

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
S.P. 579 - L.D. 1423

An Act to Improve Recycling by Updating the Stewardship Program for Packaging

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §2146, sub-§1, ¶C-1 is enacted to read:

C-1. "Consumer" means a single-family or multifamily residence, school, municipal or state government facility, public space or commercial business that uses or partners with a municipal or state waste management service.

"Consumer" does not include a person that manufactures products if the packaging material for those products is managed and the costs of that management are paid for by the person or by a producer, and that packaging material:

- (1) Is used solely for transportation of the products to persons that are not consumers; or
- (2) Is used for or generated by the person as part of the manufacturing process for the products.

Sec. 2. 38 MRSA §2146, sub-§1, ¶N, as enacted by PL 2021, c. 455, §2, is amended to read:

N. "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally intended to be sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material.

Sec. 3. 38 MRSA §2146, sub-§1, ¶O, as enacted by PL 2021, c. 455, §2, is repealed and the following enacted in its place:

O. "Producer" means:

- (1) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold or offered for sale at a physical retail location in the State:

- (a) The person that manufactured the product if the product is sold or offered for sale in the State under the manufacturer's brand or the packaging material does not identify the brand;
 - (b) If there is no person to which division (a) applies, the person that is licensed to manufacture and sell or offer the product for sale to consumers in the State under the brand or trademark of another manufacturer or person;
 - (c) If there is no person to which division (a) or (b) applies, the person that has legal ownership of the brand of the product;
 - (d) If there is no person to which divisions (a) to (c) apply that has a physical presence in the United States, the person that is the importer of record into the United States for the product for use in a commercial enterprise and that sells, offers for sale or distributes the product for sale in or into the State; or
 - (e) If there is no person to which divisions (a) to (d) apply, the person that first distributes the product for sale in or into the State;
- (2) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State through an Internet-based or remote sales transaction and not at a physical retail location in the State:
- (a) With respect to the packaging material that is used to directly contain or protect the product, a person identified pursuant to subparagraph (1), divisions (a) to (e); and
 - (b) With respect to the packaging material that is not used to directly contain or protect the product, a person that packages the item for delivery, presentation or distribution to the consumer; or
- (3) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State in a manner not described in subparagraph (1) or (2), the person that first distributes the product for sale in or into the State.

"Producer" includes a low-volume producer but does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

Notwithstanding subparagraphs (1) to (3), if the person that would otherwise be considered a producer under this paragraph is operating a business wholly or partially as a franchise, the producer is the franchisor if that franchisor has franchisees with a commercial presence in the State.

Notwithstanding subparagraphs (1) to (3), if a person that would otherwise be considered a producer under this paragraph enters into a signed agreement with another person to assign the responsibility to act as producer for the product or products of the person for the purposes of this section, that other person is considered the producer of the product or products for the purposes of this section if that other person registers with the stewardship organization to participate in the program under this section on behalf of the person and written certification of the assignment of responsibility is provided to the stewardship organization.

Sec. 4. 38 MRSA §2146, sub-§1, ¶U, as enacted by PL 2021, c. 455, §2, is amended to read:

U. "Toxicity" means, with respect to packaging material, the ~~presence in~~ intentional addition to packaging material or the intentional use in the manufacturing, recycling or disposal of packaging material of ~~intentionally introduced~~ metals or chemicals regulated or listed pursuant to Title 32, chapter 26-A; food contact chemicals of high concern or priority food contact chemicals regulated or listed pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of high concern or priority chemicals identified pursuant to chapter 16-D.

Sec. 5. 38 MRSA §2146, sub-§2, as enacted by PL 2021, c. 455, §2, is amended to read:

2. Producer exemptions. Notwithstanding any provision of this section to the contrary, a producer is exempt from the requirements and prohibitions of this section in any calendar year in which:

A. The producer realized less than \$2,000,000 in total gross revenue during the prior calendar year, except that, for the period beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3 and ending 3 years after that effective date, a producer that realized less than \$5,000,000 in total gross revenue during the prior calendar year is exempt from the requirements and prohibitions of this section;

B. The producer sold, offered for sale or distributed for sale in or into the State during the prior calendar year products contained, protected, delivered, presented or distributed in or using less than one ton of packaging material in total; or

