

MAINE STATE LEGISLATURE

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**STATE OF MAINE
WASTE MANAGEMENT AGENCY
CHAPTER 103: REDUCTION OF TOXICS IN PACKAGING**

SECTION 1. PURPOSE

The purpose of this chapter is to implement the provisions of Title 32, chapter 26-A, §§1731-1739, of the Maine Revised Statutes, which seek to reduce toxicity of packaging waste by prohibiting the unnecessary addition of heavy metals, such as lead, mercury, cadmium and hexavalent chromium, in packaging and packaging components.

SECTION 2. APPLICABILITY

This chapter applies to manufacturers, suppliers and distributors of packaging and packaging materials offered for sale or for promotional purposes in the State.

SECTION 3. DEFINITIONS

The following terms, as used in this chapter, shall have the following meanings:

- A. **"Agency"** means the Maine Waste Management Agency.
- B. **"Department"** means the Maine Department of Agriculture, Food and Rural Resources.
- C. **"Distributor"** means any person, firm or corporation that sells a packaged product to a retailer in this State or any person, firm or corporation that receives a shipment or consignment of, or in any other manner acquires, packaged products outside the State for sale to consumers in the State.
- D. **"Manufacturer"** means any person who manufactures a package or packaging component.
- E. **"Package"** means a container used in marketing, protecting or handling a product and includes a unit package and a shipping container defined by the American Society for Testing and Materials in its annual book of standards as ASTM, D996. "Package" also includes such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.
- F. **"Packaging component"** means any individual part of an assembled package such as, but not limited to, any interior or exterior strapping, coatings, closures, inks and labels.
- G. **"Person"** means any individual, partnership, corporation or other legal entity.
- H. **"Offer for promotional purposes"** means any transfer of title or possession, or both, of packaging or products in packaging without consideration.
- I. **"Offer for sale"** means any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of packaging or products in packaging for a consideration, in any manner or by any means whatsoever.

J. "Supplier" means any person, firm or corporation that sells packages or packaging components to a distributor.

K. "Tin-Plated Steel" means a material that meets the American Society for Testing and Materials (ASTM) specification A-623 and shall be considered as a single package component.

SECTION 4. PROHIBITION; SCHEDULE FOR REMOVAL OF INCIDENTAL AMOUNTS

A. Prohibition of sale of packaging. A manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component that includes inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements. Incidental means that these elements were not intentionally added and are below the concentration levels listed in Section 4.C below.

B. Prohibition of sale of product in packaging. A manufacturer or distributor may not offer for sale or for promotional purposes any product in a package that includes, in the package itself or any packaging components, inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

C. Concentration levels. The sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium that are incidentally present in any package or packaging component including the inks or adhesives affixed to such packaging or packaging component, may not exceed:

- (1) Effective April 1, 1992, 600 parts per million by weight, or 0.06%;
- (2) Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and
- (3) Effective April 1, 1994, 100 parts per million by weight, or 0.01%.

D. Substitute materials. No material used to replace lead, cadmium, mercury or hexavalent chromium in a package or packaging component may be used in a quantity or manner that creates a hazard as great or greater than the hazard created by the lead, cadmium, mercury or hexavalent chromium. The certificate of compliance will require an assurance to this effect.

SECTION 5. CERTIFICATE OF COMPLIANCE

After April 1, 1993, a certificate of compliance conforming to the form attached as Exhibit 1 and stating that a package or packaging components is in compliance with standards established in Section 4 shall be furnished by its manufacturer to the agency. A certificate of compliance may cover more than one type of package or packaging component as long as each type is identified separately. The certificate of compliance shall be signed by an authorized official of the manufacturing company. If requested, test results shall be made available to the agency to verify information provided in a certificate of compliance.

A. New or reformulated packaging. If the manufacturer reformulates or creates a

new package or packaging component, the manufacturer shall provide the agency with an amended or new certificate of compliance for the reformulated or new package or packaging component.

B. Presentation of certificates. Each manufacturer shall furnish the agency with an original certificate of compliance and each manufacturer or supplier shall furnish, at the agency's request, copies of a certificate of compliance for distribution to the public.

SECTION 6. EXEMPTIONS

A. A manufacturer is entitled to an exemption where:

(1) The package or packaging component has a code indicating a date of manufacture prior to April 1, 1992 or the manufacturer can provide written documentation that the package or packaging component was manufactured prior to April 1, 1992; or

(2) The package or packaging component contains an alcoholic beverage bottled prior to April 1, 1992.

