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Chapter 428: Stewardship Program for Packaging

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SUMMARY: This rule provides details for implementing the Stewardship Program for Packaging pursuant to 38 M.R.S. § 2146, with the goals of reducing the burden to municipalities of managing packaging material and improving the design and management of packaging material. It characterizes packaging material, provides a method for determining municipal reimbursement and producer fees, provides a method and criteria for investing in infrastructure and education, details alternative collection programs, establishes a cap for the packaging stewardship fund, and provides mechanisms for ongoing assessment and updates to the program.

1. **Applicability.** This Chapter applies to packaging material sold, offered for sale, or distributed for sale in the State of Maine.
2. **Definitions.** The following terms, as used in this Chapter, have the following meaning unless the context indicates otherwise:
 - A. **Alternative Management.** “Alternative management” means management of solid waste at an incineration facility, as defined in 38 M.R.S. § 1303-C(16); or management of solid waste at a solid waste processing facility, licensed in accordance with 38 M.R.S. § 1310-N, that does not constitute recycling, reuse, composting, or preparing material for placement in the permitted area of a landfill.
 - B. **Base Material.** “Base material” means, with regard to packaging material, the primary material or the primary material that is targeted for recycling, as designated by the Department in accordance with Section 4(B). Base materials are glass, metal, paper, plastic by resin type, and cork/wood.
 - C. **Brick Code.** “Brick code” means the seven-digit code used in Global Product Classification established by GS1 US TM.

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- D. Commodity.** “Commodity” means processed material that meets an industry specification. Compost streams and reuse streams are commodities.
- E. Commodity Stream.** “Commodity stream” means packaging material and other materials managed together and sold as a commodity.
- F. Composting.** “Composting” has the same meaning as in Chapter 06-096 C.M.R. ch. 400, § 1(EE).
- G. Compostable Packaging Material.** “Compostable packaging material” means packaging material that is designed for direct food contact and is capable of undergoing composting as shown by third-party certifications to ASTM D6400, ASTM D6868, and ASTM D8410.
- H. Compost Stream.** “Compost stream” means compostable packaging material and other material that is managed together, prior to being composted.
- I. Contamination.** “Contamination” means the material not included in a set of accepted materials, yet present in a packaging stream.
- J. Contractor.** “Contractor” means an entity paid to assist in or otherwise perform the management of a packaging stream.
- K. Consumer.** “Consumer” means an entity that uses a product, including an entity that uses a product to create a new product or includes its use in a service it provides. A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.
- L. Disposal.** “Disposal” means the final disposition of material in a manner that does not constitute recycling, reuse, or composting. Disposal includes any placement of material in the permitted area of a landfill.
- M. Disposal Stream.** “Disposal stream” means packaging material and other material that is managed together prior to disposal. Contamination removed from a mixed packaging stream, commodity stream, reuse stream, or compost stream does not

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constitute a disposal stream. Disposal streams do not undergo further processing to remove materials for recycling, reuse, or composting.

- N. Durable Product.** “Durable product” means a product that wears out over an expected lifespan of at least five years. A durable product is not depleted through use.
- O. Intentionally added toxic.** “Intentionally added toxic” means “intentionally added chemical”, as used in *Toxics in Food Packaging*, 32 M.R.S. §1741(11) (2019).
- P. Major Investment Need.** “Major investment need” means an identified need that will improve the management of packaging material by addressing a regional or systemic need.
- Q. Manage.** “Manage” means to collect, transport, process, or otherwise prepare a packaging stream for recycling, reuse, composting, or disposal; to educate consumers about packaging material; or to pick-up litter.
- R. Mixed Packaging Stream.** “Mixed packaging stream” means packaging material and other material that is managed together prior to being separated into disposal streams or commodity streams.
- S. New Infrastructure.** “New infrastructure” means capital investments that are not physically located within, or attached to, existing infrastructure.
- T. Packaging Stream.** “Packaging stream” means a set of materials that includes packaging material. Commodity streams, disposal streams, reuse streams, compost streams, and mixed packaging streams are types of packaging streams.
- U. Packaging Material Type.** “Packaging material type” means a class of packaging material with similar management requirements, form, and value, as determined through the processes established in Sections 5(A) and 5(B).
- V. Produce.** “Produce” means to use packaging material to contain, protect, deliver, present, or distribute a product that is sold, offered for sale or distributed for sale in or into the State.

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W. Producer. “Producer” means a person that:

- (1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material;
- (2) Is the sole entity that imports into the State for sale, offer for sale or distribution for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material branded by a person that meets the requirements of Section 2(W)(1) and has no physical presence in the United States; or
- (3) Adds packaging material to another producer’s product for distribution directly to a consumer. This person is only the producer for the packaging material it adds.

Producer includes a low-volume producer, as defined in 38 M.R.S. § 2146(1)(G), and a franchisor of a franchise located in the State but does not include the franchisee operating that franchise. Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

X. Product. “Product” means an economic good that is marketed or sold.

- (1) Material sold for use in containing, protecting, delivering, or presenting items at a later time is a product and, therefore, does not constitute packaging material.
- (2) Charging for, or adding a fee to, packaging material that is used for containing, protecting, delivering, or presenting other purchases does not make that packaging material a product.
- (3) For products that are not durable, material used to contain, protect, deliver, present, or distribute that remains when the product is depleted is not the product; it is packaging material.

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Y. Refill. “Refill” means an operation by which a person fills their own container.

Z. Reusable Packaging Material. “Reusable packaging material” means packaging material that is designed to be reused and the reuse of which is facilitated by an alternative collection program collecting the reusable packaging material in every county in which it is produced.

AA. Reuse Stream. “Reuse stream” means reusable packaging material and other material that is managed together, prior to being reused.

BB. Set of Accepted Materials. “Set of accepted materials” means materials in a packaging stream, as allowed by the receiving facility.

CC. Significantly Different. “Significantly different” means, with respect to representative audit results, that the specified confidence interval of one group of samples does not overlap with the specified confidence interval of another.

DD. Target Material. “Target material” means a base material that is used by a receiving facility to make:

- (1) Filtration media for use in a manner that does not constitute disposal, abrasive materials, glass fiber insulation, or construction materials for use in a manner that does not constitute disposal;
- (2) Smelter or furnace-ready metal;
- (3) Pulp;
- (4) Recycled plastic pellets ready for use in an extrusion or molding operation or recycled plastic flakes that do not require further processing before use in a final product; or
- (5) A commodity for sale to a market with a set of accepted materials that share the same base material.

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EE. Toxics. “Toxics” means chemicals of concern, chemicals of high concern, or priority chemicals listed by the Department in accordance with *Toxic chemicals in children’s products*, 38 M.R.S. § 1694; PFAS and phthalates as defined in *Reduction of toxics in packaging*, 32 M.R.S. § 1732; and food contact chemicals of high concern or priority food contact chemicals listed by the Department in accordance with *Toxic chemicals in food packaging*, 32 M.R.S. § 1743.

3. Assessment.

A. Program Goals. The Packaging Stewardship Organization (SO) must use the program goals to assess program performance and adjust investments and producer payments, as applicable. The SO must measure progress towards these goals annually, however these goals are not used to measure compliance.

- (1) Recycling access. This goal measures the percent of Maine residents with access to municipal recycling of readily recyclable packaging material. The percent should be no less than 70%, as measured by the second needs assessment, no less than 90%, as measured by the third needs assessments, and no less than 100% by the fourth needs assessment.
- (2) Participation. This goal measures the percent of cities, towns, townships, villages, and plantations, in each group of similar municipalities, as specified in Section 15, that are participating in the program. The percent should be no less than 60% from 2030 to 2034, no less than 75% from 2035 to 2039, and 100% from 2040 onward. If a participation goal is unmet, the SO must contact cities, towns, townships, villages, and plantations that are not participating to determine their reasons for not participating and must include a summary of the findings of this outreach in the following year’s annual report unless it did so for one of the past three annual reports. If the SO’s outreach suggests that participation may be increased by raising awareness of the financial and environmental benefits of program participation, the SO must propose or facilitate the proposal of investments in education about the program.
- (3) Collection. This goal measures the percent of readily recyclable packaging material in the disposal stream. It is measured once every 10 years as the weight of readily recyclable packaging material in one ton of the disposal

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stream (as identified during disposal audits) multiplied by the total tons disposed in the State (as most recently reported by the Department in accordance with 38 M.R.S. § 2124-A) divided by the tons of readily recyclable packaging material produced, according to the most recent producer reporting. The percent should be no more than 40% from 2030 to 2034, no more than 30% from 2035 to 2039, and no more than 20% from 2040 onward.

- (4) Reduction. This goal measures the total weight of packaging material reported by producers, collectively, per capita, relative to the fifth reporting year. The total weight should be reduced by no less than 40% from 2040 to 2049 and no less than 60% from 2050 onward. If a reduction goal is unmet, the SO must include, in its annual report, an evaluation of the way in which existing reductions have been made, the percent of producers contributing to that reduction, suggestions as to where reuse and refill systems could be established or expanded, and its recommendations to accelerate reduction, unless it has already done so in one of the past three annual reports. The SO must also propose, or facilitate the proposal of, investments in reuse and refill systems.
- (5) Reuse. This goal measures the percent by weight of total packaging material reported by producers that is managed for reuse by participating municipalities or through alternative collection programs. The percent should be no less than 15% from 2030 to 2039, no less than 30% from 2040 to 2049, and no less than 50% from 2050 onward. If a reuse goal is unmet, the SO must include, in its annual report, an evaluation of the way in which existing reuse is occurring, the percent of producers producing reusable packaging material types, the return rates of existing reuse systems, suggestions as to where reuse systems could be established or expanded, and its recommendations to accelerate reuse, unless it did so for one of the past three annual reports. The SO must also propose, or facilitate the proposal of, investments in reuse.
- (6) Readily recyclable, reusable, or compostable. This goal measures the percent of packaging material that is readily recyclable, reusable, or compostable. The percent should be no less than 50% from 2030 to 2039, no less than 75% from 2040 to 2049, and 100% from 2050 onward. If a goal is unmet, the per

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ton cost applied to packaging material that is not readily recyclable must increase in accordance with Section 10(A)(2)(b). The SO must identify the 10 most common packaging material types that are not readily recyclable, according to the most recent producer reporting, evaluate any options for making them readily recyclable, and include a summary of this information in the following year's annual report, unless it did so for one of the past three annual reports. The SO must also propose, or facilitate the proposal of, investments to enable recycling of the five most common packaging material types that are not readily recyclable in the State if recycling options are available elsewhere.

- (7) Base material-specific recycling rate. This goal measures the percent of packaging material expected to be managed by participating municipalities that is managed for recycling, by base material. The percent should be no less than 60% from 2030 to 2034, no less than 65% from 2035 to 2039, no less than 70% from 2040 to 2044, and no less than 75% from 2045 onward. If a base material-specific recycling rate goal is unmet, the SO must evaluate which packaging material types within that base material have the lowest recycling rates and provide a summary of this evaluation and any suggestions for improved outcomes in the following year's annual report, unless it did so for one of the past three annual reports.

