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Chapter 428: Stewardship Program for Packaging

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Chapter 428: Stewardship Program for Packaging

SUMMARY: This Chapter 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.
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 methods of managing solid waste that are prioritized above land disposal of waste and below composting of biodegradable waste according to the State’s Solid Waste Management Hierarchy pursuant to 38 M.R.S. §2101.
 - B. **Alternative Management Stream.** “Alternative management stream” means packaging material and other material managed together prior to alternative management.
 - C. **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 composite.
 - D. **Brick Code.** “Brick code” means the seven-digit code used in Global Product Classification established by GS1.
 - E. **Commodity.** “Commodity” means processed material that meets an industry specification. Compost streams and reuse streams are commodities.
 - F. **Commodity Stream.** “Commodity stream” means packaging material and other materials managed together and sold as a commodity.

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- G. Composting.** “Composting” as the same meaning as in Chapter 06-096 C.M.R. ch. 400, § 1(EE).
- H. Compostable Packaging Material.** “Compostable packaging material” means packaging material that is designed for direct food contact and is capable of undergoing composting.
- I. Compost Stream.** “Compost stream” means compostable packaging material and other material that is managed together, prior to being composted.
- J. Contamination.** “Contamination” means the material not included in a set of accepted materials, yet present in a packaging stream.
- K. Contractor.** “Contractor” means an entity paid to assist in or otherwise perform the management of a packaging stream.
- L. Consumer.** “Consumer” means the entity that uses a product, including an entity that uses a product to create a new product. A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.
- M. Disposal.** “Disposal” means the final disposition of material in a manner that does not constitute reuse, composting, or recycling. Disposal includes any placement of material in the permitted area of a landfill.
- N. 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 constitute a disposal stream. Disposal streams do not undergo further processing to remove materials for recycling, reuse, or composting.
- O. Durable Product.** “Durable product” means a product that wears out over an expected lifespan of at least 5 years. A durable product is not depleted through use.
- 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, and otherwise prepare a packaging stream for reuse, recycling, composting, or disposal. Manage includes educational initiatives to facilitate collection and litter pick-up.

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- 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 capital assets.
- T. Packaging Stream.** “Packaging stream” means packaging material and other material that is managed together. Commodity streams, disposal streams, reuse streams, compost streams, mixed packaging streams, and alternative management 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 take any of the actions by which a person meets the definition of “producer” in Section 2(W).
- 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 subsection (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).

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In cases where 2 people qualify as the producer for the same packaging material under Sections 2(V)(1) and 2(V)(2), if one producer has fulfilled the reporting and payment requirements of Sections 8, 9, and 10 of this rule, both have complied with all applicable requirements of 38 M.R.S. §2146 with respect to that packaging material.

- X. Product.** “Product” means an economic good that is marketed or sold. 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. Material bought at the point of sale for use containing, protecting, delivering, or presenting other purchases is not a product; it is packaging material.
- Y. Refill.** “Refill” means an operation by which a person fills his or her own container.
- Z. Retailer.** “Retailer” means a person who sells, or provides a platform for the sale of, a product to a consumer.
- AA. Reusable Packaging Material.** “Reusable packaging material” means packaging material that is designed to be reused several times for the same purpose and without a change in format after initial use, the actual return and reuse of which is made possible by adequate logistics and infrastructure as part of a reuse system.
- BB. Reuse Stream.** “Reuse stream” means reusable packaging material and other material that is managed together, prior to being reused.
- CC. Set of Accepted Materials.** “Set of accepted materials” means materials in a packaging stream, as allowed by the receiving facility.
- DD. Significantly Different.** “Significantly different” means, with respect to audit results, that one group of samples does not fall within the specified confidence interval of another.
- EE. Target Material.** “Target material” means a packaging material type 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;

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- (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.

FF. Toxics. “Toxics” means priority chemicals listed by the Department in accordance with *Toxic chemicals in children’s products*, 38 M.R.S. §§1691-1699B; PFAS and phthalates as defined under *Reduction of toxics in packaging*, 32 M.R.S. §§1731-1738; and priority chemicals listed by the Department in accordance with *Toxic chemicals in food packaging*, 32 M.R.S. §§1741-1747.

3. Assessment

A. Program Goals. The Stewardship Organization (SO) must use the program goals to assess program performance and adjust investments and producer payments, as follows. These goals are not used to measure compliance.

- (1) Participation. This goal measures the percent of cities, towns, townships, villages, and plantations, in each group of similar municipalities, as defined 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 no less than 100% from 2040 onward. If a participation goal is unmet, the SO must contact municipalities 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. 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 increase proposed investment in education about the program.
- (2) Collection. This goal measures the percent of readily recyclable packaging material, as defined in Appendix A and in 38 M.R.S. §2146(13)(A)(2), expected to be managed by participating municipalities that is collected and sent for recycling by participating municipalities. The percent should be no less than 60% from 2030 to 2034, no less than 80% from 2035 to 2039, and no less than 90% from 2040 onward. If a collection goal is unmet, the SO must study the reasons why it might be unmet, including looking at base material specific collection rates and variation in collection rates across participating municipalities, and include a summary of the study along with suggested steps to improve collection rates in the following year’s annual report.

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Note: 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 municipal populations of the participating municipalities.

