

Examples of the Sweeping Exemptions for Packaging Fees by Some Producers

Did you know that band aids are medical devices? And that toothpaste is an over-the-counter drug? There are some producers of packaging materials that will seek exemptions from the program. It's important to limit exemptions in your law because it doesn't remove the material from the waste stream, but rather creates free-riders and leaves the packaging for someone other than the producer of that material to pay for it. Here are examples of the large swaths of packaging materials that producers were seeking exemptions for in Maine.

Materials used to contain and distribute beverages: This includes "material used for or associated with the containment, protection, delivery, presentation or distribution of the beverage container." This would include cases, trays & shrink wrap for multi-pack or 'fridge pack' beverages.

Over the counter drugs: This includes packaging "That is used for the containment, protection, delivery, presentation or distribution of a drug, as that term is defined under Section 321 of the Federal Food, Drug, and Cosmetic Act, as regulated by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act;"

This could mean exemption for thousands of products across a range of product categories with active ingredients regulated by the FDA, including but not limited to:

Over the counter drug categories	Brand Example
Antacids	Tums
Antiemetics	Dramamine
Antihistamines	Allegra
Anti-itch products	Benadryl
Anti-fungal products	Lotrimin
Antimicrobials	Hydrogen Peroxide
Antiseptics	Neosporin
Aspirins	Bayer
Cold medicines	Robitussin
Dandruff Shampoo	Selsun Blue
Digestive aids	Pepto Bismol
Hand sanitizers	Purell
Skin care	Stridex
Sleep aid	Unisom
Sunscreen	Coppertone
Toothpaste	Crest

Exemptions for child resistant and tamper-evident packaging: This is material that is used for the containment, protection, delivery, presentation or distribution of an over-the-counter human drug product for which tamper-evident packaging is required, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Section 211.132;

Child resistant packaging is required for a large family of products that includes cleaners, fuels, body care products and dietary supplements in addition to over the counter drugs. Below are some examples of products that require child-resistant packaging.

Family of Products Requiring Child Safe Packaging	Product or Brand Example
Aspirin, Naproxen	Bayer, Aleve

Furniture polish	Pledge
Sodium and/or potassium hydroxide	Drain cleaners
Turpentine	Paint thinners
Kindling (lighter fluid, fuel)	Kingsford Lighter Fluid
Prescription drugs	Ambien
Ethylene glycol	Antifreeze
Dietary supplements	Fiber One
Acetaminophen, Diphenhydramine, Ibuprofen	Tylenol, Benadryl, Advil
Glue removers	Goo Gone
Mouthwash	Listerine
Lidocaine	Gold Bond
Minoxidil	Rogaine
Hazardous substances	Most household cleaners

Exemption for medical devices: Anything that is a medical device or a biological product, or is used for the containment, protection, delivery, presentation or distribution of a medical device or a biological product, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Parts 200, 300 and 800;”

Medical Devices are defined, in part, as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals.

A large searchable database of medical devices can be found on the FDA website. Some examples from the search include:

Examples of medical devices or biological products
Bandages
Canes and accessories
Compression leggings
Condoms
Contact lenses and accessories
Dental floss
External braces
Facemasks
Hearing aids
Humidifiers
Menstrual products
Mouthguards
Pregnancy test kits
Thermometers
Toothbrushes

Medical Device Definition: <https://www.fda.gov/medical-devices/classify-your-medical-device/how-determine-if-your-product-medical-device>

Searchable Database: <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPCD/classification.cfm>