The amount of packaging material expected to be managed by participating municipalities is the statewide total tons of packaging material reported by producers divided by the State's population and multiplied by the sum of the municipal populations of participating municipalities.

- (8) Overall recycling rate. This goal measures the percent of packaging material expected to be managed by participating municipalities that is managed for recycling. This percent should be no less than 60% from 2030 to 2034, no less than 65% from 2035 to 2039, no less than 70% from 2040 to 2044, and no less than 75% from 2045 onward. If an overall recycling rate goal is unmet, the SO must evaluate the variation in recycling rates across packaging material types and participating municipalities and provide a summary of this evaluation and any suggestions for improved outcomes in the following year's annual report, unless it did so for one of the past three annual reports.

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- (9) Post-consumer recycled material. This goal measures the percent of the total weight of packaging material eligible for a post-consumer recycled material incentive fee that is post-consumer recycled material, by base material, according to the most recent producer reporting. This percent should be no less than 10% from 2030 to 2039, no less than 20% from 2040 to 2049, and no less than 30% from 2050 onward. If a post-consumer recycled material goal is unmet, producer fees must increase in accordance with Section 10(A)(3)(a). In addition, the SO must include, in the annual report, an evaluation of the availability of post-consumer recycled material, its price relative to new material, its suitability for use, and the SO's recommendations on how to mitigate factors limiting its use, unless the SO did so for one of the past three annual reports.
- (10) Litter. This goal measures the percent of litter that is packaging material, as measured in items. The percent should be less than 80% of cumulative litter collected as determined by litter audits from the effective date of this rule to 2029, less than 50% of cumulative litter collected during litter audits from 2030 to 2039, and less than 30% of cumulative litter collected during litter audits from 2040 to 2049. From 2050 onward, the percent of litter that is packaging material in each litter audit conducted should be less than 15%. If a litter goal is unmet, the SO must identify the five packaging material types that are most littered, evaluate the feasibility of a deposit system for those packaging material types, evaluate any location patterns with respect to littering of packaging material, and include this information and any suggested mitigation methods in the following year's annual report, unless it did so for one of the past three annual reports.

B. Annual SO Reporting. The SO must produce an annual report and make it publicly accessible on its website by January 30th of each calendar year. The Department will also make this annual report publicly accessible on its website and will accept written comments on its content for a period of 30 days. After the 30-day comment period is over, the Department will make these comments available on its website and evaluate whether there is a need for changes to the program.

In addition to the information required by 38 M.R.S. § 2146(5) and other sections of this Chapter, the SO must include the following information in its annual report.

(1) Information on investments

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- (a) The total amount of funding available for investment; and
- (b) The savings plan created and maintained in accordance with Section 18(D).

(2) Producer benchmarking

- (a) A list of the brands registered by each producer and the percent of each producer's packaging material that is readily recyclable, is reusable, meets post-consumer recycled material goals, is able to be certified as containing no intentionally added toxics, and is absent any label or marking wrongly indicating the use of a material management pathway that is not available throughout the State, as reported during the prior calendar year in accordance with Section 9(B); and
- (b) A summary of progress toward reuse and refill, including a list of producers providing reuse and refill options in the State, a list of the brands registered by those producers, and a list of packaging material types for which reuse and refill options are available elsewhere.

(3) Municipal benchmarking

- (a) For each participating municipality, the tons recycled per capita, tons composted per capita, and tons reused per capita;
- (b) For each participating municipality with a current complete cost study, its cost per ton for managing each packaging material type;
- (c) Statistical analyses showing interquartile range of the tons of packaging material recycled per capita by participating municipalities and the tons of packaging material reused per capita by participating municipalities; and
- (d) Suggested best practices gleaned from analysis of data collected through the program, including practices associated with above average per capita recycling and reuse and practices that result in lower management costs while maintaining above average per capita recycling and reuse.

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- (4) An evaluation of program performance, including a status update with respect to program goals, any suggested adjustments to program goals, and data to support any suggested adjustments.
- (5) Statewide packaging recycling rate, calculated by summing the tons of packaging material types recycled statewide and dividing by the tons of packaging material produced, as reported by producers. The tons of a packaging material type recycled statewide is obtained by multiplying the percent of each packaging material type in one ton of a commodity by the tons of that commodity shipped for recycling as reported by recycling establishments, during their annual reporting, in accordance with 38 M.R.S. § 2145, and provided in aggregate to the SO by the Department.
- (6) An updated list of toxics, provided in an appendix.
- (7) Justification for any increase in program operating costs.

C. Statewide Recycling Needs Assessment. The SO must conduct a statewide recycling needs assessment every 10 years, within 18 months of entering into a contract with the Department. In addition to the requirements outlined in statute, the recycling needs assessment must include the following:

- (1) A list of municipalities that do not provide for the collection and recycling of all readily recyclable packaging material and an analysis of the amount of packaging material available for management in those municipalities.
- (2) For each municipality or regional group thereof that does not provide for the collection and recycling of all readily recyclable packaging material, the assessment must identify the infrastructure necessary to:
 - (a) Collect single-stream recycling;
 - (b) Collect dual-stream recycling; and
 - (c) Collect readily recyclable packaging material separately by base material.

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- (3) If requested by the Department, an assessment comparable to that described in Sections 3(C)(1) and 3(C)(2) for additional packaging materials that are not readily recyclable.
- (4) Identification of regional and systemic investment needs to efficiently manage packaging material and an estimated range of the cost of those investment needs. The SO must provide information on investment scenarios for collecting readily recyclable packaging material through single-stream recycling, dual-stream recycling, and separately by base material.
- (5) A study evaluating the throughput, infrastructure options, potential locations of and estimated capital and operating costs for a regional collection or processing center for any group of cities, towns, townships, villages, or plantations that expressed interest in cooperative management of packaging streams.
- (6) A summary of the ways recycling infrastructure is used to manage reusable packaging material in other jurisdictions and examples of investment proposals that would allow reusable packaging material to be managed through recycling systems in the State.

D. Disposal Audits. The SO must conduct disposal audits to determine the relative weight and volume of packaging material in the disposal stream, by packaging material type. The SO's contract with the Department must outline, or provide a mechanism for determining, the manner of categorizing material for which the packaging material type cannot be identified.

- (1) The SO must conduct this auditing at least once every 10 years.
- (2) The SO must randomly select three participating municipalities to audit. The SO must audit each municipality once between September 1st and May 31st and again once between June 1st and August 31st but not during any week immediately following a Maine State or Federal holiday.
- (3) For each audit, the SO must collect and analyze samples until results estimate the relative weight of packaging material, by packaging material type, with 90% confidence, $\pm 5\%$, for the 15 most prevalent packaging material types.

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- (4) The SO must average all samples obtained to determine the relative weight and volume of packaging material in the disposal stream, by packaging material type.

E. Litter Audits. The SO must conduct litter audits to identify the percent of litter that is comprised of packaging material, the percent of litter belonging to each packaging material type, and the percent of packaging material that can be attributed to a brand. The SO's contract with the Department must outline, or provide a mechanism for determining, the manner of categorizing material for which the packaging material type or brand cannot be identified.

- (1) The SO must conduct two litter audits every year.
- (2) During annual reporting, participating municipalities may report on litter collection events, including amount collected, anecdotal information regarding common litter locations and items, and whether the municipality plans to conduct a litter collection event in the upcoming year. The SO may randomly select two municipalities that will be conducting litter collection events at which to conduct litter audits and may provide a stipend to the municipality for the litter collection event in accordance with the SO's plan. If not using a municipal litter collection event, the SO must choose a litter audit location in accordance with the audit methodology included in its plan.
- (3) The SO must collect and categorize all litter, to the extent possible:
 - (a) Into non-packaging material and packaging material;
 - (b) For litter that is packaging material, by packaging material type; and
 - (c) For litter that is packaging material, by brand.
- (4) The SO must measure the percent of litter grouped by packaging material type and the percent of litter grouped by brand in weight and number of items.

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- (5) The Department will evaluate cumulative results to identify areas of the State in which litter accumulation is greatest.

4. Defining Packaging Material.

A. Defining Packaging Material Types. Packaging material types and their designations are described below and defined in Appendix A.

- (1) A packaging material type consists of one or multiple discrete forms of packaging material with similar management requirements and similar value. It must clearly define the packaging material classified therein. The Department may choose to have an “other” packaging material type to classify uncommon packaging material that is not readily recyclable, reusable, or compostable.
- (2) Collectively, the packaging material types must be comprehensive enough to reflect the distinctions used by participating municipalities and their affiliated contractors to manage packaging material.
- (3) Packaging material used to contain products that, regardless of the consumer’s generator status, are hazardous in accordance with Chapter 850, *Identification of Hazardous Wastes*, can be classified as a distinct packaging material type.
- (4) Packaging material with inks or colorants, attachments or closures, polymers or resins, shapes or sizes, layers or coatings, adhesives, additives, or labels that preclude or are detrimental to recycling can be classified as a distinct packaging material type.

B. Identifying the Base Material. When defining a packaging material type, the Department will designate its base material. The base material is the material routinely targeted for recycling, or if no material is routinely targeted for recycling or if more than one material is routinely targeted for recycling, the base material is the predominant material.

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For a packaging material type composed of more than one base material, the Department will identify cases where more than one material is routinely separated and targeted for recycling at recycling facilities that accept the packaging material type.

- C. Designating the Primary Material Management Pathway.** When defining a packaging material type, the Department will designate it as readily recyclable or not readily recyclable. In addition, the Department may further designate a packaging material type as reusable or compostable.

Packaging material types that meet the following criteria are eligible to be designated as readily recyclable.

- (1) Marketability. A packaging material type is marketable if all the following criteria are met.
 - (a) There are at least two facilities in North America operating in accordance with applicable environmental laws that recycle the packaging material type into products that are not primarily used for fuel and are not placed into the permitted area of a landfill. Recycling processes that are inconsistent with applicable laws and conventions are examples of processes that do not safeguard the environment and human health.
 - (b) Operational facilities have the capacity to recycle the packaging material type in quantities equal to, or in excess of, the amount of material collectively supplied by the market.
 - (c) Its anticipated cost per ton is less than or equal to 2 times the cost per ton of managing the most expensive readily recyclable packaging material type. If the packaging material type is currently being managed for recycling by participating municipalities, its anticipated cost per ton is equal to the average cost per ton currently realized by participating municipalities. If the packaging material type is not currently being managed for recycling by participating municipalities, the Department will determine the anticipated cost per ton using input from stakeholders, information on the market value of the material, and the cost of managing other packaging material types for recycling.

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- (2) Throughput. A packaging material type has sufficient throughput if it is common enough to warrant sortation, or it can be included in a commodity used to market packaging material without increasing the contamination in that commodity.
- (3) Ratio of weight targeted for recycling to total weight. At least 60% of the weight of a packaging material type, on average, is composed of materials that are routinely separated and targeted for recycling at recycling facilities that accept the packaging material type.

