CHAPTER 26-A

REDUCTION OF TOXICS IN PACKAGING

§1731. Purpose

The purpose of this chapter is to reduce the toxicity of packaging and packaging waste without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components. Under this chapter, reduction of the toxicity in packaging and packaging waste is accomplished by prohibiting the unnecessary addition of certain chemicals, such as lead, mercury, cadmium, hexavalent chromium, PFAS and phthalates, in packaging and packaging components. [PL 2019, c. 277, §1 (AMD).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 2019, c. 277, §1 (AMD).

§1732. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 849, §1 (NEW).]

1. Agency.
[PL 1995, c. 656, Pt. A, §7 (RP).]

1-A. Department. "Department" means the Department of Environmental Protection.
[PL 1995, c. 656, Pt. A, §8 (NEW).]

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.
[PL 2019, c. 277, §2 (NEW).]

1-C. 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.
[PL 2019, c. 277, §2 (NEW).]

2. Distributor. "Distributor" means any person, firm or corporation that sells a packaged product to a retailer in this State or any person, firm or corporation that receives a shipment or consignment of, or in any other manner acquires, packaged products outside the State for sale to consumers in the State.
[PL 1989, c. 849, §1 (NEW).]

2-A. 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.
[PL 2019, c. 277, §2 (AMD).]

2-B. Intentional introduction. "Intentional introduction" means the act of deliberately using a regulated metal or other regulated chemical in the formation of a package or packaging component when 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 or other regulated chemical as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, when the incidental retention of a residue of the 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 chapter.

The use of recycled materials as feedstock for the manufacture of new packaging materials, when a portion of the recycled materials may contain amounts of the regulated metals or other regulated chemicals, is not considered intentional introduction for the purposes of this chapter when the new package or packaging component is in compliance with section 1733.
[PL 2019, c. 277, §2 (AMD).]

2-C. Food package. "Food package" means a package that is designed for direct food contact. "Food package" includes, but is not limited to, a food or beverage product that is contained in a food package or to which a food package is applied, a packaging component of a food package and plastic disposable gloves used in commercial or institutional food service.
[PL 2019, c. 277, §2 (NEW).]

3. Manufacturer. "Manufacturer" means any person that manufactures a package or packaging component.
[PL 2019, c. 277, §2 (AMD).]

4. Package. "Package" means a container used in marketing, protecting or handling a product. "Package" includes a unit package and a shipping container defined by the American Society for Testing and Materials in its annual book of standards as ASTM, D996; a food package; and unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.
[PL 2019, c. 277, §2 (AMD).]

5. Packaging component. "Packaging component" means any individual assembled part of a package such as, 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 specification A-623 must be considered as a single package component. Electrogalvanized coated steel and hot-dipped coated galvanized steel that meets the American Society for Testing and Materials specifications A-525 and A-879 must be treated in the same manner as tin-plated steel.
[PL 1995, c. 184, §2 (AMD).]

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.
[PL 2019, c. 277, §2 (NEW).]

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.
[PL 2019, c. 277, §2 (NEW).]

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.
[PL 2019, c. 277, §2 (NEW).]

6. Supplier. "Supplier" means any person, firm or corporation that sells packages or packaging components to a distributor.
[PL 1989, c. 849, §1 (NEW).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1995, c. 184, §§1,2 (AMD). PL 1995, c. 465, §A9 (AMD). PL 1995, c. 465, §C2 (AFF). PL 1995, c. 656, §§A7,8 (AMD). PL 2019, c. 277, §2 (AMD).

§1733. Prohibitions; substitute materials

1. Prohibition of sale of packaging containing certain heavy metals. A manufacturer, supplier or distributor may not offer for sale or for promotional purposes in the State a package or packaging component that includes inks, dyes, pigments, adhesives, stabilizers, coatings 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.
[PL 2019, c. 277, §3 (AMD).]

2. Prohibition of sale of product in packaging containing certain heavy metals. A manufacturer or distributor may not offer for sale or for promotional purposes in the State any product in a package that includes, in the package itself or any packaging components, inks, dyes, pigments, adhesives, stabilizers, coatings 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.
[PL 2019, c. 277, §3 (AMD).]

3. Concentration levels of certain heavy metals. For the purposes of subsections 1 and 2, the sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium present in any package or packaging component may not exceed:

A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%; [PL 1989, c. 849, §1 (NEW).]

B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and [PL 1989, c. 849, §1 (NEW).]

C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%. [PL 1989, c. 849, §1 (NEW).]

[PL 2019, c. 277, §3 (AMD).]

3-A. Prohibition of sale of food package containing phthalates. Beginning January 1, 2022, 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.

The prohibition in this subsection does not prevent a manufacturer that is located in the State from offering for sale or for promotional purposes outside the State a food package to which phthalates have been intentionally introduced in any amount greater than an incidental presence.
[PL 2019, c. 277, §3 (NEW).]

3-B. Prohibition of sale of food package containing PFAS. In accordance with the requirements of this subsection, the department may by rule prohibit a manufacturer, supplier or distributor from offering for sale or for promotional purposes in the State a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence.

A. The department may not by rule prohibit the sale of a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence under this subsection unless the department has determined that a safer alternative to the use of PFAS in a specific application of PFAS to a food package is available. To determine that a safer alternative is available, the department must find that a safer alternative is readily available in sufficient quantity and at a comparable cost and that the safer alternative performs as well as or better than PFAS in a specific application of PFAS to a food package. [PL 2019, c. 277, §3 (NEW).]