B. A manufacturer may petition the agency for an exemption for a particular package or packaging component where:

(1) The package or packaging component contains lead, cadmium, mercury or hexavalent chromium added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of state or federal law; or

(2) There is no feasible alternative to the use of lead, cadmium, mercury or hexavalent chromium in the package or packaging component. For the purposes of this section, "no feasible alternative" means a use in which the regulated substance is essential to the protection, safe handling or function of the package's contents; or

(3) The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in Section 4; or

(NOTE: For a package where all components contain recycled content, the entire package is exempt. However, in the case where one component contains recycled content and the other components do not, only the component containing recycled content would be exempt and not the entire package.)

(4) The package or packaging component has been exempted by another Northeastern state with similar legislation.

C. All manufacturers claiming an exemption shall file a certificate of compliance with the agency conforming to the form attached as Exhibit 2 and stating the specific basis upon which the exemption is requested.

D. Exemptions under paragraphs A(1) and A(2) are permanent. Exemptions under paragraphs B(1) and B(2) may be granted for periods of two years. In order to receive an exemption for additional two year periods, the manufacturer would have to file an exemption request. Exemptions under paragraph B(3) expire April 1, 1996. Exemptions granted under paragraph B(4) will continue in effect only as long as the applicant can show that it holds an

exemption under similar legislation from another Northeastern state.

E. Exemptions are deemed to be approved for maximum times under Section 6.D., unless the manufacturer is notified otherwise within 60 days of the agency's receipt of the certificate of compliance.

SECTION 7. ENFORCEMENT AND PENALTIES

A. Enforcement. The Department of Agriculture, Food and Rural Resources shall enforce the provisions of this chapter and may inspect, with the consent of the owner or agent, any property or building to accomplish the objectives of this chapter.

B. Violation. Any manufacturer or supplier that violates this chapter commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each package or packaging component in violation constitutes the basis of a separate offense.

C. Hearings on violations. The Department shall provide an opportunity for hearing in a manner consistent with the Maine Administrative Procedures Act, Title 5, chapter 375.

FISCAL IMPACT ON POLITICAL SUBDIVISIONS: Compliance with this rule will have no fiscal impact on municipalities or counties of this State.

AUTHORITY TO ADOPT RULE: 32 M.R.S.A., section 1737

ADOPTED: September 2, 1992

EFFECTIVE DATE: September 11, 1992

EXHIBIT 1
STATE OF MAINE
(Title 32, Ch. 26-A)
REDUCTION OF TOXICS IN PACKAGING LAW
CERTIFICATE OF COMPLIANCE:

We certify that all packaging and packaging components sold to _____^(company name) or its subsidiaries in the State of Maine comply with the requirements of this law, namely that the sum or incidental concentration levels of lead, mercury, cadmium & hexavalent chromium present in any package or package component shall not exceed the following:

- 600 Parts Per Million by weight
(Effective April 1, 1992)
- 250 Parts Per Million by weight
(Effective April 1, 1993)
- 100 Parts Per Million by weight
(Effective April 1, 1994)

We further certify that in cases where the regulated metals are present at levels below the schedule stated above, the regulated metals were not intentionally added during the manufacturing process.

We further certify that no material used to replace the regulated metals are present in a quantity or manner that creates a hazard as great or greater than the hazard created by the regulated materials.

COMPANY NAME _____

ADDRESS _____

CERTIFIED BY:

(Name)

(Signature)

(Title)

Date: _____

We will maintain adequate documentation of this certification for inspection upon request.

EXHIBIT 2
STATE OF MAINE
(Title 32, Ch. 26-A)
REDUCTION OF TOXICS IN PACKAGING LAW
CERTIFICATE OF COMPLIANCE:
EXEMPTION STATUS

We certify that all packaging and packaging components sold to _____ (company name) or its subsidiaries in the State of Maine are in compliance with this law. However, certain packages or packaging components produced by _____ (company name) are exempt from this law for one or more of the following reasons:

- Package and/or packaging components were made or delivered before the law was signed into effect;

(List package or packaging components)

- Package and/or packaging component contains heavy metals in order to comply with state or federal health and safety requirements or there is no feasible alternative;

(List package or packaging components)

- Package and/or packaging component is made from post consumer material;

(List package or packaging components)

- Alcoholic beverage bottled prior to effective date;

(List package or packaging components)

- Package and/or packaging component has been exempted by another northeastern state. List state and basis for an exemption.

(List package or packaging components)

COMPANY NAME _____

ADDRESS _____

CERTIFIED BY:

_____ (Name)

_____ (Signature)

_____ (Title)

Date _____

We will maintain adequate documentation of this certification for inspection upon request.