5. Process for Defining the Packaging Material Types List.

A. Initial Packaging Material Types List. The Department will initiate routine technical rulemaking, including solicitation of public comments, to create the initial packaging material types list within 270 days of the effective date of this rule.

- (1) The criterion specified in Section 4(C)(1)(c) does not apply during the creation of the initial packaging material types list.
- (2) Section 5(C) does not apply to the creation of the initial packaging material types list. Packaging material types designated as readily recyclable must be collected and sent for recycling by participating municipalities. Participating municipalities must be reimbursed for managing packaging material in accordance with Section 13, and producers must pay for packaging material in accordance with Section 10.

B. Annual Review of the Packaging Material Types List. The Department will annually review input from the SO and stakeholders on the packaging material types list and initiate rulemaking to make adjustments, as necessary.

- (1) The SO must provide a mechanism for accepting suggestions for changes to the packaging material types list from stakeholders on an ongoing basis. This mechanism must allow for those suggesting changes to include supporting documentation.

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- (2) In its annual report to the Department, the SO must identify any packaging material types that might be redefined or redesignated. The report must include an appendix of suggested changes to the list provided by the SO directly or provided by stakeholders during the prior calendar year, in accordance with Section 5(B)(1). The appendix must include any supporting documentation provided by stakeholders and information gathered by the SO to support estimates of anticipated cost per ton for packaging material types being considered for readily recyclable designation.
- (3) The Department will post the SO's annual report on its website and accept comments in response to the suggested changes to the packaging material types list for 30 days.
- (4) After reviewing comments on suggested changes, the Department may initiate a routine technical rulemaking process to update Appendix A.
- (5) Within 30 days of the effective date of a rule changing the content of Appendix A, the SO must communicate these changes to the packaging material types list to entities that reported during the most recent annual reporting required by Sections 9 and 12.

C. Transitional Period.

- (1) Changing a packaging material type's designation from not readily recyclable to readily recyclable affects producer payments, municipal participation requirements, and municipal reimbursement.
 - (a) For the calendar year in which the change occurs and the calendar year following that in which the change occurs, the packaging material type fee must reflect the packaging materials type's prior designation as not readily recyclable. For the next two calendar years, the packaging material type fee is the anticipated cost per ton. Beginning the fourth calendar year following that in which the change occurs, the packaging material type fee is calculated in accordance with Section 10(A)(2).

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- (b) For the purpose of municipal participation, the packaging material type continues to be designated as not readily recyclable for two calendar years following that in which the change occurs.
- (c) For the purpose of municipal reimbursement, the packaging material type continues to be designated as not readily recyclable for three calendar years following that in which the change occurs.
- (2) Changing a packaging material type's designation from readily recyclable to not readily recyclable affects producer payments, municipal participation requirements, and municipal reimbursement.
 - (a) **For** the calendar year in which the change occurs, the packaging material type fee must reflect the packaging materials type's prior designation as readily recyclable. For the next three calendar years following that in which the change occurs, the packaging material type fee must be the average per ton cost of recycling the most expensive readily recyclable packaging material type during the prior calendar. Beginning the fourth calendar year following that in which the change occurs, the packaging material type fee is calculated in accordance with Section 10(A)(2).
 - (b) For the purposes of municipal reimbursement and participation, the packaging material type is designated as not readily recyclable immediately.
- 6. Defining Cost by Packaging Stream.** This Section itemizes management costs, as realized by a managing entity, and describes how the percent of each cost associated with the management of each packaging stream is defined. For the purposes of this Section, the source of the money used to cover the municipal costs is irrelevant.
 - A. Labor Cost.** The labor cost for an employee is the product of the percent of the employee's time spent managing a packaging stream and the total compensation and benefits paid to the employee. The labor cost of a packaging stream is the sum of the labor costs for each employee.

Expressed as a formula, for all applicable employees: Labor cost = percent time * total compensation and benefits

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The percent time is the time an employee spends managing a packaging stream divided by the total time worked. This includes administrative tasks, collecting, sorting, baling, transporting, and other activities used in the management of a packaging stream, but does not include time spent maintaining equipment and structures. It must be estimated and documented by the SO during a cost study and account for seasonal variation.

B. Equipment Cost. The equipment cost for each piece of equipment is the product of the percent of its use allocated to a packaging stream and its associated costs. Associated costs are maintenance and capital investment.

The equipment cost for a packaging stream is the sum of the equipment costs for each piece of equipment used.

Expressed as a formula, for all applicable pieces of equipment: Equipment cost = percent use * (maintenance + capital investment)

(1) Estimating the percent use for a piece of equipment.

- (a) For off-road equipment, including but not limited to balers, forklifts, skid steers, and compactors, the percent use on a packaging stream is the time a piece of equipment is used to manage a packaging stream divided by the total time a piece of equipment is used. It must be estimated and documented by the SO during a cost study and account for seasonal variation.
- (b) For on-road vehicles, the percent use is the miles traveled during the management of a packaging stream divided by the total vehicle miles traveled. The miles traveled during the management of a packaging stream are the miles traveled on a route multiplied by the number of trips, for all routes traveled. During a cost study, the SO must document the routes used to manage each packaging stream and the number of miles per route. The number of trips for each route traveled and the total miles the vehicle traveled must be reported annually.

- (2) The maintenance cost is the amount spent on parts, labor, and supplies to service or operate a piece of equipment. This includes supplies like bale wire and personal protective equipment. Maintenance cost does not include capital

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investment into a piece of equipment that changes its expected lifespan.

When staff performs maintenance, the labor cost for the maintenance must be figured as the hours spent maintaining a piece of equipment divided by the total annual hours worked multiplied by the total compensation and benefits paid. The maintenance cost must be reported annually.

- (3) The capital investment cost is money spent to buy or lease a piece of equipment or to increase its expected lifespan. In cases where a participating municipality buys a piece of equipment or increases its expected lifespan, the capital investment cost is accounted for by dividing the total investment cost by expected lifespan or expected increase in lifespan. In the case of leased equipment, it is the cost of the lease divided by the length of the lease, in years. It is documented by the SO during a cost study.

C. Structure Cost. The structure cost for each structure is the product of the percent of its use allocated to a packaging stream and its associated costs. Associated costs are maintenance and capital investment.

Examples of structures include containers, warehouses, buildings, trailers, and roll-off containers.

The structure cost for a packaging stream is the sum of the structure costs for each structure used.

Expressed as a formula, for all applicable structures: Structure cost = percent use * (maintenance + capital investment)

- (1) The percent use is the amount of floor space used in the management of a packaging stream divided by the total amount of floor space in a structure. It must be estimated and documented by the SO during a cost study and account for seasonal variation.
- (2) The maintenance cost is the amount spent in parts, labor, and supplies to service a structure. Maintenance cost does not include capital investment into a structure that changes its expected lifespan. When staff performs maintenance, the labor cost of the maintenance must be figured as the hours spent maintaining a structure divided by the total annual hours worked

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multiplied by the total compensation and benefits paid. Maintenance cost must be reported annually.

- (3) The capital investment cost is money spent to buy or lease a structure, expand or otherwise upgrade a structure, or increase its expected lifespan. In cases where a participating municipality buys a structure, upgrades a structure, or increases a structure's expected lifespan, the capital investment cost is accounted for by dividing the total investment cost by expected lifespan or expected increase in lifespan. In the case of leased structures, it is the cost of the lease divided by the length of the lease, in years. It is documented by the SO during a cost study.

D. Energy Cost. The energy cost is the cost of energy that supplies equipment and structures during the management of a packaging stream. It must be figured for each structure and piece of equipment as the product of the allocation of metered energy to a piece of equipment or structure, the total metered energy, the average cost per unit of metered energy over the reporting year, and the percent of the equipment or structure's use that is allocated to managing a packaging stream.

The energy cost for a packaging stream is the sum of the energy costs for each piece of equipment and structure used.

Expressed as a formula, for all applicable pieces of equipment and structures:

Energy cost = percent metered energy used * total metered energy * average cost/unit of metered energy * percent use

- (1) The total metered energy is the amount of energy provided on a given invoice or meter used to supply equipment or structures. It must be reported annually.
- (2) The percent metered energy used is the percentage of total metered energy that supplies a given piece of equipment or structure. It must be estimated and documented by the SO during a cost study and account for seasonal variation.
- (3) The percent use on a packaging stream is the amount of a piece of equipment's or structure's use that is allocated to a packaging stream.

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- (4) The average cost per unit of metered energy is the total cost of metered energy divided by the total metered energy. It must be reported annually.

E. Profit and Overhead Paid. The profit and overhead paid is the difference between the amount paid to a contractor and the sum of the labor cost, equipment cost, structure cost, energy cost, and profit and overhead paid realized by that contractor.

7. Calculation of the Per Ton Cost by Commodity.

Expressed as a formula, for a commodity, $\text{cost/ton} = \text{specific cost/ton} + \text{nonspecific cost/ton} + \text{shared transportation cost/ton} + \text{contractor cost/ton} + \text{profit and overhead paid/ton} - \text{revenue/ton}$

Sections 7(A) through (F) below should be calculated with respect to a participating municipality's costs, as defined in Section 6. In cases where an agreement between a participating municipality and its contractor or between a contractor and a subcontractor is for the management of a mixed packaging stream, more than one packaging stream, or includes additional services, Sections 7(A) through (F) below must be calculated for the contractor or subcontractor in order to assign the contractor cost/ton to a commodity.

A. Specific Cost Per Ton. The specific cost per ton is the sum of the labor, equipment, structure, and energy costs that are associated with a single commodity divided by the tons managed.

The costs realized by a contractor, the costs associated with the simultaneous management of more than one packaging stream, and the costs associated with a mixed packaging stream are not accounted for in the specific cost per ton.

Expressed as a formula, $\text{specific cost/ton} = (\text{labor cost} + \text{equipment cost} + \text{structure cost} + \text{energy cost})/\text{tons managed}$, where

- (1) The labor, equipment, structure, and energy costs are calculated according to Section 6. The percent time and the percent use are measured with respect to management activities that are specific to a commodity, such as management activities that are devoted solely to the management of a single commodity.
- (2) The tons managed are the tons of a commodity sent to a market, as determined in accordance with Section 17.

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B. Nonspecific Cost Per Ton. The nonspecific cost per ton is the sum of the labor, equipment, structure, and energy costs that are associated with the management of a mixed packaging stream or associated with the simultaneous management of more than one packaging stream, as allocated to a commodity. The costs specific to the management of a single commodity are not included in the nonspecific cost per ton, nor are shared transportation costs or costs realized by a contractor.