- (3) Reduction. This goal measures the total units and total weight of packaging material reported by producers, collectively, per capita, relative to the first reporting year. The total units and total weight should be reduced by no less than 20% from 2030 to 2039, 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 study why the goal went unmet. This study must include an evaluation of the way in which existing reductions have been made, the percent of producers contributing to that reduction, and where reuse and refill systems could be expanded. The SO must include in the following year's annual report a summary of this study and its recommendations to accelerate reduction. The SO must also propose or facilitate the proposal of investments in reuse and refill systems if its study identifies market demand for expansion of such programs.
- (4) Reuse. This goal measures the percent by weight of total packaging material reported by producers that is managed for reuse by 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 study why the goal went unmet, including through an evaluation of the way in which existing reuse is occurring, the percent of producers using reusable packaging material types, the return rates of existing reuse systems, and where reuse systems could be expanded. The SO must include in the following year's annual report a summary of this study and its recommendations to accelerate reuse. The SO must also propose or facilitate the proposal of investments in reuse if its study identifies room for establishment or expansion of such programs.
- (5) 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 ton cost applied to packaging material that is not readily recyclable must increase in accordance with Section 10(A)(2)(d). The SO must identify the most common packaging material types that are not readily recyclable, evaluate any options for making them readily recyclable, and include a summary of this information in the following year's annual report. The SO must also propose, or facilitate the proposal of, investments to enable

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recycling of the most common packaging material types that are not readily recyclable if recycling options are available.

- (6) Base material-specific recycling. This goal measures the percent of packaging material types of each base material expected to be managed by participating municipalities that are recycled. 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 collection rates and the lowest ratios of the weights reported in accordance with Sections 9(B)(5) and 9(B)(6) and provide a summary of this evaluation and any suggestions for improved outcomes in the following year's annual report.

Note: The amount of each packaging material type recycled is the total amount of the packaging material type sent for recycling by participating municipalities and alternative collection programs multiplied by the ratio of the weights reported in accordance with Sections 9(B)(5) and 9(B)(6).

- (7) Overall recycling rate. This goal measures the percent of packaging material expected to be managed by participating municipalities that is recycled. 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 which packaging material types have the lowest collection rates and the lowest ratios of the weights reported in accordance with Sections 9(B)(5) and 9(B)(6) and provide a summary of this evaluation and any suggestions for improved outcomes in the following year's annual report.
- (8) 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 reported by producers that is post-consumer recycled material for each base material. 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, the SO must study why the goal might be unmet, including an evaluation of the availability of post-consumer recycled material, its price relative to virgin material, and its fitness for use. The SO must provide a summary of this evaluation and any recommendations on how to mitigate factors limiting the use of post-consumer recycled material in the following year's annual report.

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(9) Litter. This goal measures the percent of litter that comprised of packaging material, as measured in units. 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 comprised of packaging material in each litter audit conducted should be less than 15%. If a litter goal is unmet, the SO must identify any packaging material types that are continually among the most commonly identified littered items, 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.

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 any changes to the program or rules.

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:

- (a) Information on investments
 - (i) The total amount of funding available for investment; and
 - (ii) The savings plan created and maintained in accordance to Section 17(D)(2).
- (b) Producer benchmarking
 - (i) The percent of each brand's packaging material that is readily recyclable, reusable, meets post-consumer recycled material content goals, able to be certified as containing no intentionally added toxics, and absent any label or marking wrongly indicating the use of a material management pathway that is not available throughout the State as paid in accordance with Sections 10(A)(2) and 10(A)(3); and
 - (ii) A summary of progress toward reuse and refill including information on brands for which reuse and refill options are available in the State as well as brands available in other places other than in the State.

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(c) Municipal benchmarking

- (i) The cost per ton by packaging material type, tons collected per capita, tons recycled per capita, tons composted per capita, and tons reused per capita for each participating municipality;
- (ii) 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
- (iii) Suggested best practices gleaned from analysis of data collected through the program, including practices associated with higher than average tons collected per capita, practices associated with higher than expected per capita recycling and reuse given tons collected, and practices that provide lower management costs while maintaining higher than average levels of per capita recycling and reuse.

(d) An evaluation of program performance.

(e) Justification for any increase in realized program operating cost.

C. Statewide Recycling Needs Assessment. The SO must conduct a statewide recycling needs assessment 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:

- (a) Identification 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.
- (b) For each municipality or regional group of municipalities that do not provide for the collection and recycling of all readily recyclable packaging material, the assessment must identify the infrastructure necessary to:
 - (i) Collect single or dual stream recycling; and
 - (ii) Collect readily recyclable packaging material separately by base material.

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- (c) If requested by the Department, an assessment comparable to that described in Sections 3(C)(a) and 3(C)(b) for additional packaging materials that are not readily recyclable.
- (d) Identification of regional investment needs to efficiently manage packaging material collected in single or dual stream recycling and separately by base material and an estimated range of the cost of those investment needs.
- (e) 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 audit methodology included in the SO's plan must describe the location of these audits and the manner of classifying materials 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 3 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 purposes of this audit, a reusable or compostable packaging material type must be accounted for with its most similar packaging material type.
- (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 audit methodology included in the SO's plan must describe the manner of classifying material for which the packaging material type or brand cannot be identified.

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- (1) The SO must conduct one litter audit every year.
- (2) During annual reporting, participating municipalities may suggest one location of up to 2 acres or up to 5 miles on both sides of a roadside for a litter audit. The SO must randomly select a location to audit from those suggested. In years when no locations have been suggested, the SO must choose a location in accordance with the audit methodology included in its plan.
- (3) The SO must collect and categorize all litter:
 - (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, to the extent possible.
- (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.
- (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.

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- (3) Packaging material containing toxics, or packaging material used to contain products that, regardless of the consumer's generator status, are hazardous in accordance with Chapter 850, 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.

For a packaging material type composed of more than one material, the Department will identify cases where the separation and recycling of more than one material is routine in the recycling market.

C. Identifying the Primary Management Pathway. When defining a packaging material type, the Department will designate it as readily recyclable, reusable, or compostable. Criteria for these designations are in Sections 3(C)(1), 2(AA), and 2(H), respectively.

