

Exemptions

At this time, no additional producer exemptions are being proposed under subparagraph (13)(D).

Scope Definitions

Additions and clarifications to statutory definitions. New language is underlined.

- A. **Consumer.** “Consumer” means the entity that uses a product in a residential location, including an entity that uses a product to create a new product.
- A consumer is not an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.
- B. **Durable product.** “Durable product” means a product that wears out over an average lifespan of at least 5 years. A durable product is not depleted through use. The Department may also designate a product as a “durable product” even if the product does otherwise not meet this definition, upon the petition and provision of justification from the SO or a producer.
- C. **Perishable food.** “Perishable food” means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions, including, but not limited to, fresh, processed, or refrigerated meats, poultry, seafood, and dairy products; bakery products ~~baked at the point of retail sale~~; eggs in their shells; fresh fruits and vegetables; and frozen wild blueberries. Perishable food does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.
- D. **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; or
 - (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 is branded by a person that meets the requirements of subsection (1) and has no physical presence in the United States.
 - (3) Adds packaging material to another producer’s product for distribution directly to a consumer.

Producer includes a low-volume producer 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).

- E. **Product.** “Product” means an economic good, or the delivery of an economic good, that is marketed or sold.

Product includes material sold in bulk for use in containing, protecting, delivering, or presenting items at a later time, but does not include packaging material bought at the point of sale for use, by a consumer, containing, protecting, delivering, or presenting other purchases.

Readily Recyclable

1. **Definitions.**
 - A. **Base material.** “Base materials” are glass, metal, paper, plastic, by resin type, and mixed.
 - B. **Refill.** “Refill” means an operation by which an end-user fills its own container.
 - C. **Remanufacturing facility.** “Remanufacturing facility” means the facility responsible for the final processing of a commodity prior to its use in a new product.
2. **Process for creating the initial packaging material types list and initial readily recyclable list.**
 - A. For 60 days beginning the effective date of this rule, the Department will accept written comments on, suggestions for, and information related to the proper classification of packaging material into packaging material types and the status of those types with respect to the criteria in SECTION READILY RECYCLABLE through the MainePackagingEPR@maine.gov email address.
 - B. Within 90 days of the effective date of this rule, the Department will publish a proposed packaging material types list and readily recyclable list and include in an appendix all comments, suggestions, and supporting information received during the 60-day comment period.

C. The Department will accept written comments on the proposal for 30 days following its publication and will republish the proposal, attaching comments received.

D. Within 30 days of the second publication of its proposal, the Department will hold a meeting, both in person and virtually, to discuss the comments prior to the Department finalizing the initial packaging material types list and initial readily recyclable list. The Department will make reasonable efforts to ensure recycling establishments and potential stewardship organizations are present.

~~D.E.~~ The Department will modify the proposed initial packaging material types and the proposed list initial readily recyclable list, as appropriate and based on the input received, and then publish finalized lists.

3. **Process for annual review of the packaging material types list and readily recyclable list.** The Department will annually review the packaging material types list and the readily recyclable list and make adjustments, as necessary.

A. The SO must provide a mechanism for accepting suggestions for changes to the packaging material types list and readily recyclable list on an ongoing basis. This mechanism must allow for those suggesting changes to include supporting documentation.

B. In its annual report to the Department, the SO must provide the percent by weight of packaging material that belongs to each packaging material type, as reported by producers during annual reporting, and identify packaging material types that might be redefined. The report must include an appendix of suggested changes to the lists and any supporting documentation provided by stakeholders during the prior calendar year. For a change to be considered during the annual process, it must be included in the report.

C. 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 and readily recyclable list. The Department will attach written comments received within 30 days to an amended version of the report and post the amended version on its website for review.

D. At least 15 days after posting the amended report, and before March 1, the Department will hold a meeting to discuss the proposed changes to the packaging material types list and readily recyclable list. The Department will offer this meeting in person and remotely to all interested parties and make reasonable efforts to ensure representatives from the SO and recycling establishments are present.