Expressed as a formula, nonspecific cost/ton = (labor cost + equipment cost + structure cost + energy cost) * percent allocation/tons managed, where

- (1) The labor, equipment, structure, and energy costs are calculated in accordance with Section 6. The percent time and the percent use are measured with respect to the management of a mixed packaging stream or the simultaneous management of more than one packaging stream.
- (2) The percent allocation to a commodity depends on whether a nonspecific cost is associated with the management of a mixed packaging stream or the simultaneous management of more than one packaging stream.
 - (a) In cases where the nonspecific cost is associated with a mixed packaging stream, the percent allocation is the volume of the materials that make up a commodity divided by the volume of all materials in the packaging stream's set of accepted materials. The SO must determine these volumes in accordance with Section 14(B)(1)(b).
 - (b) In cases where the nonspecific cost is associated with the simultaneous management of more than one packaging stream, the percent allocation to that stream is the volume of the materials that make up a commodity, as determined in accordance with Sections 14(B)(1)(c) and 17 divided by the volume of the materials that make up all packaging streams managed utilizing the nonspecific management activity, also determined in accordance with Sections 14(B)(1)(c) and 17. When applicable, the percent allocation to a commodity within a mixed packaging stream must then be allocated in accordance with Section 7(B)(2)(a).
- (3) The tons managed are the tons of a commodity sent to a market, as determined in accordance with Section 17.

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C. Shared Transportation Cost Per Ton. The shared transportation cost is the labor, equipment, structure, and energy cost for transporting a mixed packaging stream or simultaneously transporting more than one packaging stream, as allocated to a commodity.

Expressed as a formula, shared transportation cost/ton = shared transportation cost * percent allocation/tons managed, where

- (1) The labor, equipment, structure, and energy costs are calculated in accordance with Section 6, with the percent time and the percent use measured with respect to shared transportation.
- (2) The percent allocation to a commodity depends on the method of transport.
 - (a) In cases where the shared transportation cost is associated with a mixed packaging stream, the percent allocation is the volume of the materials that will make up a commodity divided by the volume of all materials included in the mixed packaging stream's set of accepted materials. The SO must determine these volumes in accordance with Section 14(B)(1)(b).
 - (b) When simultaneously transporting unbaled packaging streams, the percent allocation to each stream is the volume used to transport each packaging stream divided by the volume used to transport all packaging streams. The SO must document the percent allocation during a cost study. When a mixed packaging stream is transported in this manner, the percent allocation to commodities within the mixed packaging stream must be further allocated in accordance with Section 7(C)(2)(a).
 - (c) When simultaneously transporting more than one baled commodity, the percent allocation is the tons of each commodity sent divided by the tons of all commodities sent. Unbaled fiber sent to a recycling market can be considered baled for the purposes of allocating shared transportation costs. This percent allocation must be reported annually.
- (3) The tons managed are the tons of a commodity sent to a market, as determined in accordance with Section 17.

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D. Contractor Cost Per Ton. The contractor cost is the cost of a service agreement, as allocated to a commodity.

- (1) When a service agreement is for the management of one commodity stream, the contractor cost per ton is the contractor cost divided by the tons managed, in accordance with Section 17. The contractor cost must be reported annually to the SO.
- (2) When a service agreement is for a mixed packaging stream, more than one packaging stream, or includes additional services beyond the management of packaging streams, the contractor must participate in a cost study, and Sections 7(A) through (F) must be calculated for the contractor or subcontractor in order to assign the contractor cost/ton to a commodity.

Expressed as a formula, contractor cost/ton = specific cost/ton + nonspecific cost/ton + shared transportation cost/ton + subcontractor cost/ton + profit and overhead paid/ton – revenue/ton

Subcontractor cost per ton is figured in the same way as contractor cost per ton.

E. Profit and Overhead Paid Per Ton. The profit and overhead paid must be figured when a service agreement is for the management of a mixed packaging stream or more than one packaging stream but does not include additional services beyond the management of packaging streams. The profit and overhead paid per ton is the contractor cost realized by the participating municipality minus the cost realized by the contractor divided by the tons managed under the service agreement.

Profit and overhead paid per ton is the same for all commodities managed under a service agreement.

F. Revenue Per Ton. The revenue per ton is revenue received by a participating municipality for packaging material sold. The revenue received for a commodity is divided by the tons managed, as determined in accordance with Section 17. The revenue per ton must be reported annually to the SO.

8. Start-Up Registration and Payment.

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- A. Start-Up Registration with the SO.** Producers that are producing packaging material at the time this rule goes into effect must register with the SO within 90 days of the date a mechanism for start-up registration is made available by the SO. This registration must include the information in Section 9(A) and an estimate of the total tons of packaging material produced during a timeframe identified in the SO's contract with the Department. If the producer does not know and cannot estimate the total tons produced in accordance with Section 9(D), the producer may report the total tons of packaging material used to contain, protect, deliver, present, or distribute a product that is sold, offered for sale, or distributed for sale nationally. In such cases the SO will estimate the total tons of packaging material produced by multiplying the national tons by Maine's share of the population of the United States. This method of reporting and estimation is only acceptable for start-up registration.
- B. Start-Up Registration Fee.** Producers, other than low-volume producers, that are producing packaging material at the time this rule goes into effect must pay a start-up registration fee within 180 days of the SO entering into a contract with the Department, as invoiced by the SO, in accordance with its contract. The start-up registration fees collected must cover one year of the SO's operational costs and the administrative fee to the Department. A producer's start-up registration fee cannot exceed its share of the total start-up registration fees collected, as figured by its share of packaging material produced and reported in accordance with Section 8(A), unless the producer agrees to a higher fee. The SO's contract with the Department can provide a mechanism by which a producer that agrees to pay a start-up registration fee that exceeds its share receives interest on additional funds paid.
- C. First Calendar Year Invoice.** The SO must subtract a producer's start-up registration fee and any interest due on additional funds paid from fees owed when it invoices a producer for the first calendar year for which participating municipalities are reimbursed.

9. Ongoing Producer Registration and Reporting.

- A. Registration.** A producer must provide the following information to the SO during its annual reporting or when it begins producing packaging material and must update the SO within 60 days of this information changing.

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- (1) The contact information for a specific responsible individual working directly for the producer;
- (2) A list of the brands sold, offered for sale, or distributed for sale in packaging material or, in the case of producers that add packaging material to another producer's product for distribution directly to a consumer in the State, a description of the sales pathway resulting in the addition of packaging material; and
- (3) If the producer authorizes a third party to report on its behalf, the contact information for the third party, including a specific responsible individual working directly for the third party.

B. Annual Reporting for Producers Other Than Low-Volume Producers.

Producers other than low-volume producers or their authorized third-party reporters must report the following packaging material details to the SO by May 31st of each calendar year.

Producers or reporters must assume packaging material is received by the consumer of the product unless the producer can verify that the packaging material is not received by the consumer of the product, in which case that material is not packaging material, as defined by 38 M.R.S. § 2146, and should not be reported.

Weights must be reported to the nearest kilogram or pound.

Packaging material details must be reported for each packaging material type produced, except where the details required by Sections 9(B)(6), 9(B)(7), and 9(B)(10) vary for subsets of the packaging material type or a subset of the packaging material type is exempt from the post-consumer recycled material fee, in accordance with Section 21. In these cases, the producer will need to report these details separately for differing subsets.

- (1) Packaging material type;
- (2) Brand or brands of products sold with this packaging material, or, in cases where one producer adds packaging material to another producer's product

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for distribution directly to a consumer, a description of the sales pathway resulting in the addition of packaging material;

- (3) The UPCs of products sold with this packaging material. Brick codes may be provided instead of UPCs in cases where all products with a given brick code are associated with the same packaging material type;
- (4) The total weight of the base material or, in cases where more than one material is routinely separated and targeted for recycling, as designated in Appendix A, the sum of the weights of the materials that are routinely separated and targeted for recycling, and a short description of the methodology used to determine this measurement. Any material present that is neither the base material nor another material that is routinely separated and targeted for recycling according to Appendix A, and that weighs at least 0.1 gram, should not be included in this weight, only in Section 9(B)(5);
- (5) Total weight of the packaging material type and a short description of the methodology used to determine this measurement;
- (6) Total weight of post-consumer recycled material as verified by a third-party audit;
- (7) Whether the producer can provide a certificate from the entity or entities that manufacture the packaging material that attests to the absence of intentionally added toxics;
- (8) Whether the producer provides, or is aware of, refill options for the product sold with the packaging material, either in the State or elsewhere;
- (9) Whether the producer provides, or is aware of, reuse systems for the packaging material in the State or elsewhere; and
- (10) Whether the packaging material is labeled in a way that suggests it is recyclable, reusable, or compostable; and for a packaging material type that

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is labeled in a way that suggests it is reusable, the counties in which it is produced.

C. Annual Reporting for Low-Volume Producers. A producer that produced less than 15 tons of packaging material in total during the prior calendar year, or its authorized third-party reporter:

- (1) Must report the total tons of packaging material produced, and any estimation method used to calculate that figure, to the SO by May 31st of each calendar year;
- (2) May report tons of packaging material produced by packaging material type to the SO by May 31st of each calendar year; and
- (3) May report information detailed in Sections 9(B)(6) through 9(B)(10) to the SO by May 31st of each calendar year.

D. Estimates.

- (1) Estimating weight from units. Producers that are unable to fully satisfy the reporting requirements due to a failure to obtain sufficient information regarding the amount of packaging material produced may estimate the total weight produced based on unit quantities, as used by the producer to quantify sales to distribution networks. A producer may estimate the weights required under Sections 9(B)(4) and 9(B)(5) by grouping products packaged using the same packaging material type or types and estimating the weights of each packaging material type. To estimate weights reported in Sections 9(B)(4) and 9(B)(5) for a group of products, a producer must:
 - (a) Group products packaged using the same packaging material type or types;
 - (b) Create subgroups of products with similar dimensions;

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- (c) Randomly select a product from each subgroup and weigh the packaging material type or types and any parts of each packaging material type that weigh at least 0.1 gram;
- (d) For each packaging material type and for the weight of each packaging material type that is composed of base materials that will be separated and recycled in accordance with Appendix A:
 - (i) Multiply the weight measured for each subgroup by the number of units of that subgroup produced; and
 - (ii) Add weights for all subgroups.

A producer using this option must report descriptions of groups of products and subgroups created, total units produced for each subgroup, and the total measured weight and measured weight of each base material to be recycled for each randomly selected product.

- (2) Estimating units produced. If a producer cannot obtain information on the number of units produced, as used by the producer to quantify sales to distribution networks, it must estimate the number of units produced as follows:
 - (a) A producer must estimate the number of units produced for each distribution network that may sell, offer for sale, or distribute for sale in or into the State;
 - (b) Estimates must assume equal per capita sales throughout the distribution area, and distribution areas must be defined along state lines; and
 - (c) A producer must report, for each distribution network, the distributor, the distribution area, and the total number of units distributed through that network.

E. Auditing. The SO's contract with the Department must outline, or provide a mechanism for determining, the extent to which the SO will conduct quality assurance on and random auditing of producer reporting.

