



## Shopping, Mailer, and Produce Bags

### Toxics in Packaging Fact Sheet

#### Did you know?

- ◆ Inks and colorants used to print on or color plastic and paper bags may contain restricted heavy metals.
- ◆ Historically, heavy metals such as lead, cadmium, mercury and hexavalent chromium were used as pigments in inks and colorants.
- ◆ Lead, mercury, and chromium were found in merchandise and grocery bags, mailer bags, and produce and food service bags, in a [recent study](#) conducted by the Toxics in Packaging Clearinghouse using x-ray fluorescence technology.
- ◆ Bags printed and imported into the U.S. appear more likely to contain heavy metals.
- ◆ The intentional use of these heavy metals may be in violation of the toxics in packaging laws in some or all of the 19 U.S. states that have adopted the Model Toxics in Packaging Legislation (formerly CONEG Model Legislation).

#### TOXICS IN PACKAGING REQUIREMENTS

Nineteen states have toxics in packaging laws based on the (formerly "CONEG") Model Toxics in Packaging Legislation. State toxics in packaging laws prohibit the intentional use of *any amount* of lead, cadmium, mercury, or hexavalent chromium in packaging or individual packaging components, such as inks, adhesives, or labels. If the regulated metals are unintentionally present (for example, as a contaminant in raw materials), these state laws limit the total concentration of the sum of the metals to below 100 parts per million (ppm) in any package or individual packaging component. Limited exemptions may be available for recycled-content, reusable containers, and packages regulated by other federal and state laws.

These requirements apply to all packaging and packaging components offered for sale or for promotional purposes by the manufacturer and distributor (including importers) in states with toxics in packaging legislation. The state laws further require self-certification by companies, and require companies to produce a [Certificate of Compliance](#) upon request.

Most TPCH member states have included in their laws the ability to levy substantial monetary penalties for non-compliance. Penalties for non-compliance vary by state. In New York, for example, the penalties for violations of the Hazardous

Packaging Act are up to \$10,000 for the first violation and up to \$25,000 per violation for each violation thereafter, and each package on the shelf constitutes a separate and distinct violation. Similarly, in Connecticut, a violation could result in a penalty of \$10,000 per day per violation.

#### WHAT STEPS CAN YOU TAKE TO ENSURE COMPLIANCE WITH STATE LAWS?

Any company that sells or distributes packaging, packaging components, or packaged products is responsible for compliance with these state laws, regardless of where the restricted metals originated. Based on the experiences of regulated entities, it has become clear that packaging specifications and the assurance of suppliers are not enough to ensure the quality of packaging materials.

The TPCH recommends that each company in the packaging supply chain – from packaging component manufacturers to packaging suppliers and product brand owners and distributors – develop a quality assurance system that addresses state restrictions on the use of heavy metals in packaging, or that integrates these requirements into existing quality assurance programs.

What "due diligence" steps can your company take to ensure the quality of its packaging?

### States with Toxics in Packaging Laws

* California	* New Hampshire
* Connecticut	* New Jersey
Florida	* New York
Georgia	Pennsylvania
* Illinois	* Rhode Island
* Iowa	Vermont
Maine	Virginia
Maryland	* Washington
* Minnesota	Wisconsin
Missouri	

\* TPCCH member states

- ◆ Incorporate toxics in packaging requirements into [packaging specifications](#).
- ◆ Discuss toxics in packaging requirements directly with suppliers. Don't assume that suppliers have read and adhere to the packaging specifications, or know about restrictions on the use of heavy metals in packaging.
- ◆ Require suppliers to provide a [Certificate of Compliance](#) with supporting documentation. Ask suppliers to provide the analytical data on which they base their compliance claim. Require suppliers to submit new Certificates of Compliance with supporting documentation whenever their suppliers or raw materials change.
- ◆ Test the packaging materials or components of all new suppliers prior to issuing a purchasing contract, using x-ray fluorescence analysis or conventional laboratory testing. Select laboratory sample preparation and test methods that result in full dissolution of the sample and analyze for **total concentration** of each metal. Test methods that only measure leachable metals are not appropriate.
- ◆ Institute an on-going program for monitoring or periodically "spot-checking" incoming raw materials or packaging components to make sure that heavy metals are not subsequently introduced into your packaging materials and supplies.

### FREQUENTLY ASKED QUESTIONS

- Q: *Our company sells products, but we don't manufacture anything. Do the laws apply to us?*
- A: Yes, the toxics in packaging laws apply to any company that sells or distributes packaging, packaging components, or packaged products.

Q: *If we manufacture packaging materials or packaged products in a state without toxics in packaging legislation, do the laws apply to us?*

A: If you manufacture packaging or packaged products that are sold or distributed exclusively in states without toxics in packaging legislation, you would not be subject to the law. However, if your packaging or packaged products are distributed or sold in any state that does have the toxics in packaging legislation, you would be subject to that state's laws regardless of your location.

Q: *What if our supplier will not cooperate and furnish a Certificate of Compliance with supporting documentation?*

A: If you choose to continue to do business with this supplier, then you must generate your own Certificate of Compliance by testing the packaging.

Q: *Can we test a composite sample of the packaging?*

A: The concentration limits apply to individual packaging components; as such, testing should be done on each packaging component (e.g., resin, paperboard, inks). In some cases, it might not be possible to separate packaging components (e.g., colorants in resin). In these cases, packaging components should be separated to the extent possible, and then tested.

### TOXICS IN PACKAGING CLEARINGHOUSE

The Toxics in Packaging Clearinghouse coordinates implementation of the legislation on behalf of its member states, and serves as a single point of contact for companies seeking further information, clarification of specific details, or an exemption to toxics in packaging requirements. Manufacturers, distributors, and retailers must deal directly with states that have adopted toxics in packaging but are not members of the Clearinghouse.

Enforcement of toxics in packaging legislation is in the purview of individual member and non-member states. However, information on violations is shared among Clearinghouse member states, and is pursued in a consistent manner, to the extent possible.

For additional information on the Model Toxics in Packaging Legislation and the laws of individual states, visit [www.toxicsinpackaging.org](http://www.toxicsinpackaging.org). The full report, *An Assessment of Heavy Metals in Packaging: Screening Results Using an X-Ray Fluorescent Analyzer*, is available for [free downloading](#) on the TPCCH website. The TPCCH and member states are committed to additional testing of packaging, and enforcement of state laws as appropriate.

**Disclaimer:** This document is provided as general background information only. Companies need to consult the laws in the states where they do business.