC TANK CLEANERS**

No person may sell, offer to sell or commercially promote the use of any chemical solvent containing halogenated hydrocarbon compounds as septic tank cleaners or degreasers. [1981, c. 249, (NEW).]

SECTION HISTORY

1981, c. 249, (NEW).

**§1603. FOAM PRODUCTS**

**1. Prohibition on extruded polystyrene foam sheets.** After January 1, 1989, no person may sell or offer to sell in this State any product composed in whole or in part of thermoformed extruded polystyrene foam sheets if the foam is manufactured using any fully halogenated chlorofluorocarbon found by the United States Environmental Protection Agency to be an ozone-depleting chemical.

[ 1987, c. 752, §3 (NEW) .]

**2. Prohibition on foam board.** No person may sell or offer to sell in this State any product composed in whole or in part of foam board if:

A. The foam is manufactured using any fully halogenated chlorofluorocarbons found by the United States Environmental Protection Agency to be an ozone-depleting chemical; and [1987, c. 752, §3 (NEW) .]

B. A substitute for fully halogenated chlorofluorocarbon blowing agents is available and found to meet public health and safety standards by all applicable federal and state agencies. [1987, c. 752, §3 (NEW) .]

[ 1989, c. 39, (AMD) .]

**3. Compliance.** Compliance with this section shall be as follows.

A. All distributors engaged in the sale or distribution in the State of products covered under subsection 1 shall certify to the commissioner their compliance with subsection 1. [1989, c. 39, (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD).]

B. All distributors engaged in the sale or distribution in the State of products covered under subsection 2 shall certify to the commissioner by July 1, 1990, their compliance or scheduled compliance with subsection 2. [1989, c. 39, (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD).]

[ 1989, c. 39, (AMD); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §274 (AMD) .]

SECTION HISTORY

1987, c. 752, §3 (NEW). 1989, c. 39, (AMD). 1989, c. 890, §§A40,B274 (AMD).

## §1604. LEAD-ACID BATTERIES

For the purposes of this section, "lead-acid battery" means a device designed and used to store electrical energy through chemical reactions involving lead and acid. [1989, c. 583, (NEW); 1989, c. 585, Pt. E, §35 (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

**1. Disposal.** No person may dispose of a lead-acid battery by burial, incineration, deposit or dumping so that the battery or any of its constituents may enter the environment or be emitted into the air or discharged into any waters.

[ 1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

**2. Lead-acid battery retailers.** A person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased; [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

(2) "A deposit of \$10 will be charged for each new lead-acid battery that is not exchanged with an old lead-acid battery."

(3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or other lead-acid battery."

(4) "Recycle your used batteries." [1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR).]

[ 1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

**3. Lead-acid battery wholesalers.** Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries in reasonably clean and unbroken condition from customers. A person accepting lead-acid batteries in transfer from an automotive battery retailer shall be allowed a period, not to exceed 90 days, to remove batteries from the retail point of collection.

[ 1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

**4. Inspection and enforcement.** The Department of Environmental Protection shall produce, print and distribute notices required under subsection 2. The department shall enforce the provisions of this section and may inspect places, buildings or premises governed by this section.

[ 1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

**5. Violations.** Any person who does not abide by this section commits a civil violation subject to section 349.

[ 1989, c. 583, (NEW); 1989, c. 878, Pt. A, §116 (RPR) .]

#### SECTION HISTORY

1989, c. 583, (NEW). 1989, c. 585, §E35 (NEW). 1989, c. 878, §A116 (RPR).

## §1605. PLASTIC BAGS; RECYCLING

A retailer may use plastic bags to bag products at the point of retail sale only if the retailer: [1991, c. 475, §1 (RPR).]

**1. Location.** Locates inside the store or within 20 feet of the main entrance to the store a receptacle for collecting any used plastic bags; and

[ 1991, c. 475, §1 (NEW) .]

**2. Recycles.** Ensures that the plastic bags collected are recycled or delivered to a person engaged in recycling plastics.

[ 1991, c. 475, §1 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §E35 (NEW). 1991, c. 475, §1 (RPR).

## §1606. MOTOR VEHICLE AIR CONDITIONING

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Motor vehicle" has the same meaning as defined in Title 29-A, section 101, subsection 42. [1995, c. 65, Pt. A, §150 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF).]