B. If the department determines pursuant to paragraph A that a safer alternative to the use of PFAS in a specific application of PFAS to a food package is available, the department shall by rule prohibit the sale of a food package to which PFAS have been intentionally introduced in any amount

greater than an incidental presence under this subsection, except that such a prohibition may not take effect until January 1, 2022 or 2 years following the date on which the department determines that a safer alternative is available, whichever is later. [PL 2019, c. 277, §3 (NEW).]

The prohibition in this subsection does not prevent a manufacturer that is located in the State from offering for sale or for promotional purposes outside the State a food package to which PFAS have been intentionally introduced in any amount greater than an incidental presence.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2019, c. 277, §3 (NEW).]

3-C. Exemption to prohibition of sale of food package. The prohibitions in subsections 3-A and 3-B do 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 as long as that manufacturer has less than $1,000,000,000 of total annual national sales of food and beverage products.
[PL 2019, c. 277, §3 (NEW).]

4. Substitute materials. No material used to replace lead, cadmium, mercury, 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 prohibited heavy metal or chemical.
[PL 2019, c. 277, §3 (AMD).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 2019, c. 277, §3 (AMD).

§1734. Exemptions

All packages and packaging components are subject to the provisions of section 1733 unless: [PL 1989, c. 849, §1 (NEW).]

1. Manufactured prior to April 1, 1992. The package or packaging component has a code indicating a date of manufacture prior to April 1, 1992;
[PL 2019, c. 277, §4 (AMD).]

2. Health and safety requirements; feasibility; post-consumer materials. The manufacturer, supplier or distributor petitions the department for an exemption for a particular package or packaging component and the department grants an exemption for one or more of the following reasons.

A. 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. [PL 1989, c. 849, §1 (NEW).]

B. 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. [PL 1989, c. 849, §1 (NEW).]

C. The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in section 1733, subsection 3. [PL 1989, c. 849, §1 (NEW).]

For packages or packaging components exempted under paragraph A or B, a 2-year exemption may be granted and that exemption may be renewed for an additional 2 years. An exemption granted under paragraph C is valid for 6 years; or
[PL 2019, c. 277, §4 (AMD).]

3. Alcoholic beverages bottled prior to April 1, 1992. The package or packaging component contains an alcoholic beverage bottled prior to April 1, 1992.
[PL 2019, c. 277, §4 (AMD).]

4. Packaging and packaging components; reused.
[PL 1995, c. 184, §5 (NEW); MRSA T. 32 §1734, sub-§4 (RP).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1991, c. 177, §1 (AMD). PL 1991, c. 177, §2 (AFF). PL 1993, c. 310, §A1 (AMD). PL 1995, c. 184, §§3-5 (AMD). PL 1995, c. 656, §A9 (AMD). PL 2019, c. 277, §4 (AMD).

§1735. Certificate of compliance

A certificate of compliance is a document developed by a manufacturer and furnished to its purchasers that attests that one or more packages or packaging components meet the standards established in section 1733 or are exempt under the provisions of section 1734. If compliance is achieved under the exemptions provided in section 1734, the certificate must state the specific basis upon which the exemption is claimed. A certificate of compliance must be signed by an authorized official of the manufacturer. A certificate of compliance may cover more than one type of package or packaging component as long as they are separately identified. [PL 1993, c. 310, Pt. A, §2 (AMD).]

1. New or reformulated packaging. If the manufacturer reformulates or creates a new package or packaging component, the manufacturer shall furnish its purchasers with an amended or new certificate of compliance for the reformulated or new package or packaging component.
[PL 1993, c. 310, Pt. A, §2 (AMD).]

2. Presentation of certificates. Each manufacturer shall furnish the department, at the department's request, with a copy of any certificate of compliance and each manufacturer or supplier shall furnish, at the department's request, copies of a certificate of compliance for distribution to the public.
[PL 1995, c. 656, Pt. A, §10 (AMD).]

3. Food package; limitation of scope of certificate. A manufacturer subject to the prohibitions under section 1733, subsection 3-A or 3-B shall develop a certificate of compliance under this section, except that the manufacturer may limit the scope of the certificate to the prohibitions in section 1733, subsection 3-A or 3-B. A manufacturer that is exempt under section 1733, subsection 3-C is also exempt from the requirements of this subsection.
[PL 2019, c. 277, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1993, c. 310, §A2 (AMD). PL 1995, c. 656, §A10 (AMD). PL 2019, c. 277, §5 (AMD).

§1736. Enforcement and penalties

1. Enforcement. The department shall enforce the provisions of this chapter and may inspect, with the consent of the owner or agent, any property or building to accomplish the objectives of this chapter.
[PL 1995, c. 656, Pt. A, §11 (AMD).]

2. Violation. Any manufacturer or supplier that violates this chapter commits a civil violation for which a forfeiture of not more than $100 may be adjudged. Each package or packaging component in violation constitutes the basis of a separate offense.
[PL 1989, c. 849, §1 (NEW).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1995, c. 656, §A11 (AMD).

§1737. Rules

The department shall adopt rules necessary for the implementation, administration and enforcement of this chapter. Except as otherwise provided in this chapter, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 277, §6 (NEW).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1995, c. 656, §A12 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2019, c. 277, §6 (RPR).

§1738. Public access

A citizen of the State may request in writing from the department a copy of the certificate of compliance for a package or packaging component found in use or for sale in the State. [PL 1995, c. 656, Pt. A, §13 (AMD).]

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 1995, c. 656, §A13 (AMD).

§1739. Effective date

(REPEALED)

SECTION HISTORY

PL 1989, c. 849, §1 (NEW). PL 2019, c. 277, §7 (RP).

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