

TPCH Model Legislation

Section 1. (Title)

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 in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;
- d. Lead, mercury, cadmium and hexavalent chromium, 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 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:

Recycled Material: pre-consumer and/or post-consumer language could be here...

5. 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.

Alternatives assessment; presumptions. For the purpose of determining whether a safer alternative is available under subsection 1, paragraph B, the board may, in the absence of persuasive evidence to the contrary:

A. Presume that an alternative is a safer alternative if the alternative does not satisfy the criteria under section 1742, subsection 1, paragraph A;

B. Presume that a safer alternative is available if the sale of the food package containing the priority food contact chemical has been banned by another state within the United States based on the availability of a safer alternative; and

C. Presume that a safer alternative is available if the alternative is sold in the United States.

1-B. 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.

5-C. Safer alternative. "Safer alternative" means an alternative that, when compared to a chemical that it could replace, would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential for harm to human health or the environment as that chemical.

5-A. 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. The sum of the concentration levels of PFAS incidentally present in any package or packaging component shall not exceed 100 parts per million by weight (0.01%).

5-B. Phthalates. "Phthalates" means any member of the class of organic chemicals that are esters of phthalic acid and that contain 2 carbon chains located in the ortho position. The sum of the concentration levels of phthalates incidentally present in any package or packaging component shall not exceed 100 parts per million by weight (0.01%).

4. Substitute materials. No material used to replace lead, cadmium, mercury or hexavalent chromium, phthalates or PFAS in a package or packaging component may be used in a quantity or manner that creates a hazard as great as or greater than the hazard created by the lead, cadmium, mercury or hexavalent chromium prohibited heavy metal or chemical.

De minimis level. "De minimis level" means:

- A. For a food contact chemical of high concern or priority food contact chemical that is an intentionally added chemical in a food package, the practical quantification limit; or
- B. For a food contact chemical of high concern or priority food contact chemical that is a contaminant present in a food package, a concentration of 100 parts per million.

Practical quantification limit. "Practical quantification limit" means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability during routine laboratory operating conditions. The practical quantification limit is based on scientifically defensible, standard analytical methods. The practical quantification limit for a given chemical may be different depending on the matrix and the analytical method used.

"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 unity 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.

“Distributor” means: any person, firm or corporation who takes title to goods, produced either domestically or in a foreign country, purchased for resale or promotional purposes.

“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.

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

6. De minimis level. “De minimis level” means:

A. For a food contact chemical of high concern or priority food contact chemical that is an intentionally added chemical in a food package, the practical quantification limit; or

B. For a food contact chemical of high concern or priority food contact chemical that is a contaminant present in a food package, a concentration of 100 parts per million.

13. Practical quantification limit. “Practical quantification limit” means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability during routine laboratory operating conditions. The practical quantification limit is based on scientifically defensible, standard analytical methods. The practical quantification limit for a given chemical may be different depending on the matrix and the analytical method used.

“Distribution” means: The practice of taking title to (a) package(s) or packaging components(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.

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

“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).

“Intentional Introduction” means: The act of deliberately utilizing a regulated metal 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 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 subsection c of Section 4 of this Act.

The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of the regulated metals, is not considered intentional introduction for the purposes of this Act where the new package or packaging component is in compliance with subsection c of Section 4 of this Act.

“Incidental Presence” means: The presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

Section 4. Prohibition/Schedule for Removal of Incidental Amounts:

3-A. Prohibition of sale 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 in any amount greater than an incidental presence.

3-B. Prohibition of sale 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 in any amount greater than an incidental presence.

4. Substitute materials. A material used to replace lead, cadmium, mercury, hexavalent chromium, phthalates, PFAS or other regulated chemicals in a package or packaging component may not be used in a quantity or manner that creates a hazard as great as or greater than the hazard created by the prohibited heavy metal or chemical.

a. No package or packaging component shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of _____, which includes, in the package itself or in any packaging component, any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

b. As soon as feasible but not later than two years after the adoption of this Act, no package or packaging component shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of _XXX, which includes, in the package itself or in any packaging component, phthalates or PFAS or other regulated chemicals which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

bNo product shall be offered for sale or for promotional purposes by its manufacturer or distributor in the state of _____ in a package which includes, in the package itself or in any of its packaging components, any lead, cadmium, mercury, hexavalent chromium, phthalates, PFAS or other regulated chemicals which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

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

Section 5. Exemptions: Exemption to prohibition of sale of package

All packages and packaging components shall be subject to this Act except the following:

a. those packages or package components with a code indicating date of manufacture that were manufactured prior to the effective date of this statute; 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 in order to comply with health or safety requirements of 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

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 post-consumer 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 100 ppm for the sum of the regulated metals or chemicals; or**

d. 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 substitution of other materials. "No feasible alternative" does not include use of any of the regulated metals for the purposes of marketing;

or

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 is renewable every two years; or

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 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 is renewable every two years; and

f(1). 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.

g. A glass or ceramic package or packaging component which has a vitrified label when sample is prepared according to ASTM C1606-04 and tested in accordance with the Toxicity Characteristic Leaching Procedures of US EPA Test Method and publication SW 846, 3rd edition, Test Methods for Evaluating Solid Waste, does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium and 5.0 ppm for lead. Mercury shall not be exempted by this provision.

Section 6. Certificate of Compliance:

As soon as feasible, but not later than two years after the adoption of this Act, 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 provided, however, that where compliance is achieved under the exemption(s) provided in subsection 5, 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 [state administrative agency] upon its request and to members of the public in accordance with section 9.

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.

Section 7. Enforcement:

Each state to add its own enforcement provisions

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 agency shall provide a report based upon that review to the Governor and Legislature. The report may contain recommendations to add other toxic substances 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, and hexavalent chromium.

(The State administrative agency) shall, in consultation with the TPCH, review the extension of any exemption as it is provided for in Section 5 of this Act. This review shall commence no later than January 1, two years prior to the expiration of the exemption. A report based upon that review shall be provided to the Governor and Legislature by January 1 of the year prior to the expiration of the exemption.

Section 9. Public Access:

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:

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

Section 10. Interstate Clearinghouse:

The [responsible 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 11. Effective Date:

This Act shall become effective immediately upon adoption.

Section 12. 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.

Potential new section with language regarding future chemicals of concern that meet this criteria...

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

(2) Persistent, bioaccumulative and toxic; or

(3) Very persistent and very bioaccumulative;

As revised, December 1998, October 2004, December 2008 and July 2012.