

§2146. Stewardship program for packaging

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative collection program" means a program for the management of packaging material that is operated by an individual producer or group of producers and that has been approved by the department in accordance with subsection 8. [PL 2021, c. 455, §2 (NEW).]

B. "Brand" has the same meaning as in section 1771, subsection 1. [PL 2021, c. 455, §2 (NEW).]

C. "Collection" means the gathering of waste, including the preliminary sorting and storage of waste for the purposes of transport to a recycling establishment. [PL 2021, c. 455, §2 (NEW).]

D. "European article number" or "EAN" means a 13-digit barcode used for product identification purposes, also referred to as an international article number. [PL 2021, c. 455, §2 (NEW).]

E. "Franchisee" means a person that is granted a franchise by a franchisor authorizing the use of the franchisor's trade name, service mark or related characteristic and the sharing of the franchisor's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period. [PL 2021, c. 455, §2 (NEW).]

F. "Franchisor" means a person that grants to a franchisee a franchise authorizing the use of the person's trade name, service mark or related characteristic and the sharing of the person's proprietary knowledge or processes pursuant to an oral or written arrangement for a definite or indefinite period. [PL 2021, c. 455, §2 (NEW).]

G. "Low-volume producer" means a producer that 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 more than one ton but less than 15 tons of packaging material in total. [PL 2021, c. 455, §2 (NEW).]

H. "Municipality" means a city, town, county, township, village or plantation; a refuse disposal district under chapter 17; or a regional association. [PL 2021, c. 455, §2 (NEW).]

I. "Packaging material" means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product. "Packaging material" does not include a discrete type of material, or a category of material that includes multiple discrete types of material, that is:

(1) Intended to be used for the long-term storage or protection of a durable product and that can be expected to be usable for that purpose for a period of at least 5 years;

(2) A beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33;

(3) A container for architectural paint, as defined in section 2144, subsection 1, paragraph A, as long as a paint stewardship program is in operation, has been approved by the department pursuant to section 2144 and the stewardship organization operating that program:

(a) Has demonstrated to the department's satisfaction that it recycles at least 90% of the containers of architectural paint collected under the program; or

(b) Subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department's satisfaction that it recycles at least 80% of the containers of architectural paint collected under the program; or

- (4) Excluded from the definition of "packaging material" by the department by rule adopted pursuant to subsection 13, paragraph D. [PL 2021, c. 455, §2 (NEW).]
- J. "Packaging stewardship fund" or "fund" means a privately held account established and managed by the stewardship organization pursuant to subsection 12. [PL 2021, c. 455, §2 (NEW).]
- K. "Packaging stewardship organization" or "stewardship organization" means the entity contracted by the department under subsection 3 to operate the packaging stewardship program. [PL 2021, c. 455, §2 (NEW).]
- L. "Packaging stewardship program" or "program" means the program implemented under this section by the stewardship organization to assess and collect payments from producers based on the amount, whether by weight or volume, of packaging material sold, offered for sale or distributed for sale in or into the State by each producer and to reimburse participating municipalities for certain municipal recycling and waste management costs. [PL 2021, c. 455, §2 (NEW).]
- M. "Participating municipality" means a municipality that has complied with the requirements of subsection 9 and is eligible for reimbursement of certain costs in accordance with subsection 10. [PL 2021, c. 455, §2 (NEW).]
- 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 sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material. [PL 2021, c. 455, §2 (NEW).]
- O. "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 that is branded by a person that meets the requirements of subparagraph (1) and has no physical presence in the United States.
- "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). [PL 2021, c. 455, §2 (NEW).]
- P. "Proprietary information" has the same meaning as in section 1771, subsection 6-A. [PL 2021, c. 455, §2 (NEW).]
- Q. "Readily recyclable" means, with respect to a type of packaging material, that the type of packaging material meets the criteria and standards for recyclability as determined by the department by rule pursuant to subsection 13, paragraph A, subparagraph (2). [PL 2021, c. 455, §2 (NEW).]
- R. "Recycling" has the same meaning as in section 1771, subsection 7. [PL 2021, c. 455, §2 (NEW).]
- S. "Reuse" has the same meaning as in section 1771, subsection 8. [PL 2021, c. 455, §2 (NEW).]
- T. "Similar municipalities" means 2 or more municipalities that, as determined by the department by rule pursuant to subsection 13, paragraph A, subparagraph (3), have similar population sizes and similar geographic locations and share other department-specified criteria. [PL 2021, c. 455, §2 (NEW).]

U. "Toxicity" means, with respect to packaging material, the presence in packaging material or the use in the manufacturing, recycling or disposal of packaging material of intentionally introduced metals or chemicals regulated pursuant to Title 32, chapter 26-A; food contact chemicals of high concern or priority food contact chemicals regulated pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of high concern or priority chemicals identified pursuant to chapter 16-D. [PL 2021, c. 455, §2 (NEW).]

V. "Universal product code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers for product identification purposes. "Universal product code" includes any industry-accepted barcode used for product identification purposes in a manner similar to a UPC, including, but not limited to, an EAN. [PL 2021, c. 455, §2 (NEW).]
[PL 2021, c. 455, §2 (NEW).]

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; [PL 2021, c. 455, §2 (NEW).]

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; [PL 2021, c. 455, §2 (NEW).]

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 [PL 2021, c. 455, §2 (NEW).]

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. [PL 2021, c. 455, §2 (NEW).]

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. [PL 2021, c. 455, §2 (NEW).]

3. Selection of stewardship organization; contract. Consistent with the requirements of this subsection, the department shall select and enter into a contract with a packaging stewardship organization to operate the packaging stewardship program under this section.