- E. The Department will review available information and make any adjustments to the packaging material types list and readily recyclable list by April 1.
- (1) When adjusting the readily recyclable list, the Department will keep in mind the challenges associated with discontinuing collection of a packaging material type.
 - (2) When adjusting the packaging material types list, the Department will keep in mind the efficiencies and efficacies afforded by aligning producer reporting across jurisdictions.
 - (3) The burden of proof for substantiating that a packaging material type meets, or does not meet, the criteria for readily recyclable is the responsibility of the entity suggesting the change.
- F. The SO must communicate any changes to the packaging material types list and readily recyclable list to municipal reporting entities and producer reporting entities that report during the calendar year in which they are made.
- G. Transitional period.
1. When a packaging material type's status changes from not readily recyclable to readily recyclable:
 - a. Producer payments made during the calendar year in which the change occurs will reflect the packaging materials type's status as not readily recyclable during the prior calendar year. ~~For 3 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 fourth 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. For subsequent years, the S.O. shall determine the schedule and rate of producer payments based on the cost of managing the material, or estimates thereof if sufficient data is not available.~~
 - b. For the purposes of municipal reimbursement and participation requirements, the packaging material type is treated as not readily recyclable until the third calendar year following that in which the change occurs.
 2. When a packaging material type's status changes from readily recyclable to not readily recyclable:

- a. Producer payments made during the calendar year in which the change occurs will reflect the packaging materials type's status as readily recyclable during the prior calendar year. ~~For 3 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 fourth 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. For subsequent years, the S.O. shall determine the schedule and rate of producer payments based on the cost of managing the material, or estimates thereof if sufficient data is not available.~~
- b. Municipal reimbursement and participation requirements for the calendar year prior to that in which the change occurs will reflect the packaging materials type's status 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.

4. **Representative audits.**

- A. To better understand the presence of packaging material in the waste stream, the SO will conduct waste audits to determine the relative weight and volume of packaging material in the waste stream, by base material.
 - (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 audit must occur once between September 1 and May 31 and must occur once between June 1 and August 31, but not during any week immediately following a Maine State Holiday.
 - (3) For each audit, the SO must collect and analyze samples until results estimate the relative weight packaging material, by base material, with 90 percent confidence, ± 3 percent.
 - (4) The SO must average audit results to obtain the relative weight and volume of packaging material in the waste stream, by base material.

B. To better understand the contribution of packaging material to litter in the State, the SO must conduct litter audits to identify the percent of litter that is packaging material, by packaging material type, and the percent of packaging material that can be attributed to a given producer.

(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 roadside miles for a litter audit. The SO must randomly select a location to audit from those suggested and may audit at any time of year that the area is free of snow and ice. The S.O. must design and implement a process to randomly select a representative sample of site or sites in the state for a litter audit.~~ The SO must collect and sort all litter ~~from the audit sites~~ into non-packaging material and packaging material, and further sort the packaging material by packaging material type. The SO must then sort packaging material by producer, to the extent possible. The SO must measure the percent of litter grouped by packaging material type and the percent of litter grouped by producer in weight and number of items.

(3) The SO must analyze the results to identify the most likely sources of the litter ~~and if they are packaging material or non packaging material~~ and potential opportunities for prevention and include this analysis in its annual report. The Department will evaluate cumulative results to identify areas of the State in which litter accumulation is greatest and any trends that might be used to decrease the amount of litter in the State.

5. **Program Goals.** The SO must use program goals to assess program performance and adjust investments and producer payments as follows.

A. Reduction. Relative ~~to the first producer reporting from a base reporting year of 2013,~~ the total weight of packaging material reported by producers should be reduced by no less than ~~10~~5 percent from 2030 to 2039, no less than ~~20~~30 percent from 2040 to 2049, and no less than ~~50~~25 percent from 2050, onward. If a goal is missed, beginning the following calendar year, and continuing every year in which the goal remains unmet, the ~~S.O. will submit a plan to the Department to achieve progress toward source reduction and create greater incentives for packaging reduction.~~ Department will dedicate a percentage of investments to projects supporting reuse and refill. ~~The percentage of the investment must be at least equal to the difference~~