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- (1) Quality assurance. The SO must conduct quality assurance on producer reporting. Significant discrepancies identified through quality assurance, for which an adequate explanation cannot be provided, may result in an audit. The Department can also request an audit of a producer's reporting if it has reason to suspect it is inaccurate. Any audits conducted in accordance with this Section can be subtracted from the random audits required under Section 9(E)(2).
- (2) Random auditing. On an annual basis, the SO must randomly select a number of producers to audit and report results to the Department. Audits must include a review of the following:
 - (a) The extent to which packaging material produced has been reported;
 - (b) The accuracy of information reported under Section 9(B), including documentation verifying any use of post-consumer recycled material and certificates of no intentionally added toxics from material suppliers, and Section 9(C); and
 - (c) Documentation supporting estimates, as applicable.

10. Producer Fees. A producer must pay fees based on the packaging material it produces each year. The SO must invoice producers by July 1st of each calendar year, and a producer must pay fees owed in accordance with this Section by September 1st of each calendar year. The SO's contract with the Department must define, or provide a mechanism for defining, late fees.

A. Fees for Producers Other Than Low-Volume Producers.

- (1) Annual registration fee. Annual registration fees must cover the \$300,000 fee for Department administration and the SO's annual budget. A producer owes a share of this cost for every 15 tons of packaging material produced and not managed through an alternative collection program. A share is equal to the sum of \$300,000 and the SO's annual budget divided by the total number of shares owed, as determined from the reports of producers other than low-volume producers that are received by the reporting deadline.

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(2) Packaging material type fees.

- (a) For a packaging material type that is readily recyclable, the producer must pay, per ton produced, the average per ton cost for recycling, reusing, and composting that packaging material type during the prior calendar year. The average per ton cost is the total amount to be reimbursed to municipalities for recycling, reusing, and composting the packaging material type during the prior calendar year divided by the tons of the packaging material type recycled, reused, and composted by participating municipalities.
- (b) For a packaging material type that is not readily recyclable, the producer must pay, per ton produced, two times the average per ton cost of the most expensive readily recyclable packaging material type during the prior calendar year. If goals for the percent of readily recyclable packaging material established under Section 3(A)(6) are unmet, the producer must pay three, four, or five times the average per ton cost of the most expensive readily recyclable packaging material type, as detailed below.
 - (i) From calendar year 2031 to 2040, if the goal in Section 3(A)(6) is unmet, the producer must pay three times the per ton cost of managing the most expensive readily recyclable packaging material type.
 - (ii) From calendar year 2041 to 2050,
 - 1. If less than 50% of the total packaging material reported the prior calendar year was readily recyclable, a producer must pay four times the per ton cost of managing the most expensive readily recyclable packaging material type; or
 - 2. If at least 50% but less than 75% of the total packaging material reported the prior calendar year was readily recyclable, a producer must pay three times the per ton cost of managing the most expensive readily recyclable packaging material type.

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- (iii) From calendar year 2051 onward, producers must pay five times the per ton cost of managing the most expensive readily recyclable packaging material type.
- (3) Incentive fees. Beginning the third calendar year in which producers report under this Chapter, a producer must pay the following incentive fees, as applicable. These fees are relative and additional to packaging material type fees.
- (a) Post-consumer recycled material fee. For packaging material that is not exempt from the post-consumer recycled material fee, and for which a producer does not meet post-consumer recycled material goals, as specified in Section 3(A)(9), the producer must pay a per ton fee equal to 10% of the packaging material type fee, unless the post-consumer recycled material goal for the packaging material type's base material is unmet. Beginning the calendar year following that in which the goal is unmet, and continuing every year in which the goal remains unmet, the percentage used to determine the post-consumer recycled material fee must be 10% plus the difference between the percent post-consumer recycled material goal and the realized percent post-consumer recycled material, by base material, as reported by producers, collectively, during the prior calendar year, in accordance with Section 9(B).
- (b) Toxicity fee. For a packaging material type for which a producer is unable to provide a certificate from the entity or entities that manufacture the packaging material that attests to no intentional addition of toxics, it must pay a per ton fee equal to 10% of the packaging material type fee.
- (c) Reduction of litter fee. For a brand that consistently represents one of the top five brands collected during a litter audit for three consecutive calendar years, a producer must pay a fee equal to 10% of its annual registration fee. In lieu of this fee, a producer or group of producers may engage in an anti-litter campaign in the State that is at least as expensive as the litter fees due. The fees will be charged and upon receiving proof of completion of the campaign and its costs, the SO will subtract the amount of the previously paid litter fee from a producer's next invoice.

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(d) Labeling. For packaging material that is labeled to indicate use of a material management pathway that is not available throughout the State, the producer must pay a per ton fee equal to 20% of the packaging material type fee.

(i) For packaging material labeled in a way that suggests it is recyclable, a material management pathway is available if the packaging material is readily recyclable or if there are alternative collection programs recycling the packaging material type in every county.

(ii) For packaging material labeled in a way that suggests it is compostable, a material management pathway is available if there are alternative collection programs composting the packaging material in every county.

(iii) For packaging material labeled in a way that suggests it is reusable, a material management pathway is available if it is reusable packaging material, as defined in Section 2(Z).

(e) Weight not recycled. For the weight of packaging material that will not be recycled, as measured by the difference between the reporting points in Sections 9(B)(5) and 9(B)(4), a producer must pay a per ton fee equal to 30% of the packaging material type fee. This fee is only applied to a packaging material type designated readily recyclable.

B. Fees for Low-Volume Producers. A low-volume producer is required to pay no more than \$500 per ton of packaging material and no more than \$7,500 in total annual fees to the SO.

(1) If a low-volume producer reports in accordance with Section 9(C)(1), the producer must pay \$500 per ton of packaging material produced.

(2) If a low-volume producer reports in accordance with Section 9(C)(2), the producer must pay \$500 per ton of packaging material produced or the amount owed under Section 10(A)(2), whichever is less.

-POSTING DRAFT-**C. Adjustment to Fees for Tons Collected Through an Alternative Collection**

Program Approved Pursuant to 38 M.R.S. § 2146(8). Each calendar year, the SO must adjust a producer's fees to account for the tons of each packaging material type managed through an alternative collection program. If, in its annual report, an alternative collection program attributes tons of a packaging material type to a producer, the tons of each packaging material type attributed must be subtracted from the tons of the packaging material type produced, and producer fees adjusted accordingly.

If tons managed through an alternative collection program lower the obligation of a producer other than a low-volume producer such that the producer's payment to the SO is for fewer than 15 tons of packaging material, the producer is still not considered a low-volume producer.

(1) In the case of producers other than low-volume producers, the SO must:

- (a) Subtract the tons of a packaging material type attributed to a producer from the tons of the packaging material type produced for the purpose of determining the producer's share of the annual registration fee in accordance with Section 10(A)(1);
- (b) Subtract the tons of a packaging material type attributed to a producer from the tons of the packaging material type produced for the purpose of determining the packaging material type fees owed by the producer in accordance with Section 10(A)(2); and
- (c) Calculate incentive fees owed under Section 10(A)(3) for total tons produced and multiply each result by the percent of the packaging material type produced that was not collected through an alternative collection program.

(2) In the case of a low-volume producer, the SO must reduce the producer's tons of each packaging material type produced by the tons of that packaging material type attributed to that producer by the alternative collection program for the purpose of determining fees owed in accordance with Section 10(B)(2). In order for a low-volume producer to receive credit, it must report in accordance with Section 9(C)(2).

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A producer cannot receive credit for managing more tons of a packaging material type than it produced.

11. Alternative Collection Programs.

A. Proposal Fee. A producer or group of producers submitting a proposal for the establishment or modification of an alternative collection program must pay a fee to cover the Department's cost of reviewing the proposal.

- (1) For a program run by a single producer, collecting that producer's packaging for reuse, a producer must pay \$1000.
- (2) For a program to which Section 11(A)(1) does not apply and that only manages reusable packaging material, a group of producers must pay \$5,000.
- (3) For a program to which Sections 11(A)(1) and 11(A)(2) do not apply, a producer or group of producers must \$10,000.

The Department may waive or reduce the proposal fee for a proposed modification to an alternative collection program if its review does not require significant staff resources.

B. Approval Conditions. In order for an alternative collection program to be eligible for approval by the Department, it must provide collection that is free, available year-round, and convenient.

- (1) An alternative collection program is considered convenient if it is collecting packaging material from at least one collection location in each county. Alternative collection programs that do not meet this convenience standard may be approved in accordance with the exceptions described below.
 - (a) New alternative collection programs. An alternative collection program is considered convenient if it is collecting material at one collection location during its first year of approval, 5 collection locations in 5 counties during its second year of approval, 10 locations in 10 counties during its third year of approval, and one location in each county from the fourth year of operation onward.

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- (b) Reuse. An alternative collection program collecting reusable packaging material for reuse is considered convenient if it is collecting the reusable packaging material in every county in which the reusable packaging material is produced.
- (c) Partial credit for limited geographic reach. An alternative collection program with a limited geographic reach can partially offset the payment obligation for participating producers; it cannot attribute the tons managed to other producers. For an alternative collection program that only offers collection in one county, producers that are involved in the operation of the program can receive credit for up to 10% of the tons of a packaging material type produced. For an alternative collection program that only offers collection locations in two counties, producers that are involved in the operation of the program can receive credit for up to 20% of the tons of a packaging material type produced. For an alternative collection program that only offers collection in 3 to 15 counties, producers that are involved in the operation of the program can receive credit for up to 30% of the tons of a packaging material type produced.
- (d) Credit for regional programs. For calendar years in which a producer or group of producers has county-level data on sales in or into the State, the producer or group of producers may operate an alternative collection program and each producer can receive credit for as many tons of a packaging material type it collects in a county as it produced in that county.

C. Attributing Tons Managed. Except as noted in Sections 11(B)(1)(c) and 11(B)(1)(d), an alternative collection program may attribute tons managed through that program to producers not involved in the operation of the program either because the program collected more tons of a packaging material type than the producer or group of producers produced or because the program finds it otherwise beneficial to do so.

An alternative collection program may inform the Department of the tons of a packaging material it is interested in attributing to producers not involved in the operation of the program, and the Department will provide a list of these available

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tons, by packaging material type, and the associated contact information, on its website.

D. Reporting. An alternative collection program must report to the Department annually by April 1st of each calendar year.

- (1) The annual report must be accompanied by an annual fee of:
 - (a) For a program run by a single producer collecting that producer's packaging for reuse, \$500;
 - (b) For a program to which Section 11(D)(1)(a) does not apply and that only manages reusable packaging material types, \$2,500; or
 - (c) For a program to which Sections 11(D)(1)(a) and 11(D)(1)(b) do not apply, \$5,000.
- (2) An alternative collection program must use an annual report form approved by the Department which will require, at a minimum, reporting of the following:
 - (a) Transporters and markets used during the operation of the alternative collection program during the previous calendar year and the amounts of packaging material sent to each market;
 - (b) For regional alternative collection programs as defined in Section 11(B)(1)(d), each producers county-level data on sales in or into the State;
 - (c) The amount of each packaging material type collected at each collection location;
 - (d) The tons attributed to each producer;
 - (e) Any interruption to collection services; and
 - (f) A list of material that does not qualify as packaging material due to its origin that is managed with the packaging material collected

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through the alternative collection program and the method used to ensure such material is not counted as packaging material.

