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## **TOXICS IN PACKAGING**

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Recently, major retailers have begun requesting certifications from vendors confirming that their products comply with the “Toxics in Packaging Laws.” These laws, enacted in nineteen states, [1] prohibit the intentional use of any amount of lead, cadmium, mercury, or hexavalent chromium in packaging or individual packaging components, such as inks and labels. In addition, total concentration levels of unintended or incidental regulated metals in a package or packaging component are limited to less than 100 parts per million (0.01%) by weight. Generally, these materials appear in plastic packaging but may appear in other materials particularly through coatings and pigments. The restrictions imposed by these state laws are distinct from other federal lead limits such as those established by the Consumer Product Safety Improvement Act of 2008.

**CERTIFICATION** – Manufacturers, distributors or suppliers of “packages” [2] and “packaging components” [3] are required to furnish certificates of compliance to purchasers of the packaging or packaging components. The state laws generally provide that no product shall be offered for sale or for promotional purposes in a package that does not conform to these standards. New York and California have each adopted Toxics in Packaging laws. Thus, packaging or packaging components sold or used to package a product sold or promoted in New York or California must be compliant. Given that important markets have implemented such legislation, importers/sellers of covered goods will need to secure a certification from suppliers (domestic and overseas) attesting to the fact that the packaging they use complies with these standards. Adequate documentation of this certification must be maintained for inspection upon request. Generally, there is a three-year recordkeeping requirement.

Limited exemptions may be available for, among other things, recycled-content, reusable containers, and packages regulated by other federal and state laws. However, claims of exemption must also be certified. Accordingly, a testing and compliance program may need to be established.

**PENALTIES** - Manufacturers and suppliers should be aware that most states have included in their laws the ability to levy substantial monetary penalties for non-

compliance. Penalties vary by state. For example, in New York, a first violation is punishable with a civil penalty not to exceed \$10,000. A penalty of up to \$25,000 may be imposed for each additional violation. A distributor of a product will not, however, be held in violation if he or she relied in good faith on the written certification of compliance signed by an authorized official of the manufacturer or distributor of such packaging or packaging component. In California, the failure to comply can result in penalties of up to \$25,000 per-violation-per-day, as well as an order enjoining production or distribution of any product not in compliance. Criminal penalties for intentional violations also exist.

Given the increased compliance risks imposed by the Toxics in Packaging laws, it is recommended that companies assess the impact these laws will have on their products and update their internal policies.

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[1] The states with Toxics in Packaging laws include California, New Hampshire, Connecticut, New Jersey, Florida, New York, Georgia, Pennsylvania, Illinois, Rhode Island, Iowa, Vermont, Maine, Virginia, Maryland, Washington, Minnesota, Wisconsin, and Missouri. It is important to note that there are differences in the various states' laws.

[2] Generally, a "**package**" is considered to be any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product and includes a unit package, an intermediate package, and some shipping containers. The term "**package**" also includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil, and other trays, wrappers and wrapping films, bags, and tubs.

[3] "**Packaging component**" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior, blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels.