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Fact Sheet, December 2009

# Toxics in Packaging Prevention Act Exemptions Expiring January 1, 2010 Information for Manufacturers and Suppliers

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## INTRODUCTION

The Department of Toxic Substances Control (DTSC) prepared this fact sheet for manufacturers and suppliers of packaging and packaging components to describe recent changes to the laws intended to reduce and eliminate heavy metals in packaging and packaging components. *Manufacturers and suppliers of packaging have specific responsibilities* to ensure that the packaging and packaging components used in packaging products conform to California law. DTSC is charged with enforcing the requirements of the law that are found in the Health and Safety Code, division 20, chapter 6.5, article 10.4 (beginning with Section 25214.11), also known as the Toxics in Packaging Prevention Act.

This fact sheet will explain the changes to the Toxics in Packaging Prevention Act, and how it applies to you. This document summarizes California law. It does not replace or supersede those laws. You should consult the actual statutes to be sure that you are in compliance.

## RESTRICTIONS OF HEAVY METALS IN PACKAGING AND PACKAGING COMPONENTS

Beginning on January 1, 2006, it became unlawful to offer for sale or promotional purposes packages or packaging components that contain cadmium, lead, mercury, or hexavalent chromium, if these metals were *intentionally introduced* during manufacture or distribution. In addition this law limits the *incidental presence of these regulated metals in packages or packaging components to not more than 100 parts per million (ppm)* by weight. The law also contains various exemptions from these requirements. On January 1, 2010, some of these exemptions will expire.





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The Toxics in Packaging Prevention Act contains some important definitions:

A **package** means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D996. "Package" also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs. A package does not include a *reusable bag*, as defined in subdivision (d) of Section 42250 of the Public Resources Code.

A **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, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A591, A653, A879, and A924 shall be treated in the same manner as tin-plated steel.

**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.

**Incidental presence** means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

Manufacturers and suppliers are required to provide certificates of compliance to the purchaser of the package or packaging component stating that the package or packaging component is in compliance with the requirements of this law. Health & Safety Code Section 25214.16 sets out the required contents for this certificate.

Manufacturers and suppliers are also required to retain Certificates of Compliance for each package or packaging component while it is being sold or promoted by your company. DTSC may request these from your company at any time, in order to show that the packaging or packaging component is in compliance with the law.





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## CERTAIN EXEMPTIONS WILL NO LONGER BE ALLOWED

The following exemptions will **expire on January 1, 2010 as set forth in subdivision (c) of Section 25214.13:**

**Recycled Materials-** The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level only because of the addition of a recycled material. (Health & Safety Code Section 25214.14 (c) (1).)

**Reused Packaging-** The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level and all of the following apply:

- (A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.
- (B) The transportation of the packaged product is regulated under federal or state transportation requirements.
- (C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104. (Health & Safety Code Section 25214.14 (e)(1).)

**Controlled Distribution-** The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level. (Health & Safety Code Section 25214.14 (f)(1) )

**Vitrified Label -** Section 25214.14 (g)(1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to this section, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

After January 1, 2010, there will still be some exemptions to this law, but they only applicable in very specific circumstances. For example, packaging manufactured prior to January 1, 2006 is exempt if the package or packaging component is marked with a manufacturing code indicating that the date of manufacture was prior to January 1, 2006. Another possible exemption is where there is no feasible alternative. Additionally, for any exemption, there are specific recordkeeping





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requirements you must follow. You must retain documentation certifying that the packaging or packaging component is exempt as long as the packaging or packaging component is in use. Details on the requirements and documentation required are provided in Health & Safety Code Section 25214.15. It is recommended that you consult relevant statutes for the requirements.

**Importantly** - manufacturer or supplier of the packaging or packaging component has a responsibility to provide this certification of exemption to DTSC at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser.

## FOR MORE INFORMATION

Please read our more encompassing fact sheet, “Preventing Toxic Substances In Packaging For Consumer Goods” Fact Sheet at:

[http://www.dtsc.ca.gov/ToxicsInPackaging/upload/HWMP\\_FS\\_Toxics-Packaging.pdf](http://www.dtsc.ca.gov/ToxicsInPackaging/upload/HWMP_FS_Toxics-Packaging.pdf).

Please refer to Health & Safety Code Sections 25214.14-25214.26. A copy of this law and a link to the Official California Legislative Information website are available on our website:

<http://www.dtsc.ca.gov/ToxicsInPackaging>

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