

**TITLE X
PUBLIC HEALTH**

**CHAPTER 149-M
SOLID WASTE MANAGEMENT**

Toxics Reduction

Section 149-M:32

149-M:32 Statement of Purpose. – The general court finds that the presence of heavy metals in packaging is to be considered a matter of concern in connection with the overall solid waste stream because such metals are likely to be present in leachate when packaging is landfilled or in emissions when packaging is incinerated. The general court further finds that lead, cadmium, mercury, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern and that elimination of the addition of these heavy metals to packaging is a desirable first step in reducing the toxicity of packaging waste. Further, the general court finds that such a reduction in the toxicity of packaging waste should be accomplished without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

Source. 1996, 251:2, eff. Aug. 9, 1996.

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Section 149-M:33

149-M:33 Definitions. – In this subdivision:

I. "Distribution" means the practice of taking title to a package or packaging components for promotional purposes or resale. Persons involved solely in delivering a package or packaging components on behalf of third parties are not considered distributors.

II. "Distributor" means any person, firm, or corporation which takes title to goods produced either domestically or in a foreign country purchased for resale.

III. "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

IV. (a) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(b) "Intentional introduction" does not mean:

(1) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of such metal in the final package or packaging component is neither desired nor deliberate, if the final package or packaging component is in compliance with RSA 149-M:34, III.

(2) The use of recycled materials as feed stock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of the regulated metals, if the new package or packaging component is in compliance with RSA 149-M:34, III.

V. "Manufacturer" means any person producing a package or packaging component.

VI. "Manufacturing" means physical or chemical modification of a material to produce packaging or packaging components.

VII. "Package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product. "Package" shall include a unit package, an intermediate package, or a shipping container as defined in the American Society for Testing and Materials (ASTM), public number D-996. "Package" shall also mean and include such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil, and other trays, wrappers and wrapping films, bags, and tubs.

VIII. "Packaging component" means any individual assembled part of a package which is produced either domestically or in a foreign country, including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets the American Society for Testing and Materials (ASTM) specification A-623 shall be considered as a single package component. Electro-galvanized coated steel and hot dipped coated galvanized steel that meets the American Society for Testing and Materials (ASTM) specifications A-525 and A-879 shall be treated in the same manner as tin-plated steel.

IX. "Post-consumer material" means only those products generated by either a commercial entity or consumer which have served their intended end uses and which have been separated or diverted from solid waste for the purposes of collection, recycling, and disposition.

X. "Supplier" means any person who sells, offers for sale, or offers for promotional purposes packages or packaging components which shall be used by any other person to package a product.

Source. 1996, 251:2. 1999, 54:3, 4, eff. July 20, 1999.

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Section 149-M:34

149-M:34 Prohibition; Schedule for Removal of Intentional and Incidental Amounts. – The schedule for removal of lead, cadmium, mercury, or hexavalent chromium in any package or packaging component shall be as follows:

I. No package or packaging component shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of New Hampshire which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution. This prohibition shall not apply to the incidental presence of any of these elements.

II. No product shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of New Hampshire in a package which includes, in the package itself or in any of its packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution. This prohibition shall not apply to the incidental presence of any of these elements.

III. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium incidentally present in any package or packaging component shall not exceed 100 parts per million by weight (0.01 percent).

Source. 1996, 251:2, eff. Aug. 9, 1996.

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Section 149-M:35

149-M:35 Exemptions. –

I. All packages and packaging components shall be subject to this subdivision, except the following:

(a) Those packages or packaging components with a code indicating that the date of manufacture was prior to April 27, 1990.

(b) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law, provided that the manufacturer of a package or packaging component petitions the commissioner for an exemption from the provisions of this subdivision for a particular package or packaging component based upon compliance with health or safety requirements of federal law. The commissioner may grant an exemption for no more than 2 years and such an exemption may, upon reapplication for exemption and meeting the criterion for exemption under this paragraph, be renewed at 2-year intervals.

(c) A package or packaging component in which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process for which there is no feasible alternative, provided that the manufacturer of a package or packaging component shall petition the commissioner for an exemption from the provisions of this subdivision for a particular package or packaging component based upon this criterion and shall submit such documentation as is necessary to support the request for the exemption. The commissioner may grant an exemption for no more than 2 years if warranted by the circumstances, provided that such an exemption may, upon reapplication for exemption and meeting the criterion for exemption under this paragraph, be renewed at 2-year intervals. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the petitioner conclusively demonstrates that the regulated substance is essential to the protection, safe handling, or function of the package's contents and that technical constraints preclude the substitution of other materials. "No feasible alternative" does not include use of any of the regulated

metals for the purposes of marketing.

(d) Packages and packaging components that would not exceed the maximum contaminant levels set forth in RSA 149-M:34, III, but for the addition of recycled materials; provided that the exemption shall not apply to any cadmium, lead, mercury, or hexavalent chromium that has been recovered and separated from other materials for use as a metal or a metallic compound; and provided that the packages or packaging components do not exceed a maximum concentration limit of 200 parts per million for the use of the 4 metals.

(e) A package or packaging component that is reused but exceeds contaminant levels established in RSA 149-M:34, III, provided that the product conveyed by such packages or the packaging component is regulated under federal or state health or safety requirements; and provided that transportation of such packaged product is regulated under federal or state transportation requirements, and provided that disposal of such package is performed according to federal or state radioactive or hazardous waste disposal requirements, and provided that the manufacturer or distributor of the packages and packaging components notifies the department of the applicability of an exemption under this subparagraph to its packages or packaging components, and provided that an exemption under this subparagraph shall expire on January 1, 2020.

