TPCH Requests Comments on Updates to their Model Legislation for Toxics in Packaging

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Minnesota (July 9, 2020) –Today, the Toxics in Packaging Clearinghouse (TPCH) announces it is seeking comments on the organization's draft update to their Toxics in Packaging Model Legislation. The update includes the addition of PFAS and phthalates as regulated chemicals, as well as new processes for identifying additional chemicals of high concern in packaging.

The current TPCH Model Legislation and laws enacted in 19 states prohibit the intentional use of cadmium, lead, mercury, and hexavalent chromium in any finished package or packaging component. The laws also limit the total incidental concentration of the four metals to 100 ppm. Incidental concentration may result from the use of post-consumer recycled content to manufacture new packaging and components. The laws take a pollution prevention approach by prohibiting intentional use, and they place the primary burden of compliance on the supply chain by requiring manufacturers and suppliers to verify that the products they manufacture, sell, and use meet the requirements of the laws, maintain that documentation, and provide it to the public and units of government upon request.

The comment period will be open for 45 days. Comments must be sent via email to info@toxicsinpackaging.org and received by 11 pm Eastern Standard Time on Monday, August 24, 2020.

To facilitate review and consideration of comments, please keep comments concise and specific. When possible, please reference the specific section and line numbers when providing comments to the draft model legislation. Comments outside the scope of the proposed changes in the model legislation will not be considered. All comments submitted may be made publicly available on the TPCH website.

Development of Draft Model Toxics in Packaging Legislation

In 2016-2017, members of the Toxics in Packaging Clearinghouse began discussing the potential need to expand the list of substances, and the need to establish criteria and a process to identify new substances, that may be subject to state Toxics in Packaging laws.

We evaluated the model legislation and the nineteen enacted state laws. We found that several state laws addressed the issue, usually through a one-time reporting requirement that allowed or directed a state agency to identify additional substances as candidates and make legislative proposals to change the state's law. The enacted laws in eight states establish a process (but do not always include criteria) for identifying and adding additional substances to the legislation.

In a 1998 TPCH report ("Model Toxics in Packaging Legislation: An Evaluation of its Provisions, Administration, and Impact") this issue is explored. A key conclusion stated in the Executive Summary is "A risk assessment protocol for toxics should be adopted by the Clearinghouse and its member states before any additional substances are considered for regulation." In Chapter Five (page 26), the report includes the following:

> **Application of Legislation to Other Compounds:**
> Section 8 (State Review) of the model legislation calls for the appropriate state administrative agency to conduct a periodic effectiveness review of the enacted law. That review provides the state with the opportunity to recommend other toxic substances to the existing law. Although the TPCH is not recommending adding additional toxics to the Model Legislation at this time, the TPCH will need to identify a scientific, peer reviewed toxics protocol, should the states and/or the TPCH decide to pursue this matter in the future.

As an alternative to adopting a toxics protocol or a risk assessment protocol, TPCH considered adding chemicals that have been identified as high risk to sensitive or general populations by one or more credible independent risk evaluation organizations. For example, these could be academic, government, non-profit, or for-profit organizations not tied to any industry or manufacturing interest. However, it was not clear how this could be translated into effective legislation, so we searched for legislative models and examples.

Recent State Actions Adding Chemicals and Processes for Adding New Chemicals to Toxics in Packaging Laws

In 2018, the Washington State Legislature enacted amendments to the state's Toxics in Packaging law. The amendments prohibit the use of PFAS chemicals in plant fiber food packaging, contingent on the findings of an alternatives analysis that evaluates each application of PFAS in food packaging. The law prohibits the use of PFAS in specific food packaging applications two years after the Washington Dept of Ecology publishes findings and submits a report to the Legislature documenting that safer alternatives are available for those specific applications. The webpage for the WA Dept. of Ecology PFAS Alternatives Assessment: https://www.ezview.wa.gov/site/alias__1962/37610/pfas_in_food_packaging_alternatives_assessment.aspx.

In 2019 the Maine State Legislature enacted amendments to the state's Toxics in Packaging law. Similar to Washington, the amendments prohibit the use of PFAS chemicals in food contact packaging (including gloves used in foodservice), contingent on the findings of an alternatives analysis, and require the Maine Department of Environmental Protection to promulgate rules banning PFAS no sooner than two years after the determination that a safer alternative is available.

The Maine Toxics in Packaging law amendments also prohibit the use of orthophthalates in food packaging 'inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers or any other additives to which phthalates have been intentionally introduced in any amount greater than incidental presence.' This is effective Jan. 1, 2022 and does not require an alternatives analysis or rulemaking.

In 2019 the Maine State Legislature enacted a separate law called 'Toxic Chemicals in Food Packaging' that sets up a process and criteria for the state to identify and publish a list of no more than 10 'food contact chemicals of high concern.' In brief, a chemical may be so listed if there is credible scientific evidence that:

- The chemical is a carcinogen, a reproductive or developmental toxicant, or an endocrine disruptor, or;
- The chemical is persistent, bioaccumulative, and toxic, or very persistent and very bioaccumulative [See criteria in ECHA Table R11-1 on page 6 of this packet], or;
- The chemical has been found through biomonitoring studies to be present in human bodily tissues and fluids, and;
- The chemical has been found in food or beverage products, and/or;
- The chemical has been found in or is otherwise known to be present in food packaging.

TPCH state members decided that the legislative actions of Washington and Maine provided a template for the changes that TPCH envisioned.

The TPCH states are interested in chemicals meeting these criteria that are used in any type of packaging, not just food packaging. The TPCH states are also interested in chemical exposures and contamination of packaging beyond direct food contact risks. If any of the properties or criteria above are documented for a chemical, including presence in body fluids verified by biomonitoring, there are already pervasive environmental exposures that are best addressed through pollution prevention approaches. That is, eliminate the use of the chemical in packaging and end its commercial and environmental circulation via packaging uses and the recycling of packaging. Packaging products generally have short lives and uses, so there are potentially large amounts of chemicals being used annually to produce short-lived products and endow them with properties they do not need as short-lived products. To use a food packaging example, why would we use toxic forever chemicals to provide five minutes to possibly a couple hours of grease resistance? The same principles apply to non-food packaging. Disposal, recycling, composting, littering, or incinerating the packaging material can release the substances to the environment.

If a chemical meets the properties and criteria described above, it is a toxic chemical that is causing human exposures and health effects. TPCH believes that is sufficient grounds to phase out the use of the chemical in question from use in packaging. At that point the state agency may move forward with a regulatory process or legislative recommendation to phase out the chemical in packaging sold in the state.

There is a preponderance of evidence that PFAS chemicals as a class meet the criteria for toxic chemicals as described above. The proposed changes to the model legislation phase out the intentional use of all PFAS chemicals without any provisions for alternatives analysis or exemptions in order to spur innovation, prevent regrettable substitutions with other chemicals in the PFAS family, and create new expectations and standards of performance (for consumers and industry) that are defined by safe alternatives and not by PFAS chemicals. The proposed changes to the model legislation also include a non-detection threshold for PFAS chemicals in support of these goals.

Several states have taken actions to address PFAS in food packaging without an alternatives analysis. Minnesota's state purchasing contract requires supplier certification and laboratory test results verifying that products meet the BPI (Biodegradable Products Institute) standards. This is a manufacturer-based pollution prevention approach nearly identical to the principles of the Toxics in Packaging laws. California SB1335 (enacted in 2017) directs state agencies to procure only reusable, recyclable, or compostable food service ware. The law does not specifically address PFAS. CalRecycle is currently developing rules to implement the requirements of SB1335. The proposed rules and additional information are available at: https://www.calrecycle.ca.gov/laws/rulemaking/foodservice.

The table below is a one page summary of the proposed revisions to the current Toxics in Packaging Model Legislation. The table provides an 'at a glance' guide to the changes we are proposing relative to the current model legislation and is also intended to provide a guide for comments on the proposed changes.