B. "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115 and CFC-502. [1989, c. 622, (NEW).]

[ 1995, c. 65, Pt. A, §150 (AMD); 1995, c. 65, Pt. A, §153 (AFF); 1995, c. 65, Pt. C, §15 (AFF) .]

**2. Service.** After January 1, 1992, a person may not perform service on motor vehicle air conditioners for compensation, unless that person uses equipment that is certified by the Underwriters' Laboratories or an institution determined by the commissioner to be comparable, as meeting the Society of Automotive Engineers standard applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners.

[ 1989, c. 622, (NEW) .]

**3. Recordkeeping.** After January 1, 1992, a commercial establishment servicing automobile air conditioners shall maintain records at the establishment of the following:

A. The number of automobile air conditioners serviced by the establishment; [1989, c. 622, (NEW) .]

B. The amount of CFC purchased by the establishment; and [1989, c. 622, (NEW) .]

C. The amount of CFC sold or used by the establishment. [1989, c. 622, (NEW) .]

The establishment shall maintain records for not less than 3 years and provide those records on request to the commissioner.

[ 1989, c. 622, (NEW) .]

**4. CFC coolant.** After October 1, 1991, a person may not sell any CFC coolant in a container containing less than 15 pounds of that coolant, unless it bears a warning label indicating the product's danger to ozone in the stratosphere. After January 1, 1992, a person may sell or offer for sale CFC coolant, suitable for use in motor vehicle air conditioners, only:

A. For commercial or industrial use; or [1989, c. 622, (NEW) .]

B. In containers containing more than 15 pounds of that coolant. [1989, c. 622, (NEW) .]

[ 1989, c. 622, (NEW) .]

**5. Registration.** A motor vehicle with a model year of 1995 or later may not be registered in the State or sold to a consumer or dealer in the State if it contains air conditioning equipment that uses CFCs.

[ 1993, c. 37, §1 (AMD) .]

#### SECTION HISTORY

1989, c. 622, (NEW). 1993, c. 37, §1 (AMD). 1995, c. 65, §A150 (AMD). 1995, c. 65, §§A153,C15 (AFF).

## §1606-A. WHEEL WEIGHTS

**1. Tire service.** Beginning January 1, 2011, when replacing or balancing a tire on a motor vehicle required to be registered under Title 29-A, chapter 5, a person may not use a wheel weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[ 2009, c. 125, §1 (NEW) .]

**2. Sales ban.** Except as provided in subsection 3, beginning January 1, 2011, a person may not sell or offer to sell or distribute weights or other products for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product.

[ 2009, c. 125, §1 (NEW) .]

**3. New motor vehicles.** Beginning January 1, 2012, a person may not sell a new motor vehicle that is equipped with a weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains lead or mercury that was intentionally added during the manufacture of the product. For purposes of this subsection, "new motor vehicle" means a motor vehicle that is required to be registered under Title 29-A, chapter 5 that has not been previously sold to any person except a distributor, wholesaler or motor vehicle dealer for resale.

[ 2009, c. 125, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 125, §1 (NEW).

## §1607. CONNECTORS

*(REPEALED)*

#### SECTION HISTORY

1989, c. 878, §9 (NEW). 1991, c. 415, §3 (RP).

## §1608. OZONE-DEPLETING PRODUCTS

After January 1, 1992, no person may sell or offer for sale in this State the following ozone-depleting products: [1991, c. 11, (NEW) .]

**1. Cleaning sprays.** CFC cleaning sprays for noncommercial or nonindustrial usage in cleaning electronic and photographic equipment;

[ 1991, c. 11, (NEW) .]

**2. Fire extinguishers.** Hand-held halon fire extinguishers for residential use; and

[ 1991, c. 11, (NEW) .]

**3. Party streamers and noisemakers.** Party streamers and noisemakers in aerosol containers that contain CFC.

[ 1991, c. 11, (NEW) .]

For purposes of this section, "CFC" has the same meaning as in section 1606. [1991, c. 11, (NEW) .]

#### SECTION HISTORY

1991, c. 11, (NEW).

## §1609. RESTRICTIONS ON SALE AND DISTRIBUTION OF BROMINATED FLAME RETARDANTS

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation. [2007, c. 296, §1 (NEW) .]

**1. "Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers.** Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than 0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

[ 2007, c. 296, §1 (AMD) .]

### 2. Review; report.

[ 2007, c. 296, §1 (RP) .]