- (3) The Department will review annual reports and confirm or adjust attributed tons to be credited to producers by May 31st of each calendar year.

E. Timeframes for Correcting Deficiencies.

- (1) If the Department identifies a deficiency that can be resolved by providing additional or corrected documentation, the Department will allow 60 days to correct the deficiency.
- (2) If the Department identifies a deficiency that will require a change to collection or processing operations, the Department will allow 90 days to correct the deficiency.
- (3) If the Department identifies a deficiency that is a threat to environmental health and safety, the above timeframes do not apply, and the Department may require immediate action.

If deficiencies are not adequately resolved within the specified timeframe, the Department may nullify tons collected through the program or discontinue the program's approval.

12. Requirements for Participating Municipalities. To participate in the program, a municipality must do the following.

- A. Recycling.** Participating municipalities must provide for the collection and recycling of all packaging material types that have been designated readily recyclable for at least the two prior calendar years; and
- B. Reporting.** Participating municipalities must report to the SO by March 31st of each calendar year on a form approved by the Department. A facility or organization that meets the definition of a participating municipality may participate on behalf of the cities, towns, townships, villages, and plantations for which it manages packaging material if the cities, towns, townships, villages, and plantations do not incur packaging material management costs additional to those paid to the facility or

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organization. Any facility or organization can provide information on behalf of participating municipalities. The following information must be reported by or on behalf of a participating municipality:

- (1) The information calculated in accordance with Section 17; and
- (2) For a participating municipality that has a current complete cost study, the information required in the cost reporting plan provided by the SO.

This may require that the participating municipality obtain information from its contractors when a service agreement is for the management of a mixed packaging stream or more than one packaging stream or it includes additional services, such as the management of waste streams that do not contain packaging material. In such cases the contractor can submit information directly to the SO or to the municipality.

C. Cost studies and audits. Participating municipalities must participate in cost studies and audits as required by Sections 3(D), 14, and 17.

This may require that the participating municipality obtain participation from its contractors when a service agreement is for the management of a mixed packaging stream or more than one packaging stream or it includes additional services, such as the management of waste streams that do not contain packaging material.

For the purposes of Sections 12(B) and 12(C), information identified by the submitter as proprietary upon submittal is managed in accordance with 38 M.R.S. § 1310-B.

13. Defining Municipal Reimbursement. The SO must reimburse participating municipalities by October 1st of each calendar year and prior to dispersing funds for investments. The SO must determine the tons of each packaging material type recycled, reused, or composted in accordance with Section 17 and the median per ton costs in accordance with Section 16.

Participating municipalities must be reimbursed for material management operations as follows:

- A.** For a packaging material type that is readily recyclable, a participating municipality must be reimbursed for each ton recycled at the median per ton cost of recycling this

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packaging material type as realized by similar municipalities during the previous calendar year.

- B.** For reusable packaging material, a participating municipality must be reimbursed for each ton reused at the median per ton cost of reusing the packaging material type, as figured in accordance with Section 16. If there is no median per ton cost of reusing the packaging material type, a participating municipality must be reimbursed in accordance with Section 13(A) for reusable packaging material that is designated readily recyclable and in accordance with Section 13(D) for reusable packaging material that is not designated as readily recyclable.
- C.** For compostable packaging material, a participating municipality must be reimbursed for each ton composted at the median per ton cost of composting the packaging material type, as figured in accordance with Section 16. If there is no median per ton cost of composting the packaging material type, a participating municipality must be reimbursed in accordance with Section 13(A) for compostable packaging material that is designated readily recyclable and in accordance with Section 13(D) for compostable packaging material that is not designated as readily recyclable.
- D.** For a packaging material type that is not readily recyclable, a participating municipality must be reimbursed for each ton recycled at the median per ton cost of recycling readily recyclable packaging material as realized by similar municipalities during the previous calendar year. The median per ton cost of recycling readily recyclable packaging material is the median of the reimbursements to be paid for each ton of readily recyclable packaging material being reimbursed to participating municipalities.

14. Obtaining Information for Municipal Reimbursement. The SO must determine the per ton cost of recycling, reusing, or composting each packaging material type by each participating municipality with a current complete cost study; and the tons of each packaging material type recycled, reused, or composted by each participating municipality. The SO will obtain this information through annual reporting, cost studies, and representative audits.

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A. Cost Studies. The method for each of the following cost studies is defined in the SO's plan.

- (1) Complete cost study. During a complete cost study with a participating municipality, the SO must study operations to create a cost reporting plan that identifies the cost information that must be reported on an annual basis, obtain additional information required to determine the per ton costs, and identify the management pathway used for each packaging material type. In addition, the SO must provide guidance on what changes to the management of packaging streams require notification, in accordance with Section 14(A)(2).

The SO must conduct complete cost studies for 12 participating municipalities on an annual basis. The SO must choose the participating municipalities with which it conducts complete cost studies based on the following criteria, which are listed in order of priority.

- (a) For each group of similar municipalities, the SO must conduct complete cost studies for three participating municipalities that need a complete study cost. A participating municipality needs a complete cost study if it has never had a complete cost study, has not had a complete cost study in the past 15 years, or had its most recent cost study nullified in accordance with Section 14(A)(2)(c).

If there are more than three participating municipalities that need a complete cost study in a group of similar municipalities, the SO must randomly choose three participating municipalities that need a complete cost study from the group of similar municipalities. If there are more than four groups of similar municipalities with at least three participating municipalities that need a complete cost study, the SO must divide the 12 cost studies among groups of similar municipalities to equalize, to the extent possible, the number of current complete cost studies in each group.

- (b) The SO must conduct complete cost studies for participating municipalities that have not had a complete cost study. If the number of

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participating municipalities that have not had a complete cost study is more than the number of cost studies the SO has left to conduct, the SO must randomly choose participating municipalities that have not had a complete cost study.

- (c) The SO must conduct complete cost studies for participating municipalities with the oldest complete cost studies.
- (2) Follow-up cost study. A follow-up cost study is not a complete cost study. It targets information in a complete cost study that, as a result of a relevant change, is expected to change one or more participating municipalities' costs of managing one or more packaging material types by at least 10% or leaves one or more participating municipalities unable to complete their cost reporting plans.

When a participating municipality or any affiliated contractor makes a change to the management of a packaging stream that requires notification, it must contact the SO within 30 days of making the change. The SO must determine whether a follow-up cost study is necessary. After a follow-up cost study, the SO updates the cost reporting plans of participating municipalities, as necessary.

Changes to the management of a packaging stream that might require notification are: changes to staffing levels or employee duties; changes to collection, transportation, or processing procedures, including changes to sets of accepted materials or changes to commodities managed; new equipment, new uses of equipment, discontinued use of equipment; capital investment into existing equipment; new structures, new uses of structures, discontinued use of structures; capital investment into existing structures; changes to transportation routes; and changes to uses of energy affecting total metered energy.

- (a) If a change requiring a follow-up cost study affects the complete cost studies of less than 33% of participating municipalities in a group of similar municipalities, the SO will immediately nullify the complete cost studies for the affected participating municipalities and conduct a follow-

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up cost study to update the complete cost studies for affected participating municipalities such that they remain without a current complete cost study for no more than one reporting cycle.

- (b) If a change requiring a follow-up cost study affects the complete cost studies of 33% or more of participating municipalities in a group of similar municipalities, participating municipalities must report to the SO on operations prior to the change in accordance with their existing cost reporting plans. The SO must conduct a follow-up cost study to update the complete cost studies for affected participating municipalities. The participating municipalities must report on operations for the remainder of the calendar year in accordance with updated cost reporting plans.
- (c) If a follow-up cost study will require resources comparable to those required to conduct a complete cost study, the SO must nullify the existing complete cost study for the participating municipality. A new cost study for the participating municipality should be conducted in accordance with Section 14(A)(1).

B. Representative Audits. The method for each of the following representative audits is defined in the SO's plan.

(1) Types:

- (a) To convert the tons of a commodity managed to the tons of packaging material types recycled, reused, or composted, the SO must determine the weight of each packaging material type present in one ton of each commodity. The SO must also determine the weight of contamination present in one ton of the commodity.
- (b) To allocate costs associated with the management of a mixed packaging stream, the SO must determine the volume of the materials that will make up a commodity relative to the volume of all materials included in the mixed packaging stream's set of accepted materials.

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- (c) To allocate costs associated with the simultaneous management of more than one packaging stream, the SO must determine the volume of one ton of a given set of accepted materials.
- (d) In cases where multiple mixed packaging streams with different sets of accepted materials contribute to a single commodity, the SO must determine for each mixed packaging stream the percent by weight of the materials that will make up the commodity relative to the weight of all materials included in the mixed packaging stream's set of accepted materials.

(2) Requirements:

- (a) Initial auditing and frequency. Auditing must be conducted as part of a complete cost study with a participating municipality or during a follow-up cost study resulting from changes to sets of accepted materials or changes to commodities managed whenever there are not applicable results for a commodity or set of accepted materials managed by the participating municipality that were obtained during the last five years.
- (b) Sampling. When required for a cost study, samples must be collected once between September 1st and May 31st and once between June 1st and August 31st, but not during any week immediately following a Maine State or Federal holiday. Seasonal results from a participating municipality must be averaged to obtain one audit result.
 - (i) If a follow-up cost study requires auditing of a new packaging stream and there is not enough time to collect samples before September 1st of that year, results from a single season audit can be used for the upcoming reporting year and the audit can be finished in the following year.
- (c) Accuracy. For each site and season, samples must be collected and analyzed until results estimate the value sought with 90% confidence, $\pm 5\%$.

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- (i) For audits conducted in accordance with Section 14(B)(1)(a), samples only need to be collected and analyzed until results estimate the value of the most prevalent packaging material type with 90% confidence, $\pm 5\%$. If a packaging material type that is included in a commodity or set of accepted materials is not found during an audit, it must be presumed to be present at 1%.
 - (d) Applicability. If audit results from the first two participating municipalities audited are not significantly different, all samples must be averaged, and the results must be applied to all participating municipalities managing the commodity or set of accepted materials. If audit results from the first two participating municipalities audited are significantly different, each audit result must be assumed to be site-specific and cost studies for all participating municipalities managing that commodity or set of accepted materials must include a site-specific audit.
 - (e) Categorization. Packaging material types that are indistinguishable from one another at the time of an audit should be categorized together, as described in the SO's plan.
- (3) Site-specific audits. When a participating municipality suspects audit results being used to characterize its material are not applicable to its current operations, it may request a site-specific audit.
- (a) Process. A request for a site-specific audit must be submitted to the Department in writing, and must describe differences of processing equipment, sorting processes, or staffing levels relative to the facility where representative auditing was conducted and explain how these differences affect the parameter measured. Alternatively, the request may reference an audit result from the facility in question that is significantly different from the results being used to characterize its material currently. If the Department determines that the participating municipality should have a site-specific audit, the Department will approve the request and direct the SO to conduct a site-specific audit for the participating municipality within one year of the approval of the request. If the SO's auditing schedule does not allow for the completion of a site-specific

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audit within one year, the Department may delay approval of the request for up to 12 months.