- (1) Readily recyclable criteria. Packaging material types that meet the following criteria are eligible to be listed as readily recyclable.
 - (a) Marketability. A packaging material type is marketable if:
 - (i) There are at least 2 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; and
 - (ii) 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.
 - (b) Throughput. A packaging material type has sufficient throughput if it is common enough in the packaging stream to warrant separate sortation, or it can be

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included in a commodity used to market packaging material without increasing the contamination in that commodity.

- (c) 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 recycled by a recycling market.
- (2) For a reusable packaging material type, the Department will not designate it as readily recyclable. Rather, the Department will identify the nonreusable, non-compostable packaging material type with the lowest packaging material type fee, according to annual reporting from the prior calendar year, with which the reusable packaging material type can be managed. The Department will then designate this packaging material type as the most similar packaging material type.
- (3) For a compostable packaging material type, the Department will not designate it as readily recyclable. Rather, it will identify the nonreusable, non-compostable packaging material type with the lowest packaging material type fee, according to annual reporting from the prior calendar year, with which the compostable packaging material type can be managed. The Department will then designate this packaging material type as the most similar packaging material type.

5. Process for Defining the Packaging Material Types List

- A. Initial Packaging Material Types List.** The Department will enter into routine technical rulemaking, including solicitation of public comments, to create the initial packaging material types list within 180 days of the effective date of this rule.
- 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 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.
 - (2) In its annual report to the Department, the SO must identify packaging material types that might be redefined. The report must include an appendix of suggested changes to the list and any supporting documentation provided by stakeholders during the prior calendar year.

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- (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 enter into 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 report during the calendar year in which they are made.

C. Transitional Period.

- (1) When a packaging material type is initially designated as readily recyclable or the designation changes from not readily recyclable to readily recyclable:
 - (a) Producer payments made during the calendar year in which the change occurs must reflect the packaging materials type's designation as not readily recyclable during the prior calendar year. For 2 calendar years following that in which the change occurs, a producer's payment must reflect the per ton cost of managing the readily recyclable packaging material type with the highest management cost. Beginning the third calendar year following that in which the change occurs, a producer's payment must reflect actual per ton cost of managing the packaging material type; and
 - (b) For the purposes of municipal reimbursement and participation requirements, the packaging material type is designated as not readily recyclable until the second calendar year following that in which the change occurs.
- (2) When a packaging material type is initially designated as not readily recyclable or the designation changes from readily recyclable to not readily recyclable:
 - (a) Producer payments made during the calendar year in which the change occurs must reflect the packaging materials type's status as readily recyclable during the prior calendar year. For 2 calendar years following that in which the change occurs, a producer's payment must reflect the per ton cost of managing the readily recyclable packaging material type with the highest management cost. Beginning the third calendar year following that in which the change occurs, a producer's payment must reflect the fact that the packaging material type is not readily recyclable; and

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- (b) Municipal reimbursement and participation requirements for the calendar year prior to that in which the change occurs will reflect the packaging material type's designation as readily recyclable during that time. Beginning the calendar year in which the change occurs, municipal reimbursement and participation requirements must reflect the fact that the packaging material type is not readily recyclable.

6. Defining Reimbursable Cost by Packaging Stream. The reimbursable costs for management of each packaging stream and the methods for their determination are defined below.

- A. Labor Cost.** The reimbursable 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 is the sum of the reimbursable labor costs for each employee.

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

The percent time is the time an employee spends managing a packaging stream divided by the total time worked, including administrative tasks, collecting, sorting, baling, transporting, and other activities used in the management of a packaging stream. It must be estimated and documented by the SO during a cost study and account for seasonal variation.

- B. Equipment Cost.** The reimbursable cost for a 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 reimbursable 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.

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(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 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 reimbursable cost for a 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.

Note: Examples of structures include containers, warehouses, buildings, trailers, roll-off containers, etc.

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

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

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- (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 multiplied by the total compensation and benefits paid. Maintenance cost must be reported annually.
- (3) The reimbursable 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 reimbursable 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 reimbursable 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.

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- (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.
- (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 reimbursable profit and overhead paid is the difference between the amount paid to a contractor and the sum of the reimbursable costs realized by that contractor.

7. Calculation of the Per Ton Cost by Alternative Management Stream or Commodity.

Expressed as a formula, for an alternative management stream or 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 (E) below should be calculated with respect to the costs of the participating municipality. In cases where an agreement between a participating municipality and its contractor or between a contractor and a subcontractor is for the management of more than one packaging stream or includes additional services, Sections 7(A) through (E) below must be calculated for the contractor or subcontractor in order to assign the contractor cost/ton to an alternative management stream or 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 specific alternative management stream or 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 an alternative management stream or commodity, i.e., management activities that are devoted solely to the management of a single alternative management stream or commodity.

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- (2) The tons managed are the tons of a commodity sent to a market or the tons of an alternative management stream sent for alternative management, as determined in Section 16.

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 an alternative management stream or commodity. The costs specific to the management of an alternative management stream or 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 according to 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 an alternative management stream or 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 an alternative management stream or 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 an alternative management stream or commodity, as determined in accordance with Sections 14(B)(1)(c) and 16, 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 16. When applicable, the percent allocation to an alternative management stream or commodity within a mixed packaging stream must then be allocated in accordance with Section 7(B)(2)(a).

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- (3) The tons managed are the tons of a commodity sent to a market or the tons of an alternative management stream sent for alternative management, as determined in Section 16.

C. Shared Transportation. The shared transportation cost is the labor, equipment, structure, and energy cost realized by a participating municipality for transporting a mixed packaging stream or simultaneously transporting more than one packaging stream, as allocated to an alternative management stream or 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 according to Section 6, with the percent time and the percent use measured with respect to shared transportation.
- (2) The percent allocation to an alternative management stream or 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 an alternative management stream or 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 alternative management streams or 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.

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- (3) The tons managed are the tons of a commodity sent to a market or the tons of an alternative management stream sent for alternative management, as determined in Section 16.