~~between the percent reduction goal and the realized percent reduction as reported two calendar years prior.~~

~~B. Reuse. The S.O. shall submit a plan to the Department of the feasibility of reuse technologies across packaging materials types. The plan will suggest a percent by weight of total packaging material reported by producers that is managed for reuse should be no less than 10 percent from 2030 to 2039 and increasing every 5-years thereafter, no less than 20 percent from 2040 to 2049, and no less than 30 percent from 2050, onward. If a goal is missed not achieved, beginning the following calendar year, and continuing every year in which the goal remains unmet, the S.O. will submit a plan to the Department, for approval will to dedicate a percentage of investments to projects supporting reuse and refill. The percentage of the investment must be at least equal to the difference between the percent reuse goal and the realized percent reuse as reported two calendar years prior.~~

~~C.B.~~

~~D.C. Postconsumer recycled material. For each base material, the S.O. shall submit to the Department for approval, the percent a percentage goal of the total weight of packaging material reported by on average across all producers of a base material type that is postconsumer recycled material should be no less than 10 percent for the years from 2030 to 2039, no less than 20 an additional percentage goal from 2040 to 2049, and no less than 30 a additional percentage goal from 2050, onward. If a goal is missed, beginning the following calendar year, and continuing every year in which the goal remains unmet, the S.O. postconsumer recycled material incentive fee must be adjusted. The goals for each base material submitted by the S.O. must take into account applications where postconsumer recycled content is restricted and stipulate to the Department those product categories that should not be included in that base material goal. Producers may also petition the Department via a process developed by the S.O. for waivers from postconsumer recycled content goals if they are commercially or technologically infeasible across a base material type for a period not to exceed 5-years. The percent used to determine the incentive fee must increase by the difference between the percent postconsumer recycled material goal and the realized percent postconsumer recycled material, by base material, as reported by producers two calendar years prior.~~

~~D. Readily recyclable. The percent of packaging material that is readily recyclable on average across all producers should be no less than 50 percent from 2030 to 2039, no less than 75 percent from 2040 to 2049, and no less than 100 percent from 2050, onward.~~

~~(1) If a goal is missed, the per ton cost applied to assessed on producer packaging material that is not readily recyclable must increase.~~

(2) Producers may petition the Department, through the S.O. for a waiver from meeting the readily recyclable requirements of this subsection, if the nature of the products that the packaging material contains prevents that item from being readily recyclable or the intended use by a consumer prevents that item from being readily recyclable.

~~(1) From 2031 to 2040, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 4 times the per ton cost of managing the most expensive readily recyclable material for each ton of packaging material that is not readily recyclable they produce.~~

~~(2) From 2041 to 2050, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 5 times the per ton cost of managing the most expensive readily recyclable material for each ton of packaging material that is not readily recyclable they produce. If less than 75 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 4 times the per ton cost of managing the most expensive readily recyclable material for each ton of packaging material that is not readily recyclable they produce.~~

~~(3) From 2051, onward, producers of packaging material that is not readily recyclable must pay 6 times the per ton cost of managing the most expensive readily recyclable material for each ton of packaging material that is not readily recyclable they produce.~~

E. Litter. ~~The percent of litter that is packaging material as measured in units should be less than 80 percent of cumulative litter collected during litter audits from program inception to volume of packaging materials litter, as estimated by litter audits, shall be reduced by 5 percent from a baseline year at the inception of the plan until 2029, less than 50 percent, and an additional 10-percent reduction of cumulative litter collected during litter audits from 2030 to 2039, and less than an additional 2030 percent reduction of cumulative litter collected during litter audits from 2040 to 2049. From 2050, onward, the the goal shall be to reduce by 5 percent the volume of litter that is packaging material in each litter audit, every 1-years until reaching a nominal or residual amount conducted should be less than 15 percent. Prior to 2052, the Department will dedicate at least 0.20S.O. shall submit for approval a percent of~~

investments to litter education projects unless the litter audit conducted two calendar years prior showed a goal was met. From 2052, onward, if the litter audit conducted two calendar years prior showed a goal was unmet, the ~~Department will dedicate at least 0.05 percent of S.O. shall submit an increased investments plan for to~~ litter education projects in the participating municipality or region in which the litter audit was conducted.

~~F. Participation. The percent of cities, towns, townships, villages, and plantations participating in the program should be no less than 30 percent of all cities, towns, townships, villages, and plantations from 2030 to 2034, no less than 60 percent of all cities, towns, townships, villages, and plantations from 2035 to 2039, and no less than 90 percent of all cities, towns, townships, villages, and plantations from 2040, onward. If a goal was unmet two calendar years prior, the Department will dedicate at least 2 percent of investments to education projects that raise awareness of the financial and environmental benefits of program participation and recycling.~~

~~G.F. Collection. The percent of readily recyclable packaging material expected to be managed by participating municipalities that is collected and sent for recycling by participating municipalities should be no less than 60 percent from 2030 to 2034, no less than 80 percent from 2035 to 2039, and no less than 90 percent from 2040, onward. The amount of readily recyclable packaging material expected to be managed by a participating municipality is the statewide total tons of packaging material that is readily recyclable (as reported by producers) divided by the state's population and multiplied by the municipal populations of the participating municipalities. If municipalities are consistently not meeting these goals the Department may stipulate that the S.O. should withhold all or a percentage of municipal reimbursements under section 3 until these goals are achieved.~~

~~H.G. Base material-specific recycling. For each base material, following the needs assessment performed under Section ??? the S.O. shall recommend to the Department the percent of packaging material expected to be managed by participating municipalities that is ultimately recycled should be no less than 40 percent from 2030 to 2039, no less than 70 percent from 2040 to 2049, and no less than 80 percent from program year 2050, in a 10-year period starting in 2030, and every 10-years onward. The amount of packaging material expected to be managed by participating municipalities is the statewide total tons of packaging material (as reported by producers) divided by the State's population and multiplied by the municipal populations of the participating municipalities. The amount of each packaging material type ultimately recycled is the total amount of the packaging material type sent for recycling multiplied by the recycling yield. The amount of each base material ultimately recycled is the sum of the amounts of packaging material types of that base material that are ultimately recycled.~~

I.H. **Overall recycling rate.** Following the needs assessment performed under Section ??? the S.O. shall recommend to the Department the overall percent of packaging material expected to be managed by participating municipalities that is ultimately recycled in a 10-year period starting in 2030, and every 10-years onward.~~The percent of packaging material expected to be managed by participating municipalities that is ultimately recycled should be no less than 40 percent from 2030 to 2039, no less than 80 percent from 2040 to 2049, and no less than 90 percent from 2050, onward.~~ The amount of packaging material expected to be managed by participating municipalities is the statewide total tons of packaging material (as reported by producers) divided by the State’s population and multiplied by the municipal populations of the participating municipalities. The amount of each packaging material type ultimately recycled is the total amount of the packaging material type sent for recycling multiplied by the recycling yield. The amount of packaging material ultimately recycled is the sum of the amounts of each packaging material type ultimately recycled.

Producer reporting and payments

1. Definitions

- A. **Brick code.** “Brick code” means the 7-digit code used in Global Product Classification.
- B. **Component.** “Component” is a piece of a packaging material, as discarded by the consumer.
- C. **Produce.** “Produce”, for the purposes of this chapter, means to sell, offer for sale, or distribute for sale in or into the State packaging material for which one meets the definition of producer.
- D. **Toxics.** “Toxics” means priority chemicals listed by the department in accordance with Toxic chemicals in children’s products, 38 M.R.S. §§ 1691-1699B (2019); PFAS and phthalates as defined under Reduction of toxics in packaging, 32 M.R.S. §§ 1731-1738 (2019); and priority chemical listed by the Department in accordance with Toxic chemicals in food packaging, 32 M.R.S. §§ 1741-1747 (2019); and proven precursors.

