



2008 Revisions to Model Toxics in Packaging Legislation

Member states of the Toxics in Packaging Clearinghouse made the following revisions to the Model Toxics in Packaging Legislation in December 2008. Individual state laws may vary.

Section 4. Prohibition/Schedule for Removal of Incidental Amounts

The Model allowed for the phase in of the maximum concentration limit over four years. Since the Model and most state laws based on the Model were passed before 1995, there was no need to continue this provision. California, the most recent state to pass Toxics in Packaging requirements in 2003, did not include the phase in provision.

Section C of the Model now reads:

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

Section 5: Exemptions

The 2008 revisions to the Model addressed the expiration dates of several exemptions; increased the maximum concentration limit for heavy metals in packaging that uses recycled materials; and made some other small additions.

◆ Exemption 5c: Recycled Materials

Two changes were made to Exemption 5c: 1) the maximum concentration limit for the sum of the 4 metals was increased to 200 ppm from 100 ppm; and, 2) the expiration date was removed.

Exemption 5c now reads (with 2008 changes in bold font):

*c. packages and packaging components that would not exceed the maximum contaminant levels set forth in subsection c of Section 4 of this Act but for the addition of recycled materials; provided that none of the four regulated metals in the packaging or packaging components has been recovered and/or separated from other materials for use as a metal or metallic compound; **and provided that the packages or packaging components do***

not exceed a maximum concentration limit of 200 ppm for the sum of the four regulated metals.

◆ **Exemption 5e: Reused and Regulated**

Two changes were made to Exemption 5e: 1) a provision that requires notification to State Administrative Agencies of the applicability of this exemption was added; and, 2) the expiration date was extended from January 1, 2010 to January 1, 2020.

Exemption 5e now reads (with 2008 changes in bold font):

*e. packages and packaging components that are reused but exceed contaminant levels set forth in subsection c of Section 4 of this Act, provided that the product being conveyed by such package and/or the package packaging component is (are) regulated under Federal and/or State health or safety requirements; and provided that transportation of such packaged product is regulated under Federal and/or State transportation requirements, and provided that disposal of such package is performed according to Federal and/or State radioactive or hazardous waste disposal requirements, and **provided that the manufacturer or distributor of the packages and packaging components notifies the [State Administrative Agency] of the applicability of an exemption under this subparagraph to its packages and packaging components, and provided that an exemption under this subparagraph shall expire on January 1, 2020.***

◆ **Exemption 5f: Controlled Distribution and Reuse**

Two changes were made to Exemption 5f: 1) the expiration date was extended from January 1, 2010 to January 1, 2020; and 2) an additional requirement (a description of efforts to seek alternatives to the restricted heavy metals) was added to the plan that the manufacturer seeking an exemption must submit.

Exemption 5f now reads (with 2008 changes in bold font):

*f. packages and packaging components having a controlled distribution and reuse that exceed the contaminant levels set forth in subsection c of Section 4 of this Act, provided that the manufacturer or distributor of such packages or packaging components must petition the (State administrative agency) for exemption and receive approval from the (State administrative agency, working with the CONEG Toxics in Packaging Clearinghouse) according to standards in subsection f.1 below set by such agency 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 set forth in subsection c of Section 4; and provided that an exemption under this subparagraph shall expire on **January 1, 2020; and***

f1. Standards - A plan, to be proposed by the manufacturer seeking the exemption of his designee, shall include each of the following elements:

- i. a means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought;*
- ii. 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 his/her designee;*
- iii. a system of inventory and record maintenance to account for reusable entities placed in, and removed from, service;*
- iv. a means of transforming returned entities that are no longer reusable into recycled materials for manufacturing or into manufacturing wastes which are subject to existing Federal and/or State laws or regulations governing such manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream;*
- v. a system of annually reporting to the [appropriate State administrative agency] changes to the system and changes in designees; and*
- vi. 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.*