D. Contractor Cost. The contractor cost is the cost of service agreement, as allocated to an alternative management stream or commodity. The contractor cost includes the amount paid to or received by an entity that provided a packaging stream.

- (1) When a service agreement is for the management of one commodity stream or alternative management stream, the contractor cost per ton is the contractor cost divided by the tons of a commodity sent to a market or the tons of an alternative management stream sent for alternative management in accordance with Section 16. The contractor cost must be reported annually to the SO.
- (2) When a service agreement is for the management of one mixed packaging stream, the contractor cost per ton is the contractor cost divided by the tons of a commodity sent to a market or the tons of an alternative management stream sent for alternative management and adjusted for revenue received. To adjust for revenue received, the SO must add the average revenue received per ton managed through the service agreement (as calculated using revenue received from each resulting commodity or alternative management stream and the tons of each that result from the amount of the mixed packaging stream sent, according to Section 16(B)(2)), and then subtract the amount received per ton for the commodity or alternative management stream. The contractor cost, the revenue received for each commodity or alternative management stream, and the information necessary for the calculations in Section 16(B)(2) must be reported annually to the SO.
- (3) When a service agreement includes additional services beyond the management of packaging streams, such as the management of a waste stream that does not include packaging material, the SO must determine the alternative management stream or commodity cost per ton realized by the contractor. For the municipality to participate, the contractor must participate in the municipality's cost study and report annually in accordance with the resulting cost reporting plan.
- (4) When a service agreement is for the management of more than one packaging stream but does not include additional services, the SO must determine the alternative management stream or commodity cost per ton realized by the contractor. For the municipality to participate, the contractor must participate in the municipality's cost study and report annually in accordance with the resulting cost reporting plan. When a service agreement does not include additional services, the profit and overhead paid must be figured.

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Expressed as a formula, profit and overhead paid/ton = (contractor cost – realized cost)/tons managed under a service agreement

- (a) The realized cost is the sum of the cost of managing all alternative management streams and commodities covered by the service agreement.
- (b) The tons managed under the service agreement is the sum of tons of a commodity sent to a market, an alternative management stream sent for alternative management, and the tons of other disposal streams disposed, as determined in Section 16, for all commodities, alternative management streams, and other disposal streams managed under the service agreement.

E. Revenue Per Ton. The revenue per ton is revenue received by a participating municipality for packaging material sold. The revenue received for a commodity or alternative management stream is divided by the tons of the commodity sent to a market or tons of an alternative management stream sent for alternative management, as determined in Section 16. The revenue per ton must be reported annually to the SO.

8. Start-Up Registration and Payment

- 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.
- B. Start-Up Registration Fee.** Producers that are producing packaging material at the time this rule goes into effect must pay a start-up registration fee, as invoiced by the SO. This fee will be in accordance with the SO's approved proposal to the Department. The SO must not charge a producer more than the producer's estimated annual registration fee for the first calendar year for which participating municipalities are reimbursed, as determined by the SO in accordance with its contract, unless the producer agrees to a higher fee.
- C. First Calendar Year Invoice.** The SO must subtract the producer's start-up registration fee from fees owed when it invoices a producer for the first calendar year for which participating municipalities are reimbursed.

9. Ongoing Producer Registration

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- A. Registration.** A producer must provide the following information to the SO when it begins producing packaging material and must update the SO within 60 days of this information changing.
- (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 its 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. Packaging material details must be reported for each packaging material type produced, by brand, as follows:
- (1) Brand, or in cases where one producer adds packaging material to another producer's product for distribution directly to a consumer, a description of the sales pathway resulting in the addition of packaging material;
 - (2) The UPCs; or the brick codes in cases where all products with a given brick code are associated with the same packaging material type;
 - (3) Units produced and a short description of the methodology used to determine this number. Producers or reporters must assume packaging material is received by the consumer of the product unless the material is never intended to be received by the consumer of the product or the producer has a system in place to account for packaging that is not received by, or is reliably collected from, the consumer of the product, in which case that packaging material is not packaging material and should not be reported;
 - (4) Packaging material type;

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- (5) The total weight of the base material or, in cases where separation and recycling of more than one material is determined to be routine as designated in Appendix A, the sum of the weights of the materials that are routinely separated and recycled, and a short description of the methodology used to determine this number;
- (6) Total weight and a short description of the methodology used to determine this number;
- (7) Total weight of post-consumer recycled material;
- (8) Whether the producer can certify the absence of intentionally added toxics;
- (9) Whether the producer provides or is aware of refill options for the product sold in the packaging material, either in the State or elsewhere;
- (10) Whether the producer provides or is aware of reuse systems for the packaging material in the State or elsewhere; and
- (11) Whether the packaging material is labeled:
 - (a) Recyclable;
 - (b) Reusable; or
 - (c) Compostable.

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

- (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)(7) through 9(B)(10) to the SO by May 31st of each calendar year.

-POSTING DRAFT-**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. A producer may estimate the total weight produced and the weight required under Section 9(B)(5) by grouping products packaged using the same packaging material type or types and estimating the weights of each packaging material type as detailed below:

- (a) To estimate weights reported in Sections 9(B)(5) and 9(B)(6) for a group of products, a producer must:
- (i) Group products packaged using the same packaging material type or types;
 - (ii) Create subgroups of products with similar dimensions;
 - (iii) Randomly select a product from each subgroup and weigh its packaging material type or types and any parts of each packaging material type that are composed of base materials that will be recycled in accordance with Appendix A;
 - (iv) For each packaging material type and for the weight of each packaging material type that is composed of base materials that will be recycled,
 1. Multiply the weight measured for each subgroup by the number of units of that subgroup produced; and
 2. Add weights for all subgroups.
- (b) Producers using this option must report why they are unable to obtain sufficient information regarding the details of the packaging material they produce; and
- (c) Producers 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.

