

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Sw 1800 REDUCTION OF TOXICS IN PACKAGING

Statutory Authority: RSA 149-M:7

PART Env-Sw 1801 PURPOSE AND APPLICABILITY

Env-Sw 1801.01 Purpose. The purpose of these rules is to supplement the provisions of RSA 149-M:32-40, relative to reducing heavy metals in package and packaging components as one step in reducing the toxicity of solid waste when it is disposed of by landfilling or incineration.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3501.01)

Env-Sw 1801.02 Applicability. These rules shall apply to all package and packaging components sold, offered for sale or otherwise distributed in New Hampshire except as provided by RSA 149-M:35.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3501.02)

PART Env-Sw 1802 DEFINITIONS

Env-Sw 1802.01 “Intentional introduction” means “intentional introduction” as defined in RSA 149-M:33, IV.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3502.01)

Env-Sw 1802.02 “Manufacturer” means “manufacturer” as defined in RSA 149-M:33, VI.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3502.02)

Env-Sw 1802.03 “Package” means “package” as defined in RSA 149-M:33, VII.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3502.03)

Env-Sw 1802.04 “Packaging component” means “packaging component” as defined in RSA 149-M:33, VIII.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3502.04)

Env-Sw 1802.05 “Petitioner” means a manufacturer or supplier filing a petition for exemption from RSA 149-M:35.

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Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3502.05)

Env-Sw 1802.06 “Post-consumer material” means “post-consumer material” as defined in RSA 149-M:33, IX.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3502.01)

Env-Sw 1802.07 “Purchaser” means any person receiving a package or packaging component directly from the manufacturer or supplier of the package or packaging component who then sells or distributes the package or packaging component to a retail consumer.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3502.07)

Env-Sw 1802.08 “Reformulate” means to change the way a package or packaging component is manufactured so as to result in a different concentration of lead, cadmium, mercury or hexavalent chromium.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3502.08)

Env-Sw 1802.09 “Supplier” means “supplier” as defined by RSA 149-M:33, X.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3502.09)

PART Env-Sw 1803 EXEMPTIONS

Env-Sw 1803.01 Petition for Exemption.

(a) No petition for exemption shall be necessary if a package or packaging component is eligible for an automatic exemption under RSA 149-M:35.

(b) Subject to (c) below, in order for a petition for exemption from RSA 149-M:32-40 to be valid, the manufacturer of the package or packaging component shall file the petition.

(c) If a manufacturer of a package or packaging component does not provide a supplier with a certificate of compliance and the supplier believes the package or packaging component is eligible for an exemption, the supplier may file a petition for exemption.

(d) The petition for exemption shall be filed with the department.

(e) The petition shall include the following:

- (1) The name, address, and telephone number of the manufacturer or supplier seeking the exemption;
- (2) The name and position of the individual who can answer questions on behalf of the petitioner about the petition;
- (3) The reason why the exemption is being sought;
- (4) The type of package or packaging component for which the exemption is sought and the use thereof;

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- (5) The heavy metals identified in RSA 149-M:32 that are present in the package or packaging components;
- (6) The concentration(s) of the identified heavy metal(s) present in the package or packaging component, and the testing methods used to determine the concentration(s);
- (7) If the package or packaging components are necessary in order to comply with health or safety requirements of federal law as specified in RSA 149-M:35, I(b), identification of the federal law(s) together with a copy of the law(s); and
- (8) If there is no feasible alternative for reducing the identified heavy metals in the package or packaging components, substantiating information addressing the criteria in Env-Sw 1803.02, including a timetable for ongoing and future efforts to achieve compliance through feasible alternatives to using the identified heavy metals.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3503.01)

Env-Sw 1803.02 Criteria for Petitioned Exemptions.

(a) No petition for an exemption shall be granted unless the petitioner demonstrates to the commissioner either that:

- (1) The identified heavy metals present in the package or packaging component are necessary in order to comply with federal health or safety requirements; or
- (2) No feasible alternative to the use of the identified heavy metals exists, as “no feasible alternative” is defined in RSA 149-M:35, I(c).

(b) A petitioner shall demonstrate that the identified heavy metals present in the package or packaging component are necessary in order to comply with federal health or safety requirements by providing a copy of the federal requirements together with such additional information as would allow an independent reasonable person to conclude that the metals are necessary.

(c) A petitioner shall demonstrate that no feasible alternative exists to the use of the heavy metal in the package or packaging component by submitting such written materials as would allow an independent reasonable person to conclude that the metals are essential to the protection, safe handling or functioning of the package’s contents.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3503.02)

Env-Sw 1803.03 Processing of Petition for Exemption.

(a) The department shall notify the petitioner in writing within 5 working days of receiving a petition for exemption that the exemption petition has been received.

(b) The department shall review the exemption petition for completeness within 30 days of receipt.

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(c) If the exemption petition is determined to be incomplete, the department shall notify the petitioner within 10 working days of the determination with a specific request for the information needed to complete the application.

(d) If the exemption petition is determined to be complete, the commissioner shall designate staff to review the petition and make a recommendation to grant or deny, within 60 days of designation, based on the criteria specified in Env-Sw 1803.02.

(e) The commissioner shall review the petition, the recommendation, and the criteria specified in Env-Sw 1803.02. If the commissioner determines that the petition meets the criteria, the commissioner shall grant the petition within 30 days of the date it was forwarded, and shall notify the petitioner in writing of the decision.

(f) If the petition is granted, the written notice shall include:

- (1) The effective date of the exemption;
- (2) The expiration date of the exemption, which shall be the shorter of 2 years or the period requested by the petitioner; and
- (3) If the exemption is for 2 years, the deadline for the application for renewal of the exemption, which shall be 90 days prior to the expiration date of the exemption.

(g) The petitioner shall send an annual progress report to the commissioner based on the petitioner's efforts to come into compliance with RSA 149-M:32-40.

(h) If the commissioner determines that the petition does not meet the criteria, the commissioner shall deny the petition within 30 days of the date it was forwarded, and shall notify the petitioner in writing of the decision and of applicable appeal procedures. The written notice shall state the reason(s) for the denial.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3503.03)

PART Env-Sw 1804 RENEWAL OF EXEMPTIONS

Env-Sw 1804.01 Request for Renewal of Exemption.

(a) Any manufacturer or supplier seeking a renewal of an exemption received pursuant to Env-Sw 1803.03 shall file a written renewal request at least 90 days prior to the exemption's expiration date.

(b) The renewal request shall contain:

- (1) The information specified in Env-Sw 1803.01(d);
- (2) The differences, if any, between the information in the renewal request and the information provided with the original exemption petition; and
- (3) For exemption renewals based on there being no feasible alternative to the use of the identified heavy metal, a report on progress in meeting the timetable for achieving compliance that was submitted with the original exemption request.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3504.01)

Env-Sw 1804.02 Criteria for Renewal of Exemption. Criteria for renewal of exemption shall be as specified in Env-Sw 1803.02.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3504.02)

Env-Sw 1804.03 Processing of Petition for Renewal of Exemption. The renewal request shall be processed in accordance with Env-Sw 1803.03.

Source. #5768, eff 12-29-93, EXPIRED 12-29-99

New. #7343, eff 8-12-00; ss by #8459, eff 10-28-05 (formerly Env-Wm 3504.03)

#### PART Env-Sw 1805 CERTIFICATE OF COMPLIANCE

Env-Sw 1805.01 Availability of Certificate of Compliance.