### 3. Application.

[ 2007, c. 296, §1 (RP) .]

**4. "Deca" mixture of polybrominated diphenyl ethers in home furniture.** Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; and [2007, c. 655, §17 (AMD) .]

B. Upholstered furniture intended for indoor use in a home or other residential occupancy. [2007, c. 296, §1 (NEW) .]

[ 2007, c. 655, §17 (AMD) .]

**5. "Deca" mixture of polybrominated diphenyl ethers in electronics.** Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing more than 0.1% of the "deca" mixture of polybrominated diphenyl ethers.

[ 2009, c. 121, §17 (AMD) .]

**5-A. "Deca" mixture of polybrominated diphenyl ethers in shipping pallets.** This subsection governs the manufacture and sale of shipping pallets and products made from shipping pallets containing the "deca" mixture of polybrominated diphenyl ethers, referred to in this subsection as "the "deca" mixture."

A. A person may not manufacture, sell or offer for sale or distribute for sale or use in the State a product that is manufactured from recycled shipping pallets containing the "deca" mixture, except that this prohibition does not apply to the manufacturing, selling or distribution of shipping pallets that are manufactured from recycled shipping pallets containing the "deca" mixture. [2009, c. 610, §2 (NEW) .]

B. Beginning January 1, 2012, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a shipping pallet containing the "deca" mixture, other than a shipping pallet made from recycled shipping pallets or described in subsection 11, paragraph A-1. [2009, c. 610, §2 (NEW) .]

C. By January 1, 2013, and annually thereafter, a manufacturer or owner of shipping pallets subject to the restrictions of this subsection shall submit a report to the department that certifies its compliance with the restrictions of this subsection. The report must include data on the bromine content of a representative number of shipping pallets and an interpretive analysis of the data sufficient to

demonstrate compliance with this subsection. The board may adopt rules to implement the reporting requirements of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 610, §2 (NEW).]

[ 2009, c. 610, §2 (NEW) .]

**5-B. Exemptions.** Notwithstanding subsection 5-A, paragraph B, a person may sell or distribute a shipping pallet containing the "deca" mixture of polybrominated diphenyl ethers for which an exemption is obtained pursuant to this subsection. A manufacturer or owner of a shipping pallet may apply for an exemption by filing a written petition with the commissioner. The petition must include a proposed duration for the exemption. The commissioner shall grant an exemption upon finding that:

A. A safer alternative that meets the criteria of subsection 14 does not exist; [2009, c. 610, §3 (NEW) .]

B. A shipping pallet containing a proposed safer alternative fails to meet applicable fire safety standards, approvals and tests or relevant performance standards; [2009, c. 610, §3 (NEW) .]

C. Additional time is needed by the petitioner to complete testing or obtain approval to ensure that a shipping pallet containing a proposed safer alternative complies with applicable fire safety standards, approvals and tests; or [2009, c. 610, §3 (NEW) .]

D. Additional time is needed by the petitioner to modify the manufacturing process in order to produce a shipping pallet containing the safer alternative. [2009, c. 610, §3 (NEW) .]

The commissioner may not grant an exemption pursuant to this subsection that extends beyond January 1, 2013.

[ 2009, c. 610, §3 (NEW) .]

**6. Exemptions.** The restrictions in subsections 4 and 5 do not apply to the following products containing the "deca" mixture of polybrominated diphenyl ethers:

A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment; [2007, c. 296, §1 (NEW) .]

B. Products or equipment used in industrial or manufacturing processes; or [2007, c. 296, §1 (NEW) .]

C. Electronic wiring and cable used for power transmission. [2007, c. 296, §1 (NEW) .]

[ 2007, c. 296, §1 (NEW) .]

**7. Manufacturer responsibility.** Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer's product of the requirements of this section. Beginning January 1, 2013, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 5-A must notify persons that sell the manufacturer's product of the requirements of this section.

[ 2009, c. 610, §4 (AMD) .]

**8. Retailer assistance.** The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

[ 2007, c. 296, §1 (NEW) .]