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- (2) Estimating units produced. Producers that cannot obtain information on the number of units produced must estimate the number of units produced as follows:
 - (a) Producers must estimate the number of units produced for each distribution network that may sell, offer for sale, or distribute for sale 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) Producers must report, for each distribution network, the distributor, the distribution area, and the number of total units distributed through that network.

E. Auditing

- (1) The SO must conduct quality assurance on producer reporting as described in its approved plan to the Department. Significant discrepancies for which an adequate explanation cannot be provided may result in an audit, as described in the SO's approved plan. Any audits conducted in accordance with this section can be subtracted from the random audits required under Section 9(E)(2).
- (2) On an annual basis, the SO must randomly select a number of brands to audit, as described in its approved plan, 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 certifications of no intentionally added toxics from material suppliers; 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 as soon as possible following producer reporting, and a producer must pay fees owed in accordance with this Section by August 1st of each calendar year. The SO may apply late fees in accordance with its approved plan to the Department.

A. Fees for Producers Other Than Low-Volume Producers

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- (1) Annual registration fee. A producer other than a low-volume producer must pay an 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. 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 and that are received prior to the reporting deadline.
- (2) Packaging material type fees.
 - (a) For a reusable packaging material type.
 - (i) For a reusable packaging material type for which program data shows that at least 85% of the units produced during the prior calendar year were managed for reuse, the producer must pay, per ton produced, the average per ton cost for managing the packaging material type for reuse during the prior calendar year.

Note: Program data shows that at least 85% of the units produced were managed for reuse if participating municipalities, collectively, manage 85% of their per capita shares of the packaging material type produced for reuse, or for reusable packaging types that are managed at least in part through an alternative collection program, that participating municipalities and the alternative collection program collected 85% of the units produced.

A municipality's per capita share is determined by dividing the statewide total tons of the packaging material type, as reported sent into Maine by producers, by the State's population and then multiplying by the municipal population.

The average per ton cost is the total amount to be reimbursed to municipalities for managing the packaging material type for reuse during the prior calendar year divided by the tons of the packaging material type reused by participating municipalities.

- (ii) For a reusable packaging material type for which program data shows less than 85% of the units produced during the prior calendar

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year were managed for reuse, the producer must pay, per ton produced, the packaging material type fee of the most similar packaging material type, as designated in Appendix A.

- (b) For a compostable packaging material type.
- (i) For a compostable packaging material type for which program data shows that at least 85% of the units produced during the prior calendar year were managed through composting, the producer must pay, per ton produced, the average per ton cost for managing the packaging material type through composting during the prior calendar year.

Note: Program data show that at least 85% of the units produced were managed through composting if participating municipalities, collectively, manage 85% of their per capita shares of the packaging material type produced through composting, or for compostable packaging types that are managed at least in part through an alternative collection program, that participating municipalities and the alternative collection program collected 85% of the units produced.

A municipality's per capita share is determined by dividing the statewide total tons of the packaging material type, as reported sent into Maine by producers, by the State's population and then multiplying by the municipal population.

The average per ton cost is the total amount to be reimbursed to municipalities for managing the packaging material type through composting during the prior calendar year divided by the tons of the packaging material type composted by participating municipalities.

- (ii) For a compostable packaging material type for which program data show less than 85% of the units produced during the prior calendar year were managed through composting, the producer must pay, per ton produced, the packaging material type fee of the most similar packaging material type, as designated in Appendix A.

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- (c) For a packaging material type that is readily recyclable, the producer must pay, per ton produced, the average per ton cost for recycling 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 the packaging material type during the prior calendar year divided by the tons of the packaging material type recycled by participating municipalities.
- (d) For a packaging material type that is not readily recyclable, reusable, or compostable—or for reusable and compostable packaging material types for which the producer must pay the packaging material type fee of a most similar packaging material type that is not readily recyclable—the producer must pay, per ton produced, 2 times the average per ton cost of the most expensive readily recyclable material during the prior calendar year. If goals for the percent of readily recyclable packaging material established under Section 3(A)(5) are unmet, the producer must pay 3, 4, or 5 times the average per ton cost, as detailed below.
- (i) From 2031 to 2040, if the goal in Section 3(A)(5) is unmet, the producer must pay 3 times the per ton cost of managing the most expensive readily recyclable material.
- (ii) From 2041 to 2050,
1. If less than 50% of the total packaging material reported the prior calendar year was readily recyclable, reusable, or compostable, a producer must pay 4 times the per ton cost of managing the most expensive readily recyclable material; or
 2. If at least 50%, but less than 75%, of the total packaging material reported the prior calendar year was readily recyclable, reusable, or compostable, a producer must pay 3 times the per ton cost of managing the most expensive readily recyclable material.
- (iii) From 2051 onward, producers must pay 5 times the per ton cost of managing the most expensive readily recyclable material.
- (3) Incentive fees. Beginning the third calendar year in which producers report under this Chapter, producers must pay the following incentive fees, as applicable. These fees are relative, and additional, to packaging material type fees.

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- (a) Post-consumer recycled material fee. For a packaging material type that is not exempt from the post-consumer recycled material fee, and for which a producer does not meet post-consumer material goals, as defined in Section 3(A)(8), 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 incentive 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 certify 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 packaging material type that consistently represents one of the top 5 packaging material types collected during a litter audit for 3 consecutive calendar years, a producer must pay a per ton fee equal to 1% of the packaging material type 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. A plan and price for an anti-litter campaign must be provided to the SO at the time of producer payment.
- (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 recyclable, a material management pathway is available if the packaging material is readily recyclable or if there are alternative collection programs managing the packaging material type in every county.
 - (ii) For packaging material labeled compostable, a material management pathway is available if there are alternative collection programs managing the packaging material in every county.
 - (iii) For packaging material labeled reusable, a material management pathway is available if there are alternative collection programs

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managing the packaging material type in every county in which it is sold.