2. Defining Packaging Material

C. Packaging material type

1. A packaging material type, as defined by the Department, consists of one or multiple discrete types of packaging material. It must clearly define and indicate the packaging material classified therein.
2. Collectively, the packaging material types must be comprehensive enough to reflect the distinctions categories used by municipal reporting entities to uniformly manage packaging material.
3. When defining a packaging material type, the Department shall specify its base material.
4. Regardless of the status of a generator of hazardous waste, the addition of toxics to packaging material, or the use of packaging material to contain products that are hazardous in accordance with 40 C.F.R. part 261, can result in the packaging material being classified as a distinct packaging material type even if the packaging material is the same as another packaging material with regard to all other reported characteristics.

D.B. Base material. A packaging material type must have a defined base material. If one material type accounts for ~~at least 60 percent of the~~ the predominant weight of a packaging material type, the base material is the ~~majority-predominant~~ majority-predominant material in a packaging material type. ~~If no one material accounts for at least 60 percent of the weight of a packaging material type, the base material is considered mixed.~~

E.C. Readily recyclable. The Department shall place packaging material types that meet the following criteria on the readily recyclable list.

1. Marketability. A packaging material type is marketable if:
 - a. There are at least 3 operational remanufacturing facilities, regionally or where economically feasible to transport that material, that recycle the packaging material type,
 - b. Operational remanufacturing facilities have the capacity to recycle the packaging material type in quantities equal to, or in excess of, the amount of material collectively supplied, and
 - c. The recycling process safeguards the environment and human health. Recycling processes that are inconsistent with applicable laws, third-party standards and international waste conventions or treaties, ~~or that~~

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~~are known to result in the release of material into the environment~~ are examples of processes that do not safeguard the environment and human health.

2. Throughput. A packaging material type has sufficient throughput if:

- a. It is common enough in the packaging stream to warrant separate sortation ~~and the Department in consultation with the S.O. agree on recommendations that the material has adequate throughput. Packaging material that makes up at least 1 percent by weight of the total packaging material used to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed for sale in or into the state, as reported during annual producer reporting is common enough to warrant separate sortation.~~ Or,
- b. It can be included in a commodity already used to market packaging material without increasing the contamination in that commodity or changing the specification of the commodity to one of a lower value.

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3. Recycling yield. A packaging material type has sufficient recycling yield if ~~at least 60 percent of the weight it is reaching generally accepted recycling industry benchmarks for~~ that packaging material type that is managed for recycling in Maine ~~is ultimately recycled~~. Where the recycling yield at remanufacturing facilities is unknown, it is assumed to be the percent of the base material in packaging material of that packaging material type, as reported by producers.

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~~F.D.~~ **Component.** Producers report packaging material by component, and one product’s packaging material can have multiple components, as defined by the manner in which the packaging material is likely discarded. Components that are attached at the time of sale are assumed to be discarded separately if they are routinely separated during opening and use of the product, unless they can be reattached without the use of tools and the packaging material tells the consumer to reattach the components for the purpose of recycling.

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3. Initial Registration and Payment

A. Producers selling, offering for sale, or distributing packaging material in or into the State when this rule goes into effect must register with the Stewardship Organization (SO) within ~~30~~60 days of the date the SO makes a mechanism for registration available.

- B. Producers selling, offering for sale, or distributing packaging material in or into the State when this rule goes into effect must pay an initial registration fee, as invoiced by the SO in accordance with its approved proposal to the Department. The SO must not charge a producer more than the producer's estimated annual registration fee for the first program year, as determined by the SO in accordance with its approved proposal, unless the producer agrees to a higher fee.
- C. The SO must subtract the producer's initial registration fee from fees owed when it invoices a producer for the first program year.