- (b) **Determination.** If the Department determines the participating municipality has different processing equipment, sorting processes, or staffing levels that could affect the parameters estimated by representative auditing, or the alternative audit results referenced in the participating municipality's request are applicable and unbiased, the Department will direct the SO to conduct a site-specific audit.
- (c) **Applicability.** Site-specific audit results must be used for any participating municipality sharing the same distinctions described in the approved request. After performing a site-specific audit, the SO must identify any participating municipalities that share these distinctions and apply the audit results accordingly.

15. Similar Municipalities.

A. Defining Similar Municipalities. Participating municipalities are grouped into similar municipalities as follows:

- (1) Participating municipalities located in Lincoln, Penobscot, Knox, Kennebec, Cumberland, York, Androscoggin, and Sagadahoc counties made up of one or more city, town, township, or plantation with an average population of less than 6,500.
- (2) Participating municipalities located in Oxford, Franklin, Washington, Aroostook, Piscataquis, Waldo, Hancock, and Somerset counties made up of one or more city, town, township, or plantation with an average population of less than 1,200.
- (3) Participating municipalities located in Lincoln, Penobscot, Knox, Kennebec, Cumberland, York, Androscoggin, and Sagadahoc counties made up of one or more city, town, township, or plantation with an average population of at least 6,500.

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- (4) Participating municipalities located in Oxford, Franklin, Washington, Aroostook, Piscataquis, Waldo, Hancock, and Somerset counties made up of one or more city, town, township, or plantation with an average population of at least 1,200.

B. Annual Determination of Similar Municipalities. In the SO's annual report, it will include lists of participating municipalities as grouped into similar municipalities during the prior calendar year. Any participating municipality that disagrees with its grouping must contact the Department prior to its annual reporting to request an adjustment and provide justification for the request. After consultation with the municipality, if the Department finds the municipality has not been grouped in accordance with Section 15(A), the Department may direct the SO to move a municipality to a different group of similar municipalities prior to June 1st of the calendar year in which the request is made. The move will take effect the following calendar year.

C. Process for Defining Similar Municipalities. The Department will review the grouping of participating municipalities into similar municipalities on an annual basis. The SO must provide an ongoing mechanism for participating municipalities to suggest changes to the definition of similar municipalities and must provide these suggestions, and any of its own suggestions, in an appendix to its annual report. After considering the suggestions in the SO's annual report and written comments received in response to those suggestions, the Department may initiate rulemaking to adjust the definition of similar municipalities in Section 15(A).

16. Determining the Median Per Ton Cost of Recycling, Reusing, and Composting for Each Packaging Material Type. As data allow, the SO must determine a median per ton cost of recycling, reusing, and composting each packaging material type for each group of similar municipalities. Only costs from participating municipalities that have a current complete cost study are used to determine the median per ton cost.

A. Determining the Per Ton Cost for a Packaging Material Type from Commodity Cost. For each participating municipality that has a current complete cost study, the SO must determine the per ton cost of recycling, reusing, and composting each packaging material type for recycling, reusing, or composting as the per ton cost of the commodity with which it was sold.

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B. Determining the Median Per Ton Cost. The SO must determine a median per ton cost of managing a packaging material type through a management pathway when there are at least three data points to inform the determination.

- (1) If there are at least three current complete cost studies measuring the per ton cost of a management pathway for a packaging material type, as realized by municipalities in a group of similar municipalities, the SO must determine the median per ton cost using only the current complete cost studies from this group of similar municipalities.
- (2) If there are not three current complete cost studies measuring the per ton cost of a management pathway for a packaging material type, as realized by municipalities in a group of similar municipalities, the SO must determine the median per ton cost using the per ton costs realized by all participating municipalities with current complete cost studies.
- (3) If there are not three current complete cost studies measuring the per ton cost of a management pathway for a packaging material type, the SO will not determine the median per ton cost for this management pathway for this packaging material type.

17. Calculating the Tons of Packaging Material Recycled, Reused, or Composted. For each participating municipality, the SO must annually calculate the tons of each packaging material type recycled, reused or composted. A participating municipality must annually report the information necessary to determine the tons of each packaging material type recycled, reused, or composted.

A. Assigning Tons When a Packaging Stream is Managed Jointly by Participating Municipalities.

- (1) When assigning tons among participating municipalities that jointly manage material, and for which municipal-specific tonnages are unknown, the tons are assigned assuming that each municipality's residents contributed equally on a per capita basis, unless the municipalities agree to a different way of assigning the tons managed. Each participating municipality must annually

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report the tons managed jointly, along with a list of the municipalities with which it jointly managed material, and the method to be used for assigning the tons managed.

- (2) When assigning tons to a participating municipality that manages material with non-municipal entities, and for which municipal-specific tonnages are unknown, the participating municipality must estimate the tons it managed. The participating municipality must annually report the estimated tons managed and the method used to arrive at the estimate. During a complete cost study for a participating municipality that manages material with a non-municipal entity, the SO must review the estimation method and provide an updated method in cases where accuracy can be improved without the use of additional equipment or changes to operations.

B. Determining the Tons of a Commodity Managed by a Participating Municipality.

- (1) In cases where a participating municipality manages a commodity or commodity stream, the tons managed by the participating municipality are equal to the tons sent.
- (2) In cases where a participating municipality contributes a mixed packaging stream to a receiving facility, the method for determining the tons of a commodity managed depends on whether all contributions to the commodity consist of the same set of accepted materials.
 - (a) When all contributions consist of the same set of accepted materials, the tons sent to market by the receiving facility that are managed by a participating municipality are proportional to the percent of the stream of accepted materials received that are contributed by the participating municipality. The participating municipality must annually report the total tons of the set of accepted materials received by the receiving facility, the tons it contributed, and the tons of the commodity sent to a market by the receiving facility.

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- (b) When not all contributions consist of the same set of accepted materials, the SO must first determine the contribution of each set of accepted materials to the tons of the commodity sent to a market by the receiving facility and must then assign the tons that result from the set of accepted materials to a participating municipality, as described in Section 17(B)(2)(a). The contribution of each set of accepted materials to the tons sent to a market by the receiving facility is figured as follows:
- (i) The contribution of a commodity stream is the total weight of that stream; and
 - (ii) When a receiving facility receives multiple sets of accepted materials that are mixed packaging streams that contribute to a commodity, the percent of each set's contribution must be figured as follows:
 - 1. The SO must determine the percent by weight of the materials intended for a commodity in each set of accepted materials in accordance with Section 14(B)(1)(d). If there is not a complete audit result, the participating municipality must obtain and report an estimate from the receiving facility;
 - 2. A participating municipality must obtain and report the total weight of each set of accepted materials received by a receiving facility. The SO must multiply the total weight of each set of accepted materials received by the percent determined in accordance with Section 17(B)(2)(b)(ii)(1) to determine the expected contribution of the set;
 - 3. The SO must divide the expected contribution of a set of accepted materials by the total expected contributions from all sets to determine the percent of the tons of a commodity sent that were contributed by the set; and
 - 4. The participating municipality must obtain and report the total tons of the commodity sent by the receiving facility.

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The SO must multiply the percent determined in accordance with Section 17(B)(2)(b)(ii)(3) by the total tons of the commodity sent by the receiving facility to determine the tons that resulted from that set.

- (3) In cases where material that does not qualify as packaging material because it did not leave a point of sale with, and was not received by, the consumer of a product contributes to a commodity, a commodity stream, or a mixed packaging stream managed by a participating municipality, the participating municipality must develop a method of estimating the material that is not packaging material due to its origin and deduct its weight from the tons managed.
- (a) A participating municipality must assume material received from a retailer did not leave a point of sale with, and was not received by, the consumer of a product and does not qualify as packaging material.
- (b) A participating municipality must assume material received from other sources is packaging material.

For material that does not qualify as packaging material, the participating municipality must annually report the source, the estimated tons received, and the method used to obtain this estimate. During a complete cost study with a participating municipality that receives material that does not qualify as packaging material due to its origin, the SO must review the estimation method and provide an updated method in cases where accuracy can be improved without the use of additional equipment or changes to operations.

C. Defining the Point at Which Packaging Material is Counted as Recycled, Reused, or Composted. In order for packaging material to be counted as recycled, reused, or composted, it must be tracked, as described in Section 17(B), until:

- (1) It is part of a commodity for which the set of accepted materials share a base material; or
- (2) It is received by a facility at which the packaging material type's base material is a target material.

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D. Determining the Tons of Each Packaging Material Type Recycled, Reused, or Composted. The SO must calculate the tons of each packaging material type recycled, reused, or composted by each participating municipality, as follows.

- (1) For each commodity with a set of accepted materials that share a base material, the SO must multiply the tons managed by the weight of the packaging material type in one ton of the commodity.
- (2) For each commodity with a set of accepted materials that do not share a base material, the SO must multiply the tons managed and sent to a receiving facility at which the packaging material type's base material is a target material by the weight of the packaging material type in one ton of the commodity.

The tons of a commodity managed is determined in accordance with Sections 17(A) and 17(B), and the weight of the packaging material type in one ton of a commodity is determined in accordance with Section 14(B)(1)(a).

18. Investments.

A. Investment Criteria. Investment proposals must meet the criteria below to be eligible for approval from the Department. The primary objective of an investment must be to improve the management of packaging material. Proposals that improve the management of material other than packaging material must be supported with a commensurate source of outside funding that reflects the extent to which the investment will be used to manage material other than packaging material.

- (1) The proposal must be either:
 - (a) A proven solution for improving the management of packaging material;
or
 - (b) A pilot project that is designed to collect information on its efficiency as a solution for improving the management of packaging material.

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- (2) In the case of a proposal for new infrastructure, the proposal must designate the infrastructure as the property of a municipality, group of municipalities, tribe, school administrative unit, career and technical region set forth in 20-A M.R.S. § 8451, nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3), or a business that realized less than \$5,000,000 in total gross revenue during the prior calendar year. These conditions do not apply to proposals for investments in education, improvements to existing infrastructure, or major investment needs.
- (3) An investment proposal must be offered by either:
- (a) An entity that has demonstrated responsible use of, and completed reporting requirements for, any previous program funding received; or
 - (b) An entity that does not meet the criteria set forth in Section 18(A)(3)(a) but has not received funding in 10 years and includes a detailed plan for responsible use of funding and completion of reporting requirements.
- (4) The proposal must be offered by an entity that has the capacity to execute the project or identifies third-party subcontractors with that capacity, as shown by relevant experience.
- (5) In the case of proposals for infrastructure, operation of the proposed infrastructure must be sustainable, as shown by projected revenues, or other ongoing funding sources equal to, or in excess of, the funding required for operation. This criterion does not apply to pilot projects as described in Section 18(A)(1)(b).
- (6) In the case of proposals for infrastructure that are not pilot projects as described in Section 18(A)(1)(b), the proposal must fulfill an unmet need and be cost effective, as shown by:
- (a) An analysis of current resources and throughput demonstrating that current resources are insufficient or expected to be so; or

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- (b) An analysis of realized municipal costs showing that current resources are not cost competitive; and
- (c) For proposals for infrastructure that facilitate recycling, the investment will not result in a total cost of more than \$2,000 per ton, expressed in January 2021 dollars and adjusted according to the U.S. Bureau of Labor Statistics' Consumer Price Index.