Overview of Revisions to TPCH Model Legislation

Start with current Model Legislation, then….	**Changes**	**Basis/rationale**
Address presence of and limits on regulated metals due to use of post-consumer recycled materials PFAS and ortho-phthalates may not be used as processing agents or intermediates (Sec. 3)	1. Add definition of post-consumer recycled material. 2. Revise definition of intentional introduction to clarify that use of post-consumer recycled material with regulated metals content constitutes 'incidental presence.' The finished package or packaging component must comply with the total concentration limit of 100 ppm for the four metals or ortho-phthalates. 3. Definition of Intentional Introduction: Only the regulated metals may be used as processing agents/intermediates.	The model legislation does not differentiate between industrial scrap and post-consumer recycled materials as feedstock for new packaging components. However, the law has always had an explicit objective of promoting the use of secondary materials while maintaining compliance. These changes recognize the importance of and continue to encourage the use of post-consumer recycled materials, which should be compliant and not contributing to elevated levels when used for new packaging.
Add new substances (Sec. 4)	Add PFAS and ortho-phthalate bans for all packaging, effective 2 years after enactment. PFAS shall not be present above the detection limit, ortho-pthalates may be present up to 100 ppm incidental presence.	Many state TIP laws have provisions to identify and add new chemicals of concern. There are broadly acknowledged concerns with both substances, and both are used in packaging.
Remove Exemptions (Sec. 5)	1. Date of package manufacture 2. Vitrified labels testing criteria 3. Reusable packaging in closed loop system with end of life recovery 4. State option for higher metals content due to recycled materials	1. No longer needed 2. Advances in vitrified label materials to reduce/eliminate regulated chemicals; testing criteria provision has not been adopted by all states 3. Expired in all states at end of 2010 4. Adopted by only one state, maintaining original 100 ppm ensures consistency across states
Retain exemptions (Sec.5) *Note that these have never been requested.*	1. State/federal health or safety requirements, must apply for renewable state exemption 2. No feasible alternative, must apply for renewable state exemption	1. May still be needed, exemption process identifies outstanding issues 2. May still be needed, exemption process identifies outstanding issues
Add criteria for new toxic chemicals (Sec. 6)	Properties of Packaging Chemicals of High Concern: *Credible scientific evidence of:* • *Known developmental/health effects* • *PBT/vPvB (see criteria in ECHA Table R.11-1 below)* • *Biomonitoring detection in human fluids/tissues* • *Used/found in packaging* *[First three may also be used to identify chemicals not currently used in packaging to prevent future uses]*	Establishing criteria for what constitutes a toxic chemical will ensure that TIP laws focus on those substances that cause the most harm to both humans and the environment
Add process options to phase out new toxic chemicals (Sec. 6)	1. State agency may prohibit by rule 2. State agency may recommend prohibition to Legislature	States have existing legal mechanisms for phasing out chemicals by rule or legislative recommendation

The chart below has been provided as background for Section 6 in the 2020 TPCH Model Legislation Update

Guidance on Information Requirements and Chemical Safety Assessment*

Chapter R.11: PBT/vPvB assessment

Version 3.0 – June 2017

R.11.2.2 PBT and vPvB criteria and information listed in Annex XIII to the REACH Regulation

The following tables (Table R.11—1, Table R.11—2, and Table R.11—3) summarize the PBT and vPvB criteria given in accordance with Section 1 of Annex XIII to REACH and the relevant information to be used for the PBT/vPvB assessment as provided in Sections 3.1 and 3.2 of Annex XIII to the REACH Regulation.

Table R.11—1: PBT and vPvB criteria according to Section 1 of Annex XIII to the REACH Regulation.

Property	PBT criteria	vPvB criteria
Persistence	A substance fulfils the persistence criterion (P) in any of the following situations: (a) the degradation half-life in marine water is higher than 60 days; (b) the degradation half-life in fresh or estuarine water is higher than 40 days; (c) the degradation half-life in marine sediment is higher than 180 days; (d) the degradation half-life in fresh or estuarine water sediment is higher than 120 days; (e) the degradation half-life in soil is higher than 120 days.	A substance fulfils the "very persistent" criterion (vP) in any of the following situations: (a) the degradation half-life in marine, fresh or estuarine water is higher than 60 days; (b) the degradation half-life in marine, fresh or estuarine water sediment is higher than 180 days; (c) the degradation half-life in soil is higher than 180 days.
Bioaccumulation	A substance fulfils the bioaccumulation criterion (B) when the bioconcentration factor in aquatic species is higher than 2000.	A substance fulfils the "very bioaccumulative" criterion (vB) when the bioconcentration factor in aquatic species is higher than 5000.
Toxicity EC10 preferred over NOEC (see further explanation in Section R.11.4.1.3).	A substance fulfils the toxicity criterion (T) in any of the following situations: (a) the long-term no-observed effect concentration (NOEC) or EC10 for marine or freshwater organisms is less than 0.01 mg/L; (b) the substance meets the criteria for classification as carcinogenic (category 1A or 1B), germ cell mutagenic (category 1A or 1B), or toxic for reproduction (category 1A, 1B or 2) according to Regulation EC No 1272/2008; (c) there is other evidence of chronic toxicity, as identified by the substance meeting the criteria for classification: specific target organ toxicity after repeated exposure (STOT RE category 1 or 2) according to Regulation EC No 1272/2008.	-