(e) Weight not recycled. For packaging material that will not be recycled, as measured by the difference between the reporting points in Sections 9(B)(6) and 9(B)(5), a producer must pay a per ton fee equal to 30% of the packaging material type fee. This fee is only applied to:

- (i) A packaging material type designated readily recyclable; and
- (ii) A packaging material type that is reusable or compostable, for which less than 85% of the units produced during the prior calendar year were managed for reuse or composting, and for which the most similar packaging material type is 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.

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 producer fees to account for 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.

Note: 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 to be a low-volume producer.

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

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- (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 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 producer's packaging material type fees 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).

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

11. Alternative Collection Programs

- A. 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.
- B. Convenient Collection.** 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.
 - (1) New alternative collection programs. An alternative collection 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.
 - (2) Reuse. An alternative collection program collecting packaging material for reuse is considered convenient if it is collecting packaging material in every county in which

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the product that is contained, protected, delivered, presented, or distributed using reusable packaging material is sold.

- (3) 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 2 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.
- (4) Credit for regional programs. For calendar years in which a producer or group of producers has county-level data on sales into the State, the producer or group of producers may operate an alternative collection program and receive credit for as many tons of a packaging material type it collects in a county as are used for the containment, protection, delivery, presentation or distribution of the product sold in that packaging material type, including products sold over the Internet, at the time the product leaves the point of sale with or is received by the consumer of the product in that county.

C. Attributing Tons Managed. 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 must 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 tons, by packaging material type, and the associated contact information, on its website.

In its annual report, an alternative collection program must indicate the producer or producers to which the tons it collected should be attributed.

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

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- (1) The annual report must be accompanied by an annual fee of:
 - (a) \$10,000; or
 - (b) For a program managing only reusable packaging material types, \$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) Amount of each packaging material type collected at each collection location;
 - (c) Any interruption to collection services; and
 - (d) A list of material that does not qualify as packaging material due to its origin that is managed with the packaging material collected 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 by the SO to producers.

E. Timeframes for Correcting Deficiencies.

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

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

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- 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 2 prior calendar years; and
- B. Reporting.** Participating municipalities must report the following to the SO by March 31st on a form approved by the Department:
- (1) The information defined in Section 16; 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 municipality obtain information from its contractors when a service agreement is for the management of 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 provide 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 14 and 16.

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

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

- 13. Defining Municipal Reimbursement.** A participating municipality must be reimbursed for the cost of managing packaging material that is reused, recycled, or composted and for the cost of managing packaging material that is not readily recyclable through alternative management. The SO must determine the tons managed in accordance with Section 16 and the per ton cost realized by similar municipalities in accordance with Section 15.
- A.** For a packaging material type that is readily recyclable, a participating municipality must be reimbursed for each ton managed for recycling at the median per ton cost of managing this packaging material type realized by similar municipalities for recycling during the previous calendar year.
 - B.** For a packaging material type that is reusable, and for which the most similar packaging material type is readily recyclable, a participating municipality must be reimbursed for each

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- ton managed for reuse or recycling at the median per ton cost of managing this packaging material type realized by similar municipalities for reuse or recycling during the previous calendar year.
- C. For a packaging material type that is compostable, and for which the most similar packaging material type is readily recyclable, a participating municipality must be reimbursed for each ton managed for composting or recycling at the median per ton cost of managing this packaging material type realized by similar municipalities for composting or recycling during the previous calendar year.
 - D. For a packaging material type that is not readily recyclable and managed through alternative management, a participating municipality must be reimbursed for each ton managed using alternative management at the median per ton cost realized by similar municipalities for managing material using alternative management in this manner during the previous calendar year.
 - E. For packaging materials managed for recycling, and where a packaging material type is either not readily recyclable, or is reusable or compostable but where the most similar packaging material type is not readily recyclable, a participating municipality must be reimbursed at 2 times the median per ton cost realized by similar municipalities for managing material through alternative management during the previous calendar year.
- 14. Obtaining Information for Municipal Reimbursement.** The SO must determine the per ton cost of managing each packaging material type for reuse, composting, or recycling, the total tons of each packaging material type managed for reuse, composting, or recycling by each participating municipality, and the per ton cost of managing packaging material that is not readily recyclable through alternative management. The SO will obtain this information through annual reporting, cost studies, and representative audits.
- A. **Cost Studies.** The method for each of the following cost studies is defined in the proposal provided by the SO in accordance with 38 M.R.S. §2146(3) and approved by the Department.
 - (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 and obtain additional information required to determine the per ton costs. The SO must perform complete cost studies for 12 participating municipalities on an annual basis unless there are fewer than 12 participating municipalities that need a complete cost study, in which case it must perform complete cost studies for all participating municipalities that need one. A participating municipality needs a complete cost study if it has not had

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one or if its complete cost study is not current. A complete cost study is not current if it was nullified because of a relevant change to operations or if it is 15 or more years old. 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 3 participating municipalities without a current complete cost study. If there are more than 3 participating municipalities that need a complete cost study in a group of similar municipalities, the SO must randomly choose 3 participating municipalities that need a complete cost study from the group of similar municipalities. If there are more than 4 groups of similar municipalities with at least 3 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 data points available to determine median cost to 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 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 complete cost study.
 - (c) The SO must conduct complete cost studies for participating municipalities that have had a complete cost study, but do not have a current complete cost study. If the number of participating municipalities that need a current complete cost study is greater than the number of cost studies the SO has left to conduct, the SO must randomly choose participating municipalities that need a current complete cost study.
- (2) Follow-up cost study. When a participating municipality or any affiliated contractor makes a relevant change to the management of a packaging stream, it must contact the SO to provide that information within 30 days of making the change. The SO must determine whether a follow-up cost study is necessary to update information in a participating municipality's complete cost study and existing cost reporting plan. A follow-up cost study targets information in a complete cost study that, as a result of the relevant change, is expected to change a participating municipality's cost of managing one or more packaging material types by at least 10%. After a follow-up cost study, the SO updates a participating municipality's cost reporting plan, as necessary.

