

CHAPTER 213
PACKAGING—HEAVY METAL CONTENT

567—213.1(455D) Purpose. The purpose of this chapter is to implement the provisions of Iowa Code section 455D.19, which seeks to reduce toxicity of packaging waste by eliminating the addition of heavy metals such as lead, mercury, cadmium, and hexavalent chromium in packaging and packaging components.

567—213.2(455D) Applicability. This chapter applies to manufacturers and distributors of packaging and packaging materials offered for sale or for promotional purposes in the state.

567—213.3(455D) Definitions. The following terms, as used in this chapter, shall have the following meanings:

“Department” means the department of natural resources as created under Iowa Code section 455A.2.

“Distributor” means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering or storing packages or packaging components on behalf of third parties is not a distributor.

“Incidental presence” means that these elements were not intentionally introduced during manufacturing or distribution and are below the concentration levels established by the department in subrule 213.4(3).

“Intentional introduction” means an act of deliberately utilizing a regulated metal in the formulation 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. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate and if the final package or packaging component is in compliance with Iowa Code section 455D.19(4), paragraph “c.” Intentional introduction also does not include the use of recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with Iowa Code section 455D.19(4), paragraph “c.”

“Manufacturer” means a person who produces one or more packages or packaging components.

“Manufacturing” means physical or chemical modification of one or more materials to produce packaging or packaging components.

“Offer for promotional purposes” means any transfer of title or possession, or both, of packaging or products in packaging without consideration.

“Offer for sale” means any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of packaging or products in packaging for a consideration in any manner or any means whatsoever.

“Package” means a container which provides a means of marketing, protecting, or handling a product, including a unit package, an intermediate package, or a shipping container. Package also includes, but is not limited to, unsealed receptacles, such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

“Packaging component” means any individual assembled part of a package, including, but not limited to, interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, and tin-plated steel.

“Regulated metal” means any metal regulated under this chapter.

“Reusable entities” means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in Iowa Code section 455D.19(5), paragraph “e.”

“Tin-plated steel” means a material that meets the American Society for Testing and Materials (ASTM) specification A-623 and shall 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 (ASTM) specifications A-879 and A-529 shall be treated in the same manner as tin-plated steel.

567—213.4(455D) Prohibition—schedule for removal of incidental amounts.

213.4(1) *Prohibition of packaging.* A manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes, a package or packaging component in this state, which includes in the package itself or in any packaging component inks, dyes, pigments, adhesives, stabilizers or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements. In addition, this prohibition does not apply to any refillable glass and ceramic package or packaging component that is managed under a comprehensive system resulting in reuse and where the lead and cadmium from the component do not exceed the Toxicity Characteristic Leachability Procedures (TCLP) of leachability of lead and cadmium as set forth by the United States Environmental Protection Agency.

213.4(2) *Prohibition of sale of product in packaging.* Rescinded IAB 10/8/97, effective 11/12/97.

213.4(3) *Concentration levels.* The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed 100 parts per million by weight, or 0.01 percent. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

213.4(4) *Substitute materials.* No material used to replace lead, cadmium, mercury, or hexavalent chromium in a package or packaging component may be used in a quantity or manner that creates a hazard as great or greater than the hazard created by the lead, cadmium, mercury, or hexavalent chromium. The Certificate of Compliance will require an assurance to this effect.

567—213.5(455D) Certification of compliance. A manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance conforming to the requirements of this rule. Certificates provided shall substantially conform with either or both, as applicable, of the following forms:

REDUCTION OF TOXICS IN PACKAGING LAW
CERTIFICATE OF COMPLIANCE

We certify that all packaging and packaging components sold to _____

(Company Name)

or its subsidiaries in the State of Iowa comply with the requirements of this law, namely that the sum of the incidental concentration levels of lead, mercury, cadmium, and hexavalent chromium present in any package or package component shall not exceed the following:

600 Parts Per Million by weight

(Effective July 1, 1992)

250 Parts Per Million by weight

(Effective July 1, 1993)

100 Parts Per Million by weight

(Effective July 1, 1994)

We further certify that in cases where the regulated metals are present at levels less than the schedule stated above, the regulated metals were not intentionally added during the manufacturing process.

We further certify that no material used to replace the regulated metals are present in a quantity or manner that creates a hazard as great or greater than the hazard created by the regulated materials.

We will maintain adequate documentation of this certification for inspection upon request.

Company Name _____

Address _____

Certified by:

(Name)

(Signature)

(Title)

Date: _____

REDUCTION OF TOXICS IN PACKAGING LAW
CERTIFICATE OF COMPLIANCE—EXEMPTION STATUS

We certify that all packaging and packaging components sold to _____

(Company Name)

or its subsidiaries in the State of Iowa are in compliance with the law. However, certain packages or packaging components produced by _____

(Company Name)

are exempt from this law for one or more of the following reasons:

Package or packaging components were made or delivered before the law was signed into effect:

(List package or packaging component) _____

Package or packaging component contains heavy metals in order to comply with state or federal health and safety requirements or there is no feasible alternative (i.e., the regulated substance is essential to the production, safe handling, or function of the package's contents):

(List package or packaging component) _____

Package or packaging component is made from postconsumer material:

(List package or packaging component) _____

Alcoholic beverage bottled prior to effective date:

(List package or packaging component) _____

We will maintain adequate documentation of this certification for inspection upon request.

Company Name _____

Address _____

Certified by:

(Name)

(Signature)

(Title)

Date: _____

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new Certificate of Compliance for the reformulated or new package or packaging component.

567—213.6(455D) Exemptions. The following packaging and packaging components are exempt from the requirements of Iowa Code section 455D.19:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

2. 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 or for which there is no feasible alternative if the manufacturer of a packaging or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular packaging or packaging component. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

3. Packages or packaging components that would not exceed the maximum contaminant levels established but for the addition of recycled materials.

4. Packages or packaging components that are reused, but exceed contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c," if all of the following criteria are met:

- The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.
- Transportation of the packaged product is regulated under federal or state transportation requirements.
- The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

5. Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c," if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c." The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in paragraphs "1" to "4" of this rule, be renewed for additional two-year periods.

In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

- A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.
- A method or regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to another person are not discarded by the person after use, but are returned to the manufacturer or the manufacturer's designee.
- A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.
- A means of transforming returned entities that are no longer reusable into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

The application for an exemption must document the measures to be taken by the applicant as set out in Iowa Code section 455D.19(5), paragraph "e," subparagraphs (1) to (4).

567—213.7(455D) Inspection and penalties.

213.7(1) *Inspection.* The department may inspect, with the consent of the owner or agent, any property or building to determine compliance with the requirements of this chapter.

213.7(2) *Violation.*

a. Violations of this chapter are subject to the provisions of Iowa Code Supplement sections 455D.22 to 455D.25.

b. Each package or packaging component in violation constitutes the basis of a separate offense for purposes of the calculation of penalties pursuant to Iowa Code Supplement section 455D.25(2).

These rules are intended to implement Iowa Code Supplement section 455D.19.

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