- (a) Certificates of compliance shall be made available as prescribed by RSA 149-M:36, I.
- (b) If a supplier is unable to obtain a certificate of compliance from a manufacturer of a package or packaging component but has sufficient information to prepare the certificate, the supplier shall prepare the certificate based on that information.
- (c) If a supplier is unable to obtain a certificate of compliance from a manufacturer of a package or packaging component and does not have sufficient information to prepare the certificate, the supplier shall not be guilty of a failure to provide the certificate if the supplier has notified the department in accordance with (e) below that the certificate is unavailable from the manufacturer.
- (d) If a purchaser is unable to obtain a certificate of compliance from a manufacturer or supplier of a package or packaging component, the purchaser shall not be liable for failure to retain the certificate as required by RSA 149-M:36, I, if the purchaser has notified the department in accordance with (e) below that the certificate is unavailable from the manufacturer or supplier.
- (e) Notification under (c) or (d) above shall:
  - (1) Be in writing; and
  - (2) Include the following:
    - a. The name, address and telephone number of the person filing the notification;
    - b. The type of package or packaging component for which a certificate cannot be obtained;
    - c. The name(s) and address(es) and, if available, the telephone number(s) of the manufacturer of the package or packaging component;
    - d. If the notice is filed pursuant to (d) above, the name(s) and address(es) and, if available, the telephone number(s) of the supplier(s) of the package or packaging component; and
    - e. A brief summary of the attempts made to obtain the certificate.

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(f) No person shall be held responsible for erroneous information in a certificate of compliance if all of the following are true:

- (1) The person is not the manufacturer of the package or packaging component;
- (2) The person did not prepare the certificate;
- (3) The person did not have any reason to believe the information in the certificate was erroneous; and
- (4) The person in good faith believed the information in the certificate to be true.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3505.01)

Env-Sw 1805.02 Certificate of Compliance Contents.

(a) All certificates of compliance for package or packaging components shall be completed by the manufacturer or supplier and included in the shipment of the package or packaging component to the purchaser.

(b) Each certificate of compliance shall include the following:

- (1) Type of package or packaging component;
- (2) Company name;
- (3) Company address;
- (4) Name, signature, and title of authorized official;
- (5) Name and position of the individual who can answer questions regarding the composition of the package or packaging component;
- (6) Date the certificate of compliance is completed;
- (7) Either a statement that there has been no intentional introduction of the identified heavy metals in the package or packaging component, or, for a package or packaging component for which an exemption has been granted under RSA 149-M:35, a statement identifying the applicable exemption which allows the intentional introduction; and
- (8) Either a statement that the total concentration of any incidental amounts of the identified heavy metals in the package or packaging component does not exceed the limit established in RSA 149-M:34 or, for a package or packaging component for which an exemption has been granted under RSA 149-M:35, a statement identifying the applicable exemption allowing the exceedance of the limits.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3505.02)

Env-Sw 1805.03 Requests for Certificate of Compliance.

(a) Requests for copies of certificates of compliance shall be made in accordance with RSA 149-M:39.

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(b) The manufacturer or supplier who receives a request for a certificate of compliance in accordance with RSA 149-M:39 shall provide a copy of the written request to the department with the copy of its response required by RSA 149-M:39.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3505.03)

Env-Sw 1805.04 Amended Certificate of Compliance.

(a) Amendments to certificates of compliance shall be made in accordance with RSA 149-M:36, II.

(b) In addition to the information specified in Env-Sw 1804.02, the amended certificate shall include the following:

- (1) The previous composition of the package or packaging component;
- (2) The reformulation, including the new level of identified heavy metals used; and
- (3) Any difference(s) between the grounds for compliance as stated in the original certificate of compliance and the amended certificate of compliance.

Source. #7343, eff 8-12-00; ss by #8459, eff 10-28-05  
(formerly Env-Wm 3505.04)

**Appendix**

| <b>Rule Sections</b> | <b>Statute(s) Being Implemented</b> |
|----------------------|-------------------------------------|
| Env-Sw 1800          | RSA 149-M:7, XII; RSA 149-M:32-40   |