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Relevant changes to the management of a packaging stream 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 produced; 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 additional uses of energy affecting total metered energy.

- (a) If a relevant 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-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 relevant 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 relevant change in accordance with their existing cost reporting plans. The SO must conduct a follow-up cost study with the participating municipalities to update the complete cost study and the participating municipalities must report on operations for the remainder of the calendar year in accordance with updated cost reporting plans.

B. Representative Audits. The method for each of the following representative audits is defined in the proposal provided by the SO in accordance with 38 M.R.S. §2146(3) and approved by the Department.

(1) Types:

- (a) To convert the tons of a commodity sent to a market to the tons of packaging material types recycled, reused, or composted, the SO must determine the percent by weight of each packaging material type present in each type of 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 an

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alternative management stream or commodity relative to the volume of all materials included in the mixed packaging stream's set of accepted materials.

- (c) To allocate costs associated with the simultaneous management of more than one packaging stream, the SO must determine the volume of 1 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 the percent by weight of the materials that will make up the alternative management stream or commodity relative to the weight of all materials included in each 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 produced 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 5 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. The SO must provide the location for audits where sampling is required in its proposal provided to and approved by the Department in accordance with 38 M.R.S. §2146(3).
 - (c) Accuracy. For each site and season, samples shall be collected and analyzed until results estimate the value sought with 90% confidence, $\pm 5\%$.
 - (d) Applicability. If audit results from the first 2 participating municipalities audited are not significantly different, all samples must be averaged and the results applied to all participating municipalities managing the commodity or set of accepted materials. If audit results from the first 2 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.

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- (e) Categorization. Packaging material types that are indistinguishable from one another at the time of an audit should be categorized together. Reusable and compostable packaging material types in material that is managed for sale to a recycling market should be categorized with their most similar packaging material type.
- (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. The 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 perform 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 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. Determining the Median Cost for Similar Municipalities

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

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- (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 municipal 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 municipal 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 municipal population of at least 6,500.
 - (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 municipal population of at least 1,200.
- B. Annual Determination of Similar Municipalities.** In the SO's annual report, it will include lists of similar municipalities as grouped by the prior calendar year. Any participating municipality that disagrees with its grouping must contact the Department prior to its annual reporting requesting an adjustment and providing 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.
- C. Determining the Median Cost of Managing Each Packaging Material Type for Recycling, Reuse, or Composting and the Median Cost of Managing the Alternative Management Stream through Alternative Management.** For similar municipalities, the SO must determine the median cost of managing each packaging material type for recycling, reuse, or composting and the median cost of managing an alternative management stream through alternative management. Only costs from participating municipalities that have a current complete cost study may be used to determine the median cost.
- (1) For each participating municipality that has a current complete cost study, the SO must calculate the cost of managing each alternative management stream through alternative management and the cost of managing each commodity.
 - (2) For each participating municipality that has a current complete cost study, the SO must calculate the per ton cost of managing a packaging material type for recycling,

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reuse, or composting as the per ton cost of managing the commodity with which it was sold.

- (3) In cases where a participating municipality with a current complete cost study produces more than one alternative management stream containing packaging material for alternative management, the SO must determine the average cost of managing the alternative management stream. The SO determines the average cost by multiplying the cost per ton for each alternative management stream by the number of tons of that stream managed through alternative management, summing those costs, and then dividing by the total tons to determine the average cost per ton. This average cost per ton is the participating municipality's cost of managing its alternative management stream through alternative management.

D. 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 in 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 undertake rulemaking to adjust the definition of similar municipalities in Section 15(A).

16. Calculating the Tons Managed. A participating municipality must annually report the information necessary to determine the tons of each packaging material type managed for recycling, reuse, or composting. For participating municipalities that are managing one or more alternative management streams, that municipality must report the information necessary to determine tons of each alternative management stream.

A. Managing a Packaging Stream Jointly.

- (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 split. Each participating municipality must annually report, or ensure reporting of, 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.

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- (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, or ensure reporting of, 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 Sent to a Market or the Tons of an Alternative Management Stream Sent for Alternative Management by a Participating Municipality.

- (1) In cases where a participating municipality sends a commodity or commodity stream to a market or an alternative management stream for alternative management, the tons assigned to 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 sent to a market or the tons of an alternative management stream sent for alternative management depends on whether all contributions to the commodity or alternative management stream 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 or for alternative management by the receiving facility that are assigned to 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 or the tons of the alternative management stream sent for alternative management by the receiving facility.
 - (b) When not all contributions consist of the same set of accepted materials, the reporting entity must first determine the contribution of each set of accepted materials to the tons sent to a market or for alternative management by the receiving facility and must then assign the tons of the alternative management stream or commodity that result from the set of accepted materials to a participating municipality. The contribution of each set of accepted materials to

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the tons sent to a market or for alternative management by the receiving facility is figured as follows:

- (i) The contribution of a commodity stream or alternative management 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 and that contribute to a commodity or an alternative management stream, 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 an alternative management stream or 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 figured in Section 16(B)(2)(b)(ii)(1) to determine the expected contribution of the set;
 3. The SO must divide the expected contribution from a set of accepted materials by the total expected contributions from all sets to determine the percent of the tons of a commodity or an alternative management stream sent that were contributed by the set; and
 4. The participating municipality must obtain and report the total tons sent by the receiving facility. The SO must multiply the percent figured in Section 16(B)(2)(b)(ii)(3) by the total tons of the commodity or alternative management stream sent by the receiving facility by to determine the tons sent that resulted from that set.
- (c) 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, a mixed packaging stream, or

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an alternative management 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 sent to a receiving facility.