*ECHA - European Chemicals Agency (this table can be found on page 17 at https://echa.europa.eu/documents/10162/13632/information_requirements_r11_en.pdf)

DRAFT – Toxics in Packaging Clearinghouse Model Legislation Update 2020

Section 1. The Toxics in Packaging Act

Section 2. The legislature finds and declares that:

a. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

b. Packaging comprises a significant percentage of the overall solid waste stream;

c. The presence of heavy metals and other toxic chemicals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, in leachate when packaging is landfilled, or when packaging has elevated levels of toxic chemicals due to post-consumer materials being recycled into new packaging components;

d. Lead, mercury, cadmium, hexavalent chromium, phthalates, and perfluoroalkyl and polyfluoroalkyl substances (PFAS), on the basis of available scientific and medical evidence, are of particular concern;

e. It is desirable, as a first step in reducing the toxicity of packaging waste, to eliminate the addition of these heavy metals, phthalates, and PFAS to packaging; and

f. The intent of this Act is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

Section 3. Definitions:

a. **Alternative**. "Alternative" means a substitute process, product, material, chemical, strategy or combination of these that serves a functionally equivalent purpose to a chemical in a package or packaging component.

b. **Chemical.** "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism.

c. **Credible scientific evidence**. "Credible scientific evidence" means the results of a study, the experimental design and conduct of which have undergone independent scientific peer review, that are published in a peer-reviewed journal or in a publication of an authoritative federal or international governmental agency, including but not limited to the United States Department of Health and Human Services; National Toxicology Program; Food and Drug Administration and Centers for Disease Control and Prevention; the United States Environmental Protection Agency; the World Health Organization; and the European Union, European Chemicals Agency.

d. **Distribution. “**Distribution” means the practice of taking title to (a) package(s) or packaging component(s) for promotional purposes or resale. Persons involved solely in delivering (a) package(s) or packaging component(s) on behalf of third parties are not considered distributors.

e. **Distributor**. “Distributor” means any person, firm or corporation who takes title to packages or packaging components, produced either domestically or in a foreign country, purchased for resale or promotional purposes.

f. **Incidental Presence**. “Incidental Presence” means the presence of a regulated metal or other regulated chemical as an unintended or undesired ingredient of a package or packaging component.

g. **Intentional Introduction**. **“**Intentional Introduction**”** means the act of deliberately utilizing a regulated metal or other regulated chemical in the formation 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.

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 said metal or chemical in the final package or packaging component is neither desired nor deliberate, is not considered intentional introduction for the purposes of this Act where said final package or packaging component is in compliance with Section 4 of this Act.

The use of post-consumer recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the post-consumer package or packaging component may contain amounts of the regulated metals or chemicals but is neither desired nor deliberate, is not considered intentional introduction for the purposes of this Act where said final package or packaging component is in compliance with Section 4 of this Act.

h. **Manufacturer**. “Manufacturer” means any person, firm, association, partnership, or corporation producing (a) package(s) or packaging component(s) as defined in this Act.

i. **Manufacturing**. “Manufacturing” means: Physical or chemical modification of (a) material(s) to produce packaging or packaging components.

j. **Package**. “Package” means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting or handling a product and shall include a unit package, an intermediate package or a shipping container as defined in American Society of Testing and Materials (ASTM) specification 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.

k. **Packaging Component**. “Packaging Component” means any individual assembled part of a package which is produced either domestically or in a foreign country, such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, dyes, pigments, adhesives, stabilizers, labels or any other additives. 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 A653, A924, A879 and A591 shall be treated in the same manner as tin-plated steel.

l. **Perfluoroalkyl and polyfluoroalkyl substances; PFAS**. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means all members of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

m. **Phthalates**. "Phthalates" means all members of the class of organic chemicals that are esters of phthalic acid and that contain 2 carbon chains located in the ortho position.