4. **Producer Reporting**

- A. **Registration.** Beginning after this rule goes into effect, ~~A~~ a producer must provide the following information to the SO when it begins producing packaging material sold or distributed in the State and must update the SO whenever this information changes.
 - 1. The contact information for a 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 or into 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.
- B. **Annual reporting for producers that are not low-volume producers.** Producers that are not low-volume producers or their authorized third-party reporters must report the following packaging material details to the SO by May 31st of each program year. Packaging material details must be reported for each component produced, as follows:
 - 1. Brand, or a description of the sales pathway resulting in the addition of packaging material;
 - 2. The UPC; ~~the~~ category brick code and size in cases where multiple products of the same category brick code and size are associated with packaging material that shares all characteristics reported under SECTION PACKAGING MATERIAL DETAILS BY COMPONENT; or, the product group in cases where weight was determined using SECTION ESTIMATES;

3. Units of the component produced. Units produced must assume a component is received by the consumer of the product unless the producer has a system in place to account for components that are not received by the consumer of the product, in which case those components are not packaging material and should not be reported;
4. Packaging material type, or for components with more than one packaging material type, by individual material types used ~~the heaviest packaging material type~~;
5. For packaging material types that have a mixed base material, the percent of relative amount of paper, plastic, metal, and glass, if known;
6. The total weight of the heaviest packaging material type; or, where remanufacturing facilities routinely separate and recycle multiple packaging material types, the sum of the weights of the packaging material types that are routinely separated and recycled;
7. Total weight of the component;
8. Post-consumer recycled material content;
9. Whether the producer can certify the absence of intentionally added toxics above a de minimis amount;
10. Whether the producer provides refill options for the product sold in the packaging material, either in the State or elsewhere;
11. Whether the component is collected for reuse in the State or elsewhere; and
12. Whether the producer operates reuse systems for the product sold in the packaging material either in Maine or elsewhere.

C. Annual Reporting for Low-Volume Producers

1. Producers that produced less than 15 tons of packaging material total during the prior calendar year or their authorized third-party reporters 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. Producers that produced less than 15 tons of packaging material total during the prior calendar year or their authorized third-party reporters may also report the following to the SO by May 31st of each calendar year.
 - a. The tons of that packaging material produced by packaging material type; and
 - b. Information on their use of refill or reuse systems, post-consumer recycled material content and toxics.

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 their packaging material may estimate the total weight produced based on unit quantities. A producer may estimate the total weight produced by grouping products packaged using the same set of components and estimating the weight of each component to be used when reporting for the product group.
 - a. To calculate an estimated weight of each component to be used for a product group, a producer must group products packaged using the same set of components, create subgroups of products with similar dimensions, randomly select a product from each subgroup, weigh its components, multiply that weight by the number of units of that subgroup produced, add weights for all subgroups, and then divide by the total units of the product group produced.
 - b. Producers using this option must report why they are unable to obtain sufficient information regarding the details of the packaging material they produce.
 - c. Producers using this option must report descriptions of product groups and subgroups created, total unit sales for each subgroup, and the measured weight of each component for the randomly selected products.
 - d. When the tons of a component produced are estimated, fees assessed under SECTION ECO-MODULATION FEES must assume the following:
 1. The component does not meet post-consumer recycled material goals;

2. The producer is unable to certify no intentional addition of toxics for the component;
 3. The component is prone to be littered;
 4. The component is labeled to indicate or encourage use of a material management pathway that is unavailable or improper in the State; and
 5. In cases where the packaging material type is readily recyclable, the quotient of points 5 and 6 in SECTION PACKAGING MATERIAL DETAILS BY COMPONENT, only 60 percent of the component's weight is recycled.
 6. A producer may still used estimated data but seek a waiver from the S.O. for these factors if they producer can provide certification that certain factors in this section are not applicable to the component.
 - 5.7.A producer is not subject to these fees if reporting is based on actual shipments at the national level and normalized for Maine's population, as authorized in paragraph (4)(D)(2).
2. Estimating units to the State. 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 proposal to the Department.
2. On an annual basis, the SO must randomly select two brands to audit and report results to the Department. Audits must review the following:
 - a. The extent to which packaging material produced has been reported;
 - b. The accuracy of information reported under SECTION PACKAGING MATERIAL DETAILS BY COMPONENT; and
 - c. Documentation supporting estimates, as applicable.
3. The SO must provide a mechanism to anonymously report and substantiate suspected irregularities in producer reporting. In addition to the random audits required by SECTION AUDITING 2, the SO must annually audit up to two brands for which the SO has determined that substantiated irregularities have been reported and report the results to the department.
5. **Producer Fees.** A producer must pay fees based on the packaging material it produced. The SO must invoice producers as soon as possible following producer reporting, and a producer must pay fees owed in accordance with SECTION PRODUCER FEES by July 1st of each program year. ~~On July 2nd of each program year, the SO must apply a late fee of 10 percent of the total owed to the outstanding invoices of producers that are not low-volume producers unless the Department waives the late fee.~~ The SO may apply standard late fees after July 1 if a producer is non-communicative as to the reason for late payment.