B. Acceptance of Investment Proposals. Investment proposals must be accepted by the SO using a form designed by the SO and approved by the Department.

- (1) The SO must provide a mechanism for accepting investment proposals from interested entities on an ongoing basis.
- (2) The Department may work on the development of an investment proposal and may issue an informal request for investment proposals to meet an identified need.

C. Annual Evaluation of Investment Proposals.

- (1) Public comment. The SO must include summaries of the investment proposals it received during the previous calendar year in its annual report and provide a mechanism for requesting and receiving a full investment proposal.

If an investment proposal contains proprietary information identified as proprietary by the submitter, it will be managed as confidential information in accordance with 38 M.R.S. § 1310-B.

A summary must include the submitter's name, the purpose of the investment, a brief description of the work plan and proposed services, and the cost of the investment proposal.

For a period of 30 days after the Department posts the SO's annual report, the Department will accept comments on the investment proposal summaries.

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Following the comment period, the Department will share comments received on its website.

- (2) Stakeholder input. During annual reporting, the SO must include an optional survey that asks participating municipalities, their affiliated contractors, producers, and their authorized third-party reporters to comment on and rank investment proposals included in its annual report. Comments and ranking received via this mechanism must be submitted to the Department with investment proposals by the second Monday in July of each calendar year.
- (3) SO evaluation. The SO must provide an evaluation of each investment proposal that includes a determination on whether the proposal meets each investment criterion. The SO must include its evaluations when it submits investment proposals to the Department by the second Monday in July of each calendar year.
- (4) Department evaluation. The Department will evaluate each investment proposal to determine whether the proposal meets each investment criterion.
- (5) SO and Department discussion. The Department will meet with the SO to discuss investment proposals including any differences between the SO's and Department's evaluations of investment criteria and the SO's priorities for investment. If after discussion, the SO's and the Department's evaluations of an investment proposal still differ, the Department's decision will determine an investment proposal's eligibility for funding.

D. Major Investment Needs. In addition to accepting investment proposals in accordance with Section 18(B), the SO must collaborate with the Department to identify major investment needs and plan for their funding using a savings plan.

- (1) The SO or the Department may propose a major investment need. When proposing a major investment need, the SO or the Department will identify the investment need, estimate its cost, and project the year in which the major investment need should be funded. A proposed major investment need must be included with investment proposals in the SO's annual report as described

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in Section 18(C)(1) and in the optional survey described in Section 18(C)(2). The SO and the Department will consider comments provided, discuss, and make adjustments as appropriate before adding a major investment need to the savings plan.

- (2) The SO must develop and maintain a savings plan to fund major investment needs. The SO must review the savings plan on an annual basis to suggest allocation of new funds to major investment needs and reallocation of funds among major investment needs to accommodate any changes to priorities or timelines that arose during the previous calendar year. Initial creation of and any changes to the savings plan require Department approval.
- (3) The SO must maintain a copy of the savings plan on its website. The savings plan must include the list of major investment needs, their estimated costs, and the years in which the SO plans to fund them.
- (4) Three years prior to a projected investment year, the Department will issue an informal request for investment proposals to meet the identified major investment need. Proposals to fulfill a major investment need must follow the process described in Section 18(C) and investment proposals that will designate new infrastructure as property of a municipality, group of municipalities, tribe, school administrative unit, or career and technical region set forth in 20-A M.R.S. § 8451 must be preferred. A pilot project cannot fulfill a major investment need. If no such qualified investment proposals are received in time to be included in one of the SO's next two annual reports, investment proposals designating new infrastructure as property of a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3), or a business that realized less than \$5,000,000 in total gross revenue during the prior calendar year are eligible. If no qualified investment proposal is received in time to be included in the SO's next annual report, any qualified investment proposal may be eligible, regardless of ownership of new infrastructure.

The SO must submit and the Department may approve an investment proposal that meets the identified need and the investment criteria. The SO

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may disperse partial funding for use before all requisite state and local permits are obtained, as described in the approved investment proposal, but the SO must not disperse remaining funding until after all relevant permitting has been completed.

- (5) If an investment proposal meeting the identified major investment need and the investment criteria is not received by the year following that in which the SO planned to fully fund a major investment need, the SO may suggest reallocation of funding to other major investment needs listed in the savings plan.

E. Available Funding.

- (1) Defining available funding. The fees paid by producers that are not used for reimbursements to participating municipalities, the SO's operational costs, or the administrative fee to the Department are available to fund investments.
 - (a) The Department will not approve, and the SO must not disperse, funding for investments such that expenditures would leave the stewardship fund with less than the required funding for two years of municipal reimbursements, as estimated from the prior year's expenditures; the SO's operational costs; and the administrative fee to the Department.
 - (b) The Department will approve investment proposals such that any increases to funding in response to unmet goals required by Section 3(A) are met.
 - (c) After the requirements of Sections 18(E)(1)(a) and 18(E)(1)(b) are met, the SO must suggest, and the Department may approve, allocation of funding in accordance with the savings plan.
 - (d) After allocating funding in accordance with the savings plan, the Department may approve, and, if approved, the SO must disperse funding for investment proposals that do not fulfill a major investment need.
- (2) Preferences for funding. When available funding does not allow for the approval of all proposals that meet the investment criteria, proposals must be

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prioritized based on the funding preferences set forth in 38 M.R.S. § 2146(11)(C), in the order in which those preferences are listed.

F. Department Approval of Investment Proposals. The Department will approve or deny each investment proposal within 90 days of its submittal by the SO. Following approval, the SO must enter into a contract with a recipient that requires:

- (1) The funding be used for its intended purpose and specifying that any funding not so used must be refunded to the SO in proportion to its misuse. Infrastructure sold or used for another purpose prior to its full depreciation is an example of funding not being used for its intended purpose; and,
- (2) The recipient to report data to the SO and the Department, in accordance with its proposal and the Department's approval.

G. Communication of Investments. The SO's annual report must include any reported results from ongoing pilot projects and pilot projects completed during the prior calendar year.

19. Packaging Stewardship Fund Cap.

A. Excess Funding. Each year after municipal reporting and before invoicing producers, the SO must determine whether there is excess funding in the packaging stewardship fund.

- (1) There is no excess funding during the first five years.
- (2) After five years, the packaging stewardship fund has excess funding if after setting aside funding for municipal reimbursement for the prior calendar year, there is more than enough funding to cover:
 - (a) The sum of expenditures realized over the past five years, other than expenditures on major investment needs; and
 - (b) The amount being saved for major investment needs according to the savings plan.

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(3) After 10 years, the packaging stewardship fund has excess funding if after setting aside funding for municipal reimbursement for the prior calendar year, there is more than enough funding to cover:

- (a) The sum of expenditures realized over the past three years, other than expenditures on major investment needs; and
- (b) The amount being saved for major investment needs according to the savings plan.

B. Reducing Amount Owed. If producer reporting demonstrates that full payment will result in excess funding, the SO must calculate the expected excess funding, divide that amount by the number of tons produced during the prior program year, and reduce the amount owed for each ton of packaging material produced accordingly. If a producer's per ton cost is such that this reduction is more than the amount owed, the excess must be used to lower or eliminate the producer's annual registration fee but must not be refunded to the producer.

20. Exemptions. Any packaging material exempted from 38 M.R.S. § 2146 by Department rulemaking is exempt from this Chapter.

21. Requests for a Waiver from the Post-Consumer Recycled Material Incentive Fee. A producer of packaging material that, because of its association with a federally regulated product, is required to meet specific content or construction standards that may preclude or significantly diminish the producer's ability to meet the post-consumer recycled material goals in Section 3(A)(9) may request a waiver from the post-consumer recycled material incentive fee in Section 10(A)(3)(a) on a form provided by the Department.

A. The Burden of Proof Rests with the Requester. The requester must affirmatively demonstrate, to the satisfaction of the Commissioner, that compliance with the post-consumer material content goal cannot be met.

B. Scope of Review. In determining if a request should be approved, the Commissioner will consider all relevant evidence to that effect, such as:

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- (1) The extent to which the packaging material type currently used can incorporate post-consumer recycled material;
- (2) The extent to which the federally regulated product is offered for sale in alternative packaging material that allows for the incorporation of post-consumer recycled material;
- (3) Whether purity or construction standards prohibit the use of packaging material that incorporates post-consumer recycled material; and
- (4) The administrative burden of adjusting packaging material, as required by federal law or regulation.

C. Submissions.

- (1) A requester seeking a waiver must submit the following information:
 - (a) A reference to and description of the federal law or regulation that precludes or significantly diminishes the producer's ability to meet the post-consumer recycled material goal;
 - (b) The scope of products to which the circumstances described in the request applies;
 - (c) A description of past, current, and planned future efforts to identify or develop packaging material that meets post-consumer recycled material goals;
 - (d) A list of the individuals, companies, and resources consulted during the search for alternative packaging material; and
 - (e) A description of all potential alternatives that have been identified and considered and the specific basis for concluding that each potential alternative is not feasible for the intended use.

-POSTING DRAFT-**(2) Accepting waiver requests.**

- (a) The SO must provide an ongoing mechanism for accepting waiver requests.
- (b) The SO must include any waiver requests received prior to December 1st in an appendix dedicated to post-consumer recycled material incentive fee waivers in its next published annual report.

D. Review Process.

- (1) Comment period. The Department will accept written comments on waiver requests for a period of 30 days following the publication of the SO's annual report.
- (2) Decision. The Department will review waiver requests in accordance with this Section, and the Commissioner will approve or deny a request within 90 days of the end of the public comment period.
 - (a) Approvals can include relevant conditions;
 - (b) Approvals will waive the post-consumer recycled material incentive fee for all packaging material to which the circumstances described in, and affirmatively demonstrated by, the waiver request apply; and
 - (c) The Commissioner can waive the post-consumer recycled material incentive fee for the packaging material for a period of up to five years beginning with the packaging material produced during the calendar year of approval and reported during the following calendar year.
- (3) Applicability.
 - (a) Upon approving a waiver request, the Department will require the SO to inform all registered producers of the approval; provide a mechanism that allows producers to identify any packaging material they produce that

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they believe falls under the waiver and the product with which it is associated; create a list of packaging material for which the post-consumer recycled material incentive fee should be waived, as indicated by producer response; and include this list in the next annual report in the appendix referenced in Section 21(C)(2)(b).

- (b) The Department will accept public comment for a period of 30 days before making any adjustments and finalizing the list. The Department will provide the finalized list to the SO by April 1st of that year.

AUTHORITY: 38 M.R.S. § 2146; 38 M.R.S. § 341-D(1-C)

EFFECTIVE DATE:

APPENDIX A
PACKAGING MATERIAL TYPES LIST