n. **Post-Consumer Recycled Material**: "Post-Consumer Recycled Material" means a finished material that would normally be discarded as a solid waste having completed its life cycle as a consumer item but instead is separated from mixed municipal solid waste for the purpose of recycling or reuse, including but not limited to paper, glass, plastics, and metals. Refuse-derived fuel or other material that is destroyed by incineration is not a recycled material.

o. **Recycling**. "Recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

p. **Substitute material.** “Substitute material” means a material used to replace lead, cadmium, mercury, hexavalent chromium, phthalates or PFAS in a package or packaging component.

q. **Supplier**. “Supplier” means any person, firm, association, partnership, or corporation who sells, offers for sale, or offers for promotional purposes packages or packaging components which shall be used by any other person, firm, association, partnership, or corporation to package (a) product(s).

r. **Toxic Chemical.** “Toxic chemical” is a chemical listed as a packaging chemical of high concern as listed in Section 6.

Section 4. Prohibition/Schedule for Removal of Intentional Amounts; Substitute Materials.

a. Prohibition of sale or distribution of package or packaging components containing lead, cadmium, mercury or hexavalent chromium. Beginning XXXXXX a manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component to which lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution in any amount greater than an incidental presence. The sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium incidentally present in any package or packaging component shall not exceed 100 parts per million by weight (0.01%). (*for states newly adopting this legislation, Section 4(a) can take place immediately as it has already been enacted for 25+ years in 19 U.S. states*)

b. Prohibition of sale or distribution of package or packaging components containing phthalates. Beginning XXXXXX, a manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component to which phthalates have been intentionally introduced during manufacturing or distribution in any amount. The concentration levels of phthalates incidentally present in any package or packaging component shall not exceed 100 parts per million by weight (0.01%).

c. Prohibition of sale or distribution of a package or packaging components containing PFAS. Beginning XXXXXX, a manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component to which PFAS has been intentionally introduced during manufacturing or distribution in any amount. There shall be no detectable PFAS in any package or packaging component.

d. Substitute materials. No material used to replace a chemical regulated by this Act 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 chemical regulated by this Act. The Certificate of Compliance will require an assurance to this effect.

Section 5. Exemptions. All packages and packaging components shall be subject to this Act, unless, an individual state adopts into their law, any or all of the below exemptions, which shall then apply only in that state.

a. 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 State or Federal law, provided that the manufacturer of a package or packaging component must petition the [state administrative agency] for any exemption from the provisions of this subsection for a particular package or packaging component based upon either criterion; and provided further that the [state administrative agency] may grant an exemption for up to two years if warranted by the circumstances; and provided further that such an exemption may, upon reapplication for exemption and meeting the criteria of this subsection, be renewed at two-year intervals; or

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 for which there is no feasible alternative, provided that the manufacturer of a package or packaging component must petition the [state administrative agency] for any exemption from the provisions of this subsection for a particular package or packaging component based upon the criterion and submit such documentation as necessary to support the request for the exemption; and provided further that the [state administrative agency] may grant an exemption for up to two years if warranted by the circumstances; and provided further that such an exemption may, upon reapplication for exemption and meeting the criterion of this subsection, be renewed at two-year intervals. For purposes of this subsection, 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 use of alternatives. "No feasible alternative" does not include use of any of the regulated metals for the purposes of marketing.

Section 6. Identification and Prohibition of packaging chemicals of high concern:

In accordance with the requirements of this section, the department may periodically revise and publish a list of packaging chemicals of high concern.

1. Criteria. A chemical may be included on the list under this section only if:

A. The chemical is included on the list of chemicals of concern published by the [state administrative agency] or the chemical has been identified by an authoritative governmental entity on the basis of credible scientific evidence as being:

(1) A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor; or

(2) Persistent, bioaccumulative and toxic; or

(3) Very persistent and very bioaccumulative; or

B. The [state administrative agency] determines that there is strong credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor or human carcinogen; and

C. The [state administrative agency] determines that there is strong credible scientific evidence that the chemical meets one or more of the following additional criteria:

(1) The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine or other human bodily tissues or fluids; or

(2) The chemical has been found through sampling and analysis to be present in packaging; or

(3) The chemical has been added to or is present in a package.