C. The producer realized more than 50% of its total gross revenue in the prior calendar year from the sale of goods it acquired through insurance salvages, closeouts, bankruptcies and liquidations; or

~~D. The producer sold, offered for sale or distributed for sale in or into the State during the prior calendar year to retailers or direct to consumers products that were perishable food and that were contained, protected, delivered, presented or distributed in or using less than 15 tons of packaging material in total.~~

~~As used in this paragraph, "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 and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.~~

Notwithstanding any provision of this section to the contrary, a producer is exempt from the requirements and prohibitions of this section with respect to the first 15 tons of packaging material used by the producer to contain, protect, deliver, present or distribute products that were perishable food and that were sold, offered for sale or distributed for sale in or into the State during the prior calendar year.

As used in this subsection, "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 and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.

A producer claiming an exemption under this subsection shall provide to the department sufficient information to demonstrate that the producer meets the requirements for an exemption under this subsection within 30 days of receiving a request from the department to provide such information.

Sec. 6. 38 MRSA §2146, sub-§3, ¶A, as enacted by PL 2021, c. 455, §2, is amended by amending subparagraph (7), division (c) to read:

(c) The processing capacity, market conditions and opportunities in the State and regionally for recyclable material; ~~and~~

Sec. 7. 38 MRSA §2146, sub-§3, ¶A, as enacted by PL 2021, c. 455, §2, is amended by enacting a new subparagraph (7), division (e) to read:

(e) The producer payments schedule adopted by the department pursuant to subsection 13 and the anticipated effect of that schedule on incentivizing the use by producers of readily recyclable packaging materials and supporting the solid waste management hierarchy under section 2101; and

Sec. 8. 38 MRSA §2146, sub-§4, ¶B, as enacted by PL 2021, c. 455, §2, is amended to read:

B. The stewardship organization shall provide to the department a list of producers that are participating in the program and a list of the UPCs of products or a list of all producers and brands for which the producer has complied with the program's requirements and, if known to the stewardship organization, a list of producers that are not participating in the program and are not compliant with the program's requirements. The stewardship organization shall provide to the department regularly updated producer compliance information described in this paragraph.

Sec. 9. 38 MRSA §2146, sub-§4, ¶C, as enacted by PL 2021, c. 455, §2, is amended to read:

C. Based on information provided to the department under paragraph B and any other information considered by the department, the department shall make available on its publicly accessible website a regularly updated list of ~~UPCs of products~~ producers and brands for which the department has determined the producer has complied with all applicable requirements of this section and a list of producers and, where applicable, specific products and the ~~UPCs~~ brands of those products for which the department has determined the producer has not complied with all applicable requirements of this section.

Sec. 10. 38 MRSA §2146, sub-§6, ¶A is enacted to read:

A. Notwithstanding any provision of this section to the contrary, a producer may not be required to pay an increased fee or penalty for packaging material that is not composed of post-consumer recycled material if the packaging material is subject to state or federal laws, rules or regulations that effectively prohibit the use of post-consumer recycled material in that packaging material.

Sec. 11. 38 MRSA §2146, sub-§6, ¶B is enacted to read:

B. Following the execution of a contract between the selected stewardship organization and the department pursuant to subsection 3, the stewardship organization, based on the statewide recycling needs assessment conducted pursuant to subsection 3, paragraph A, subparagraph (7) and other available information, may recommend to the department that the producer payments schedule adopted by the department by rule pursuant to subsection 13 be modified to better incentivize the use by producers of readily recyclable packaging materials and support the solid waste management hierarchy under section 2101 and the department may, in its discretion, initiate rulemaking in accordance with this section to implement any modifications to that schedule.

Sec. 12. 38 MRSA §2146, sub-§7, as enacted by PL 2021, c. 455, §2, is amended to read:

7. Annual reporting by producers. In accordance with rules adopted by the department, a producer shall annually report to the stewardship organization the total amount, whether by weight or volume, of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer in the prior calendar year. Notwithstanding any provision of this section to the contrary, a producer may not be required to report annually to the stewardship organization regarding its products or the associated packaging material using the UPCs of those products.

Sec. 13. 38 MRSA §2146, sub-§9, ¶A, as enacted by PL 2021, c. 455, §2, is amended to read:

A. Provide for the collection and recycling of any packaging material that is generated in the municipality and is readily recyclable; and