**9. Interstate clearinghouse.** The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

[ 2007, c. 296, §1 (NEW) . ]

**10. Review; report.**

[ 2007, c. 643, §1 (RP) . ]

**11. Application.** This section does not prohibit the sale, distribution or use of:

A. Used products; [2009, c. 121, §18 (NEW) . ]

A-1. Shipping pallets manufactured before January 1, 2012 that contain the "deca" mixture of polybrominated diphenyl ethers or shipping pallets for which an exemption has been granted under subsection 5-B; [2009, c. 610, §5 (NEW) . ]

B. Except as provided in subsection 5-A, products if the presence of polybrominated diphenyl ether is due solely to the use of recycled material; or [2009, c. 610, §5 (AMD) . ]

C. Replacement parts that contain the "octa" or "penta" mixtures of polybrominated diphenyl ether if the parts are for use in a product manufactured before January 1, 2006. [2009, c. 121, §18 (NEW) . ]

[ 2009, c. 610, §5 (AMD) . ]

**12. Enforcement.** If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or [2007, c. 296, §1 (NEW) . ]

B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified. [2007, c. 296, §1 (NEW) . ]

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement action in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

[ 2007, c. 296, §1 (NEW) . ]

**13. Department rule-making authority; flame retardants.** If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention and the Department of Public Safety, Office of the State Fire Marshal, that a flame retardant is harmful to the public health and the environment or meets the criteria as a prohibited replacement pursuant to subsection 14, paragraph B and a safer alternative to the flame retardant as set forth in subsection 14 is available, the commissioner may adopt rules to prohibit the manufacture, sale or distribution in the State of:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that contains that flame retardant; [2009, c. 610, §6 (AMD) . ]

B. A television or computer that has a plastic housing containing that flame retardant; or [ 2009 , c . 610 , §6 (AMD) . ]

C. A plastic shipping pallet that contains that flame retardant. [ 2009 , c . 610 , §6 (NEW) . ]

The commissioner's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

[ 2007 , c . 655 , §18 (AMD) ; 2009 , c . 610 , §6 (AMD) . ]

**14. Safer alternatives; policy.** It is the policy of the State that the "deca" mixture of polybrominated diphenyl ethers be replaced with safer alternatives as soon as practicable.

A. For the purposes of this subsection, "safer alternative" means a substitute process, product, material, chemical, strategy or any combination of these that:

- (1) When compared to the chemical to be replaced would reduce the potential for harm to human health or the environment or has not been shown to pose the same or greater potential for harm to human health or the environment as the chemical to be replaced;
- (2) Serves a functionally equivalent purpose that enables applicable fire safety standards, approvals and tests and relevant performance standards to be met;
- (3) Is commercially available on a national basis; and
- (4) Is not cost-prohibitive. [ 2009 , c . 610 , §7 (NEW) . ]

B. Effective June 1, 2011, a person subject to the restrictions under this section may not replace the "deca" mixture of polybrominated diphenyl ethers with a chemical alternative that the commissioner, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, determines:

- (1) Has been identified as or meets the criteria for identification as a persistent, bioaccumulative and toxic chemical by the United States Environmental Protection Agency;
- (2) Is a brominated or chlorinated flame retardant, unless the person demonstrates to the satisfaction of the commissioner that the flame retardant is a safer alternative; or
- (3) Creates another chemical as a breakdown product through degradation or metabolism that meets the provisions of subparagraph (1).

A replacement to the "deca" mixture of polybrominated diphenyl ethers may contain an amount of the chemicals listed or described in subparagraphs (1), (2) and (3) equal to or less than 0.1%, except that a replacement may contain an amount of a halogenated organic chemical containing the element fluorine equal to or less than 0.2%.

Upon request by the commissioner, a person subject to the restrictions under this subsection shall provide the commissioner with all existing information about the hazard and exposure characteristics of the replacement chemical that is known to, in the possession or control of or reasonably ascertainable by the person. [ 2011 , c . 160 , §1 (AMD) . ]

[ 2011 , c . 160 , §1 (AMD) . ]

**15. Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions set forth in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

[ 2009, c. 610, §8 (NEW) .]

#### SECTION HISTORY

RR 2003, c. 2, §119 (RAL). 2003, c. 629, §1 (NEW). 2003, c. 661, §2 (NEW). 2007, c. 296, §1 (AMD). 2007, c. 643, §1 (AMD). 2007, c. 655, §§17, 18 (AMD). 2009, c. 121, §§17, 18 (AMD). 2009, c. 610, §§2-8 (AMD). 2011, c. 160, §1 (AMD).

