**Chapter 80: Reduction Of Toxics In Packaging**

Summary: This Chapter implements the provisions of 32 M.R.S. §§ 1731-1739 which seek to reduce toxicity of packaging waste by prohibiting the unnecessary addition of certain substances in packaging and packaging components.

**1. Applicability**

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

**2. Definitions**

For terms not defined in this Chapter, the definitions found in 32 M.R.S. §§ 1732 apply. The following terms, as used in this Chapter, have the following meanings:

1. Perfluoroalkyl and polyfluoroalkyl substances, PFAS. “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
2. Phthalates. “Phthalates” means any member of the class of organic chemicals that are esters of phthalic acid and that contain two carbon chains located in the ortho position.

**3. Prohibition of Sale of Packages Containing Heavy Metals**

**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.

**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 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.

**4. Prohibition of Sale of Food Packages Containing Phthalates**

1. **Sales Prohibition.** A manufacturer, supplier, or distributor may not offer for sale or for promotional purposes in the State a food package that includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to which phthalates have been intentionally introduced in any amount greater than an incidental presence, except as provided in subsection B of this section.
2. This prohibition does not apply to a manufacturer of a food or beverage product that is contained in a food package or to which a food package is applied if that manufacturer has less than $1,000,000,000 of total annual national sales of food and beverage products.

**5. Prohibition of Sale of Food Packages Containing PFAS**

1. **Sales Prohibition**. A manufacturer, supplier, or distributor may not offer for sale or for promotional purposes in the State food packaging intended for direct food contact comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers which are intended for short-term storage or to hold freshly prepared food, to which PFAS have been intentionally introduced in any amount greater than an incidental presence (except as provided in paragraph B of this section) and are one of the following:

1) bags and sleeves: bags and sleeves are containers made from flexible material that can be folded flat and are typically used to transport food from a foodservice establishment. Sleeves include sealed-end bags referred to as pinch-bottom bags.

2) bowls: an open-topped container with a wide rim opening and a bottom that allows spooning of food. These containers are typically designed to hold foods for serving that have a substantial liquid component; this includes portion cups.

3) closed containers: a container that encloses food on all sides, with interlocking pieces or overlapping walls which hold the container closed for transport. Examples include clamshells, food pails, bakery boxes, and deli containers.

4) flat serviceware: shallow, flat-bottomed containers with large surface areas used for serving and transporting food which have one large surface or multiple compartments to separate food items during food service. Examples include, but are not limited to, trays, cafeteria-style trays, and plates.

5) food boats: a type of tray with tall sides and no compartments.

6) open-top containers: containers that enclose food on all but one side and are designed to hold food for serving or transportation. Examples include, but are not limited to, paper cones, cups, bowls, and food boats.

7) pizza boxes: a folded box used for serving, holding, or transporting various sizes of pizza or calzones.

8) plates: flat serviceware, whether single or with multiple compartments, used for serving or holding food items during food service.

9) wraps and liners: sheets used to wrap food for food service or create a lining inside other serviceware to act as an additional barrier.

1. This prohibition does not apply to a manufacturer of a food or beverage product that is contained in a food package or to which a food package is applied if that manufacturer has less than $1,000,000,000 of total annual national sales of food and beverage products.

**6. Certificate of Compliance**

A certificate of compliance prepared to fulfill the requirements of title 32 M.R.S. § 1735 must identify the packaging or packaging components covered, the standard being complied with or the exemption being claimed, and shall include a certification that the information contained in the statement is accurate and complete to the best knowledge of the organization’s responsible official or his/her designee. The certification shall include the effective date, full name, title, email address and telephone number of the responsible official or designee signing the certificate. If requested, test results shall be made available to the Department to verify information provided in a certificate of compliance.

**7. Exemptions**

**A.** **Packages or packaging components are exempt 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 Department 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.

**C.** All manufacturers claiming an exemption shall file a certificate of compliance with the Department stating the specific basis upon which the exemption is requested. (See section 6(A) above.)

**D.** Exemptions under paragraphs 7(A)(l) and 7(A)(2) are permanent. Exemptions under paragraphs 7(B)(1) and 7(B)(2) may be granted for periods of two years.

STATUTORY AUTHORITY: 32 M.R.S. § 1733; 38 M.R.S. § 341-D(1-C); 38 M.R.S. § 341-H

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 (as Ch. 130 under 07-310, Maine Waste Management Agency)

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 to 06-096 Ch. 80 as the result of a March 5, 1998 memo from Assistant Attorney General Lucinda E. White, noting PL 1995 c.656 §A-12.

NON-SUBSTANTIVE CORRECTION: October 28, 1998 -

 corrected umbrella/unit number on first page.

AMENDED:

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