2. Revisions. The [state administrative agency] may periodically review the list published pursuant to this section and shall remove from the list any packaging chemical of high concern that no longer meets the criteria of subsection 1. The [state administrative agency] may add to the list additional packaging chemicals of high concern that meet the criteria of subsection 1, except that the list under this section may not at any one time include more than 10 packaging chemicals of high concern.

3. Toxic Chemical. A packaging chemical of high concern listed pursuant to this section is defined as a toxic chemical. To fulfill this statute's goal of reducing the toxicity of packaging waste, the [state administrative agency] may:

A. prohibit by rule the sale of packaging and packaging components to which the toxic chemical has been intentionally introduced, or;

B. recommend to the state legislature that the toxic chemical be added to the prohibited chemicals identified in Section 4 of this statute, with an effective date no later than 2 years after date of enactment.

4. Regulatory efficiency. The [state administrative agency] may, in exercising its discretionary authority under this section, consider the extent to which a chemical known to be used or present in a package or packaging component is adequately regulated by the Federal Government or an agency of this State to reduce or prevent the same public health threats that would be the basis for addressing the chemical under this section.

Section 7. Certificate of Compliance:

a) A Certificate of Compliance stating that a package or packaging component is in compliance with the requirements of this Act shall be furnished by its manufacturer or supplier to its purchaser (upon request). Where compliance is achieved under any state exemption(s) provided in Section 5, the Certificate of Compliance 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.

b) Public Access. Certificates of Compliance, or copies thereof, shall be furnished to the [state administrative agency] and to members of the public upon request.

1. Any request from a member of the public for any Certificate of Compliance from the manufacturer or supplier of a package or packaging component shall be:

- Made in writing with a copy provided to the [state administrative agency];
- Made specific as to package or packaging component information requested;
- Responded to by the manufacturer or supplier within 60 days.

c) 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 to all current purchasers.

d) Enforcement: Certificate of compliance. If there are grounds to suspect that a package is being offered for sale in violation of this chapter, the [state administrative agency] may request that the manufacturer or distributor of the package provide a certificate of compliance with the applicable provisions of this chapter. Within 30 days of receipt of a request under this subsection, the manufacturer or distributor shall:

1. Provide the [state administrative agency] with the certificate attesting that the package does not contain a chemical regulated under this act; or

2. Notify persons who sell the package in this State that the sale of the package is prohibited and provide the [state administrative agency] with a copy of the notice and a list of the names and addresses of those notified.

Section 8. State Review:

The [state administrative agency] shall, in consultation with the Toxics in Packaging Clearinghouse (TPCH), review the effectiveness of this Act within five years of its adoption and every 5 years thereafter. The [state administrative agency] may provide a report based upon that review to the Governor and Legislature. The report may contain recommendations to add other chemicals contained in packaging to the list set forth in this Act in order to further reduce the toxicity of packaging waste, and a description of the nature of the substitutes used in lieu of lead, mercury, cadmium, hexavalent chromium, PFAS, phthalates and other regulated chemicals.

Section 9. Toxics in Packaging Clearinghouse:

The [state administrative agency] is authorized to participate in a multi-state clearinghouse to assist in carrying out the requirements of this [Title/Act/section] and help coordinate joint outreach and education, responses to manufacturer inquiries, review of exemption requests, and any other activities or related functions that benefit from the cooperative efforts of multiple states regarding implementation of their toxics in packaging provisions.

Section 10. Implementation, administration and enforcement; rules; violations:

1. The department shall implement, administer and enforce this chapter and may adopt rules as necessary for the implementation, administration and enforcement of this chapter.

2. Violations. A person that violates any provision of this chapter is subject to penalties in accordance with (the appropriate state authority). Each state to add its own enforcement provisions as necessary.

Section 11. Severability and Construction.

The provisions of this Act shall be severable, and if any court declares any phase, clause, sentence, or provision of this Act to be invalid, or its applicability to any government, agency, person, or circumstance is declared invalid, the remainder of the Act and its relevant applicability shall not be affected. The provisions of this Act shall be liberally construed to give effect to the purposes thereof.

Section 12. Effective Date.

This Act shall become effective immediately upon adoption.

As revised, December 1998, October 2004, December 2008, July 2012 (pending new 2020 date once finalized).