## §1609-A. RESIDENTIAL UPHOLSTERED FURNITURE

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Flame-retardant chemical" means a chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. "Flame-retardant chemical" includes, but is not limited to, halogenated, phosphorus-based, nitrogen-based and nanoscale flame retardants and any chemical or chemical compound for which "flame retardant" appears on the substance safety data sheet required under 29 Code of Federal Regulations, Section 1910.1200(g) (2015). [2017, c. 311, §1 (NEW) .]

B. "Upholstered furniture" means residential furniture intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials. [2017, c. 311, §1 (NEW) .]

[ 2017, c. 311, §1 (NEW) .]

**2. Sales prohibition.** Except as otherwise provided in section 1609, subsection 4, beginning January 1, 2019, a person may not sell or offer to sell or distribute for promotional purposes upholstered furniture containing in its fabric or other covering or in its cushioning materials more than 0.1% of a flame-retardant chemical or more than 0.1% of a mixture that includes flame-retardant chemicals.

[ 2017, c. 311, §1 (NEW) .]

**3. Exemptions.** The restrictions in subsection 2 do not apply to the following upholstered furniture products containing flame-retardant chemicals:

A. Used upholstered furniture; [2017, c. 311, §1 (NEW) .]

B. Upholstered furniture purchased for public use in public facilities, including, but not limited to, schools, jails and hospitals, that is required by the State of California to meet the flammability standard in California Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation Technical Bulletin 133, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies," dated January 1991; and [2017, c. 311, §1 (NEW) .]

C. New upholstered furniture otherwise subject to the prohibition in subsection 2 that is sold, offered for sale or distributed for promotional purposes in the State by a retailer or wholesaler on or after January 1, 2019 and that was imported into the State or otherwise purchased or acquired by the retailer or wholesaler for sale or distribution in the State prior to January 1, 2019. [2017, c. 311, §1 (NEW) .]

[ 2017, c. 311, §1 (NEW) .]

**4. Rulemaking.** The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2017, c. 311, §1 (NEW) .]

#### SECTION HISTORY

2017, c. 311, §1 (NEW).

## §1610. ELECTRONIC WASTE

*(REALLOCATED FROM TITLE 38, SECTION 1609)*

**1. Findings; purpose.** The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, consolidators, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.

[ 2007, c. 292, §39 (AMD) .]

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. [2017, c. 391, §1 (RP).]

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph (1). [2011, c. 250, §2 (AMD).]

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility. [2007, c. 292, §41 (NEW).]

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school. [2011, c. 250, §3 (NEW).]

C. "Covered electronic device" means a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment; other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act; or a cellular telephone subject to section 2143. [2017, c. 391, §1 (AMD).]

C-1. "Desktop printer" means a device weighing 100 pounds or less that prints text or illustrations on paper or 3-dimensional objects and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile. [2017, c. 391, §1 (AMD).]

D. "Manufacturer" means a person who:

- (1) Manufactures or has manufactured a covered electronic device under its own brand or label;
- (2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;
- (3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or
- (4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device. [2007, c. 292, §42 (AMD).]

D-1. "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices. [2009, c. 231, §1 (NEW); 2009, c. 231, §7 (AFF).]

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. [2003, c. 2, §119 (RAL).]

F. [2011, c. 250, §4 (RP).]

G. [2017, c. 391, §1 (RP).]

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy recovery or energy generation by means of combustion. [2003, c. 2, §119 (RAL).]

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling. [2003, c. 2, §119 (RAL).]

J. "Retailer" means a person who sells or provides a platform for the sale of a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including wholesale transactions with a distributor or other retailer. [2017, c. 391, §1 (AMD).]

K. [2017, c. 391, §1 (RP).]

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game. [2009, c. 397, §6 (NEW).]

[2011, c. 250, §§2-4 (AMD); 2017, c. 391, §1 (AMD) .]

**3. Sales prohibition.** Beginning January 1, 2006 the following sales prohibitions apply to manufacturers and retailers.

A. A manufacturer not in compliance with this section is prohibited from offering a covered electronic device for sale in this State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's covered electronic devices are not offered for sale in this State. [2003, c. 2, §119 (RAL).]

B. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this section. [2003, c. 2, §119 (RAL).]

[2003, c. 2, §119 (RAL) .]

**4. Manufacturer label required.** Beginning January 1, 2005, a manufacturer may not offer for sale in this State a covered electronic device unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to it.

[2003, c. 2, §119 (RAL) .]