(f) A package or packaging component having reusable entities, which means a controlled distribution and reuse, that exceed the contaminant levels established in RSA 149-M:34, III, provided that the manufacturers or distributors of such package or packaging component shall petition the commissioner for exemption and receive approval from the commissioner, working with the Toxics in Packaging Clearinghouse according to standards for a plan established in this section and based upon satisfactory demonstrations that the environmental benefit of the controlled distribution and reuse is significantly greater as compared to the same package manufactured in compliance with the contaminant levels established in RSA 149-M:34, III; and provided that an exemption under this subparagraph shall expire on January 1, 2020.

(g) Those packages or packaging components containing liquor, as defined in RSA 175:1, XLII, manufactured prior to April 27, 1990.

(h) A package or packaging component that is glass or ceramic which has a vitrified label that, when tested in accordance with Toxicity Characteristic Leaching Procedure, test Method 1311, published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, does not exceed one part per million for cadmium, 5 parts per million for lead, or 5 parts per million for total chromium. Mercury shall not be exempted by this provision.

II. A plan to be proposed by the manufacturer or designee seeking an exemption shall include each of the following elements:

(a) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.

(b) A method of regulatory and financial accountability so that a specified percentage of such reusable entities manufactured and distributed to other persons are not discarded by those persons after use but are returned to the manufacturer or designee.

(c) A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.

(d) A means of transforming returned entities that are no longer reusable into recycled materials for

manufacturing or into manufacturing waste which are subject to existing federal or state laws or regulations governing such manufacturing waste to ensure that these wastes do not enter the commercial or municipal waste stream.

(e) A system of annually reporting to the commissioner changes to the system and changes in designees.

(f) A description of efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

Source. 1996, 251:2. 1999, 54:5, eff. July 20, 1999. 2008, 41:1, eff. July 11, 2008. 2009, 167:2, 3, eff. June 30, 2009.

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149-M:36 Certificate of Compliance. –

I. A certificate of compliance stating that a package or packaging component is in compliance with the requirements of this subdivision shall be furnished by its manufacturer or supplier to its purchaser. If compliance is achieved under RSA 149-M:34, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing or supplying company. The purchaser shall retain the certificate of compliance for as long as the package or packaging component is in use. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component. Certificates of compliance, or copies thereof, shall be furnished to the department and to members of the public in accordance with RSA 149-M:39.

II. If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

Source. 1996, 251:2, eff. Aug. 9, 1996.

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Section 149-M:37

149-M:37 Rulemaking. – The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Procedures for petitions for exemption pursuant to RSA 149-M:35, including renewals of exemptions.

II. Procedures for certificates of compliance pursuant to RSA 149-M:36.

- III. A schedule of administrative fines which may be imposed under RSA 149-M:38, VI.
- IV. Procedures for notice and hearing prior to the imposition of an administrative fine under RSA 149-M:38, VI.

Source. 1996, 251:2, eff. Aug. 9, 1996.

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Section 149-M:38

149-M:38 Enforcement. –

I. The commissioner may issue an order to any person in violation of this subdivision, any rule adopted under this subdivision or any condition in any exemption granted under this subdivision to comply with the subdivision, the rule or condition, and may require such remedial measures as may be necessary.

II. The commissioner may request the attorney general to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction, or both, to enforce any provision of this subdivision, any rule adopted under this subdivision, any condition in any exemption granted under this subdivision, or any order issued pursuant to this subdivision.

III. Any person who knowingly violates any provision of this subdivision, any rule adopted under this subdivision, any condition in any exemption granted under this subdivision, or any order issued pursuant to this subdivision or who makes or certifies a material false statement relative to any certificate of compliance required by this subdivision shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person. Each day of a continuing violation shall constitute a separate violation.

IV. Notwithstanding RSA 651:2, a natural person may, in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$25,000 if found guilty of any violation pursuant to paragraph III.

V. Any person who violates any provision of this subdivision, any rule adopted under this subdivision, any condition in any exemption granted under this subdivision, or any order issued pursuant to this subdivision or who makes or certifies a material false statement relative to any certificate of compliance required by this subdivision shall be subject to a civil forfeiture not to exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

VI. The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each violation upon any person who violates any provision of this subdivision, any rule adopted under this subdivision, any condition in any exemption granted under this subdivision, or any order issued pursuant to this subdivision or who makes or certifies a material false statement relative to any certificate of compliance required by this subdivision. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this paragraph shall not preclude the imposition of other penalties under this chapter.

Source. 1996, 251:2, eff. Aug. 9, 1996.

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149-M:39 Public Access. – Any member of the public may request a certificate of compliance from a manufacturer or supplier of packaging or of a packaging component. The request shall be in writing and shall specifically state the packaging component or package information requested. A copy of the written request shall be provided to the department. The manufacturer or supplier of the package or packaging component shall respond in writing within 60 days of receiving such request. A copy of the response shall also be provided to the department.

Source. 1996, 251:2, eff. Aug. 9, 1996.

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Section 149-M:40

149-M:40 Severability. – If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subdivision which can be given effect without the invalid provisions or applications, and to this end the provisions of this subdivision are severable.

Source. 1996, 251:2, eff. Aug. 9, 1996.