A. Fees for Producers Other than Low-Volume Producers

1. Annual registration fee.
 - a. A producer that is not a low-volume producer must pay an annual registration fee share for every 15 tons of packaging material produced.
 - b. An annual registration fee share is equal to the sum of \$300,000, or a lower administrative fee as determined by the Department's actual administrative costs, and the annual SO budget divided by total number of annual registration fee shares owed, as calculated from producer reports received prior to the reporting deadline.
2. Packaging material type fees.

- a. For a packaging material type that is readily recyclable, the producer must pay, per ton produced, the average per ton management cost for recycling that packaging material type during the prior calendar year. The average per ton management 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.
 - b. For a packaging material type that is not readily recyclable, the producer must pay, per ton produced, times a factor that the SO determines will cover the costs of alternative management or recycling of non-readily recyclable material plus an equal share of investments in infrastructure planned to improve recycling of that material ~~three times the average per ton management cost of the most expensive readily recyclable material during the prior calendar year unless goals for the percent of readily recyclable packaging material are unmet, in which case the producer must pay four, five, or six times the average per ton management cost, in accordance with SECTION RR GOALS.~~
3. Incentive fees. Producers must pay the following incentive fees to account for packaging material details by component, as applicable. These fees are relative, and additional, to packaging material type fees.
- a. Post-consumer recycled material fee. For ~~components base materials~~ that do not meet post-consumer material goals, as defined in SECTION GOALS PCR, the producer must pay a per ton fee equal to 10 percent of the packaging material type fee, ~~unless the relevant material base type PCR goal is unmet, in which case the percent increase in cost must be figured as required by SECTION GOALS PCR.~~
 - b. Toxicity fee. For components for which a producer indicates it is unable to certify no intentional addition of toxics, it must pay a per ton fee ~~equal to 10 percent~~ recommended by the SO and approved by the Department of for the packaging material type fee.
 - c. Reduction of litter. The SO may develop a per ton fee for packaging material types that consistently represent the largest share of litter in audits for more than one litter audit cycle. For each component comprised of one of the top five packaging material types collected during litter auditing as described in SECTION LITTER AUDITS, a

~~producer must pay a per ton fee equal to 5 percent of the packaging material type fee.~~

- d. Labeling. For packaging that is ~~not labeled in accordance with national recycling labeling standards, the SO may develop a fee, to be imposed if that producer does not conform to national labeling standards after consultation and guidance for a period of 1-year, labeled to indicate or encourage use of a material management pathway that is unavailable or improper in the State, the producer must pay a per ton fee equal to 30 percent of the packaging material type fee.~~
- e. Yield. For packaging material that will not be recycled, as measured by the difference between reporting points 5 and 6 in SECTION PACKAGING MATERIAL DETAILS BY COMPONENT multiplied by the units of the component produced, a producer must pay a per ton fee equal to 10 percent of the component's packaging material type fee. If a component's packaging material type is not readily recyclable, this fee does not apply.

B. Fees for Low-Volume Producers. A low-volume producer must pay \$500 per ton of packaging material produced unless it reports tons of packaging material by packaging material type, in which case it must pay \$400 per ton of packaging material produced. 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 under this section.

C. Adjustment to Fees for Tons Collected Through an Alternative Collection Program. 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. A producer cannot receive credit for managing more tons of a packaging material type than it produced.

- 1. In the case of producers that are not low-volume producers, the SO must:
 - a. Subtract the tons of a packaging material type attributed to a producer from the tons of the packaging material type produced for the purpose of calculating the annual registration fee share.