**5. Responsibility for recycling.** Municipalities, consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that covered electronic devices generated as waste from covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system. [2017, c. 391, §2 (AMD).]

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices. [2011, c. 250, §6 (NEW).]

B. A consolidator is subject to the requirements of this paragraph.

(1-A) A consolidator shall maintain a written log of the total weight of each type of covered electronic device delivered each month to the consolidator and identified as generated by a covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated on a basis proportional to the manufacturer's national market share of each type of covered electronic device sold in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport covered electronic devices to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility

that receives covered electronic devices from the consolidator and shall provide the department with a copy of these records within 24 hours of request by the department. [ 2017, c. 391, §2 (AMD) . ]

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department. [ 2007, c. 292, §43 (AMD) . ]

D. Covered electronic device manufacturers are subject to the requirements of this paragraph.

(1) Manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all covered electronic devices received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of each type of covered electronic device must be funded by allocating the cost of the program among the manufacturers selling covered electronic devices in the State on a basis proportional to the manufacturer's national market share of the type of covered electronic device. The department shall annually determine each manufacturer's recycling share based on readily available national market share data. If the department determines that a manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the manufacturers that have 1/10 of 1% or more of the market of each type of covered electronic device.

(2) Each manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator. [ 2017, c. 391, §2 (AMD) . ]

E. Annually by January 1st the department shall provide manufacturers and consolidators with a listing of each manufacturer's proportional market share responsibility for the recycling of covered electronic devices for the subsequent calendar year. [ 2017, c. 391, §2 (AMD) . ]

[ 2017, c. 391, §2 (AMD) . ]

## **6. Manufacturer plan and reporting requirements.**

[ 2007, c. 292, §44 (AMD); 2009, c. 397, §14 (AFF); 2009, c. 397, §8 (RP) . ]

**6-A. Manufacturer registration.** Prior to offering a covered electronic device and by April 1st annually, a manufacturer that offers or has offered within the preceding calendar year a covered electronic device for sale in or into this State shall submit a registration to the department. The annual registration must include:

A. The name, contact and billing information of the manufacturer; [ 2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF) . ]

B. The manufacturer's brand name or names and the type of covered electronic device on which each brand is used, including:

(1) All brands sold in the State in the preceding calendar year; and

(2) All brands currently being sold in the State; [ 2017, c. 391, §3 (AMD) . ]

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

E. The method or methods of sale used in the State; [2009, c. 397, §9 (NEW); 2009, c. 397, §14 (AFF).]

F. Annual national sales data on the weight, number and type of covered electronic devices sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; [2017, c. 391, §3 (AMD).]

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10; and [2011, c. 250, §9 (AMD).]

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers. [2017, c. 391, §3 (AMD).]

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.

[ 2017, c. 391, §3 (AMD) .]

**7. Enforcement; cost recovery.** The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.

[ 2017, c. 391, §4 (AMD) .]

**8. Reports to Legislature.** The department shall submit a report on the recycling of electronic waste in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters as part of each product stewardship report submitted in accordance with section 1772. The report may include an evaluation of the recycling rates in the State for covered electronic devices and recommendations for any changes to the system of collection and recycling of electronic devices in the State.

[ 2011, c. 250, §10 (AMD) .]

**9. State procurement.** All vendors of electronic devices to the State shall provide take-back and management services for their products at the end of life of those products and must be in compliance with all the requirements of this section. Vendors shall provide assurances that all take-back and management services will operate in compliance with all applicable environmental laws. Purchasing preference must be given to electronic devices that incorporate design for the preservation of the environment.

[ 2003, c. 2, §119 (RAL) .]

**10. Rulemaking.** The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of covered electronic devices.

[ 2017, c. 391, §5 (AMD) .]

**11. Interstate clearinghouse for electronic waste.** The department may participate in the establishment and implementation of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

[ 2009, c. 397, §12 (NEW) .]

#### SECTION HISTORY

RR 2003, c. 2, §119 (RAL). 2005, c. 330, §§37-40 (AMD). 2005, c. 561, §8 (AMD). 2007, c. 292, §§39-44 (AMD). 2009, c. 231, §§1-5 (AMD). 2009, c. 231, §7 (AFF). 2009, c. 397, §§2-12 (AMD). 2009, c. 397, §14 (AFF). 2011, c. 250, §§2-10 (AMD). 2017, c. 391, §§1-5 (AMD).

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