- (i) 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.
- (ii) 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. Determining the Tons of Each Packaging Material Type.

- (1) The SO must calculate the tons of each packaging material type recycled, reused, or composted by each participating municipality by multiplying:
 - (a) The tons of a commodity sent to a receiving facility at which the packaging material type is a target material by, or on behalf of, a participating municipality, in accordance with Sections 16(A) and 16(B), by the weight of the packaging material type in one ton of the commodity, as determined in accordance with Sections 14(B)(1)(a); and
 - (b) For commodities not targeted by a receiving facility, with a set of accepted materials that share a base material, the tons of a commodity sent by, or on behalf of, a participating municipality, in accordance with Sections 16(A) and 16(B), by the weight of the packaging material type in one ton of the commodity, as determined in accordance with Sections 14(B)(1)(a).
- (2) The SO must calculate the tons of packaging material types that are not readily recyclable sent for alternative management by each participating municipality by

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multiplying the tons of an alternative management stream sent by, or on behalf of, a participating municipality, in accordance with Section 16(A) and 16(B), by the weight of packaging material types that are not readily recyclable in one ton of the disposal stream, as determined in accordance with Section 3(D).

17. Investment

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) 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 defined 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 or improvements to existing infrastructure.
- (2) 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 17(A)(2)(a) but has not received funding in 10 years and includes a detailed plan for responsible use of funding and completion of reporting requirements.
- (3) 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.
- (4) 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.

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- (5) In the case of proposals for infrastructure, 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 are expected to be so; and
 - (b) For proposals for infrastructure that facilitate recycling, an analysis of throughput demonstrating that for every \$2,000 of investment, expressed in January 2021 dollars and adjusted according to the U.S. Bureau of Labor Statistics' Consumer Price Index, there will be at least one ton of material recycled.
- (6) 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 efficacy as a solution for improving the management of packaging material.

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.

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

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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. 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 receiving investment proposals in accordance with Section 17(B), the Department will collaborate with the SO 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 shall be included with investment proposals in the SO's annual report as described in Section 17(C)(1) and in the

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optional survey described in Section 17(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 17(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 defined in 20-A MRS §8451 must be preferred. If no such qualified investment proposals are received in time to be included in one of the SO's next 2 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.

The SO must submit and the Department may approve an investment proposal that meets the identified need and the investment criteria, but the funding for an investment proposal must not be dispersed by the SO until the full amount required has been saved. The SO 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 in which the SO planned to fully fund a major investment need, the SO may suggest reallocation of funding to other investments, including other major investment needs listed in the savings plan. Any

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funding not reallocated to other major investment needs within 3 years must be made available for all program needs.

E. Available Funding.

- (1) Defining available funding.
 - (a) The Department will not approve, and the SO must not disperse, funding for investments such that expenditure would leave the stewardship fund with less than the required funding for 2 years of municipal reimbursements and program administration, as estimated from the prior year's expenditures.
 - (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 17(E)(1)(a) and 17(E)(1)(b) are met, the SO must suggest, and the Department may approve, allocation of funding to previously identified major investment needs in accordance with the savings plan.
 - (d) After allocating funding to previously identified major investment needs, the Department may approve, and the SO must disperse or allocate to the savings plan, funding for new investment proposals.
- (2) Preferences for funding. When available funding does not allow for the approval of all proposals that meet the investment criteria, proposals must be prioritized based on the funding preferences identified in 38 M.R.S. §2146(11)(C).

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.

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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.

18. Packaging Stewardship Fund Cap

A. Excess Funding. The packaging stewardship fund has excess funding if there is more than enough funding to cover:

- (1) The sum of expenditures realized over the past 5 years, other than expenditures on major investment needs; and
- (2) The amount being saved for major investment needs according to the savings plan.

B. Reducing Amount Owed. If producer reporting shows 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.

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

20. Petitions for Exemption 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 content goals in Section 3(A)(8) may apply for an exemption 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 Applicant. The applicant 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 an exemption should be granted, the Commissioner shall consider all relevant evidence to that effect, such as:

- (1) The extent to which the packaging material type currently used can incorporate post-consumer recycled material;

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- (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. An applicant seeking exemption must submit the following information:

- (1) 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;
- (2) The scope of products to which the circumstances described in the request applies;
- (3) A description of past, current, and planned future efforts to identify or develop packaging material that meets post-consumer recycled material goals;
- (4) A list of the individuals, companies, and resources consulted during the search for alternative packaging material; and
- (5) 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.

D. Review process.

- (1) Public notice. Upon receiving an application for exemption, the Department will provide notice to any person who has notified the Department of their interest in exemptions to the post-consumer recycled material incentive fee. The Department will accept written comment on the exemption application for a period of 30 days.
- (2) Decision. The Commissioner will approve or deny an application within 90 days.
 - (a) Approvals can include relevant conditions;

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- (b) Approvals will exempt all packaging material to which the circumstances described in, and affirmatively demonstrated by, the exemption application apply; and
- (c) The Commissioner can exempt the packaging material for a period of up to 5 years.
- (3) Department decisions on exemption requests can be appealed to the Board of Environmental Protection.
- (4) Applicability. Upon approving an exemption request, the Department will direct the SO to inform all registered producers of the approval, provide a mechanism that allows producers to identify any packaging material they produce that they believe falls under the exemption and the product with which it is associated, and create a list of exempted packaging material, as indicated by producer response, for review by the Department. The Department will review this list and make it available for public comment for a period of 30 days before finalizing the list and providing it to the SO for final implementation.

AUTHORITY: 38 M.R.S. § 2146

EFFECTIVE DATE:

**APPENDIX A
PACKAGING MATERIAL TYPES LIST**