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2009 New Hampshire Statutes

TITLE X — PUBLIC HEALTH (Includes Chapters 125 - 149-O)

CHAPTER 149-M — SOLID WASTE MANAGEMENT

Section 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

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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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