- b. Adjust packaging material type fees and incentive fees by finding the average per ton cost owed for packaging material of that packaging material type, multiplying that per ton cost by the tons attributed to the producer by the alternative collection program, and reducing the producer's fees by that amount.
 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. In order for low-volume producers to receive credit, they must report the tons of that packaging material produced by packaging material type.

6. Packaging Stewardship Fund Cap

- A. The packaging stewardship fund has excessive funds if there is more than enough money to cover:
 1. Five times the average annual expenditures, other than expenditures on major investments, as realized over the past five years, and
 2. The amount to be saved for major investments, as determined in SECTION DEPT REVIEW OF NEEDS ASSESSMENT.

~~B. In the case of excessive funds, the SO must create and fill an additional full-time position dedicated to assisting producers, recycling establishments, and municipalities in the preparation of investment proposals. The total cost of this position must be in line with industry standards and added to the SO's annual budget. This position should not be eliminated, even if contents of the fund change such that it no longer has excessive funds.~~

~~C.B.~~ If producer reporting shows that full payment will result in excessive funds, the SO must calculate the expected excess funds, 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.

7. Transparency and Benchmarking for Producers

- A. The SO must annually produce a document that lists the percent of each brand's packaging material that is readily recyclable, reusable, meeting post-consumer recycled material content goals, able to be certified as containing no intentionally

added toxics, and not labeled [in accordance with national labeling standards](#) to indicate or encourage use of a material management pathway that is unavailable or improper throughout the State.

- B. The SO must annually produce a summary document on progress toward reuse and refill with information on brands for which reuse and refill options are available in the State and on brands for which reuse and refill options are available in other places but not in the State.

~~C. The SO must annually produce a document that relates available data on the average price per unit for packaging material associated with products of a given size and brick code, the highest price per unit paid for components associated with products of a given size and brick code, the least expensive price per unit paid for components associated with products of a given size and brick code, and a description of this least expensive set of components.~~

8. **Alternative Collection Programs**

- A. In order for an alternative collection program to be approved by the Department, it must provide collection that is free, available year-round, and convenient.
- B. An alternative collection program is considered convenient if it is collecting packaging material from at least one collection location in each county or serving all counties through a mail-based collection system. Alternative collection programs that do not meet this convenience standard may be approved in accordance with the exceptions described below.
 - 1. Novel alternative collection programs. An alternative collection program collecting a packaging material type not previously collected through any alternative collection program is considered convenient if it is collecting material at one collection location during its first year of operation, five collection locations in five counties during its second year of operation, ten locations in ten counties during its third year of operation, and one location in each county from the fourth year of operation forward.
 - 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 the product contained, protected, delivered, presented, or distributed using reusable packaging is sold.
 - 3. Partial credit for limited reach. Alternative collection programs with a limited geographic reach can partially offset the payment obligation for participating

producers and 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 percent of the tons of a packaging material type produced. For an alternative collection program that only offers collection locations in two counties, producers that are involved in the operation of the program can receive credit for up to 20 percent of the tons of a packaging material type produced. For an alternative collection program that only offers collection in three counties, producers that are involved in the operation of the program can receive credit for up to 30 percent of the tons of a packaging material type produced.

- C. An alternative collection program may attribute tons managed through that program to producers not involved in the operation of the program. In its annual report, an alternative collection program may indicate an interest in attributing tons managed to producers not involved in the operation of the program. The Department will make a list of these tons and associated contact information available on its website.
- D. Alternative collection programs must report to the Department annually by April 1st of each calendar year. This report must be accompanied by an annual fee equal to ~~the lesser of:~~
1. \$10,000 ~~per participating producer~~ for programs with less than 10 producers,
or
 2. ~~\$5,000 per packaging material type managed for reuse and \$10,000 per packaging material type not managed for reuse~~ \$25,000 for programs with more than 10 producers.

E. Timeframes for Correcting Deficiencies

1. If the identified deficiency involves inadequate or incorrect documentation, the Department will allow 60 days to correct the deficiency.
2. If correcting a deficiency will require a change to collection or processing operations, the Department will allow 30 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.