A. Consistent with applicable competitive bidding requirements under state purchasing laws and following the initial adoption of rules by the department pursuant to subsection 13 to implement this section, the department shall issue a request for proposals for the operation of the packaging stewardship program by a packaging stewardship organization. The proposals must be required to

cover a 10-year operation of the packaging stewardship program by the successful bidder and must be required to include, at a minimum:

- (1) A description of how the bidder will administer the stewardship organization, including:
 - (a) The mechanism or process, to be developed with input from producers, by which a producer may request and receive assistance from the stewardship organization in the reporting of required information and regarding methods by which the packaging material used by a producer may be modified so as to reduce the producer's payment obligations under subsection 6; and
 - (b) The mechanism or process, to be developed with input from municipalities, by which a participating municipality may request and receive assistance from the stewardship organization in the reporting of required information and regarding methods by which a municipality's recycling program may be modified so as to increase access to and participation in the program;
- (2) A description of how the bidder intends to solicit and consider input from interested persons, including, but not limited to, producers, municipalities, environmental organizations and waste management and recycling establishments, regarding the bidder's operation of the packaging stewardship program, if selected;
- (3) A description of how the bidder intends to establish and manage the packaging stewardship fund consistent with subsection 12, including, but not limited to: the staffing the bidder intends to use for management of the fund; a plan to ensure equity of access to the fund for participating municipalities; a plan for providing technical support to producers and municipalities regarding program requirements; and a plan for administering payments to and reimbursements from the fund and the financial mechanisms, including investment types, if any, the bidder intends to use in managing the fund;
- (4) A proposed financial assurance plan that ensures all funds held in the packaging stewardship fund are immediately and exclusively forfeited and transferred to or otherwise made immediately available to the department to support waste diversion, reuse or recycling programs when the stewardship organization's contract with the department is terminated by the department or expires, unless the stewardship organization enters into a new contract with the department in accordance with paragraph B prior to the expiration of the stewardship organization's existing contract;
- (5) A proposed budget outlining the anticipated costs of operating the packaging stewardship program, including identification of any start-up costs that will not be ongoing and a description of the method by which the bidder intends to determine and collect producer payments during the initial start-up period of program operation to fund the program's operational costs during that initial start-up period and to reimburse or require additional payments by those producers subsequent to that initial start-up period based on producer reporting of the actual amount of packaging material sold, offered for sale or distributed for sale in or into the State by each producer during that initial start-up period. The proposed budget under this subparagraph may overestimate the cost of operating the program during its initial start-up period of operation but must describe the method and basis for any overestimate;
- (6) A certification that the bidder will not share, except with the department, information provided to the bidder by a producer that is proprietary information and that is identified by the producer as proprietary information. The certification must include a description of the methods by which the bidder intends to ensure the confidentiality of such information;
- (7) A description of how the bidder will conduct a statewide recycling needs assessment that, at a minimum, includes an evaluation of:

- (a) Current funding needs affecting recycling access and availability in the State;
- (b) The capacity, costs and needs associated with the collection and transportation of recyclable material in the State;
- (c) The processing capacity, market conditions and opportunities in the State and regionally for recyclable material; and
- (d) Consumer education needs in the State with respect to recycling and reducing contamination in collected recyclable material; and

(8) Any additional information required by the department. [PL 2021, c. 455, §2 (NEW).]

B. In accordance with applicable requirements of state purchasing laws, the department shall enter into a contract with a bidder that has submitted a proposal in accordance with the requirements of this subsection, the term of which must cover 10 years of operation of the packaging stewardship program by the stewardship organization. The contract must, at a minimum, include provisions to ensure that the stewardship organization will conduct the statewide recycling needs assessment described in paragraph A, subparagraph (7) and report the results of that assessment to the department within a reasonable time frame and operate the program in accordance with all applicable statutory requirements and the rules adopted by the department under this section. [PL 2021, c. 455, §2 (NEW).]

If, at the close of the competitive bidding process under this subsection, the department determines that no bidder has submitted, in accordance with this subsection, a proposal that meets the requirements of this subsection, the department may reopen a new competitive bidding process under this subsection. [PL 2021, c. 455, §2 (NEW).]

4. Prohibition; producer compliance information. This subsection governs the sale or distribution in the State of products with packaging not in compliance with the requirements of this section and sets forth requirements for the collection and publication of compliance information.

A. Except as provided in paragraph D, beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, a producer may not sell, offer for sale or distribute for sale in or into the State a product contained, protected, delivered, presented or distributed in or using packaging material for which the producer has not complied with all applicable requirements of this section. [PL 2021, c. 455, §2 (NEW).]

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 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. [PL 2021, c. 455, §2 (NEW).]

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 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 of those products for which the department has determined the producer has not complied with all applicable requirements of this section. [PL 2021, c. 455, §2 (NEW).]

D. Notwithstanding a producer's failure to comply with all applicable requirements of this section for a type or types of packaging material used to contain, protect, deliver, present or distribute a product, the department may authorize the sale or distribution for sale in or into the State of another product or products of the producer that are contained, protected, delivered, presented or distributed

in or using a different type or types of packaging material for which that producer has complied with all applicable requirements of this section. In the event that the department provides such an authorization, the department shall ensure that such information is included in the information made available pursuant to paragraph C. [PL 2021, c. 455, §2 (NEW).]
[PL 2021, c. 455, §2 (NEW).]

5. Annual reporting by stewardship organization. In accordance with rules adopted by the department, the stewardship organization shall annually submit to the department and make available on its publicly accessible website a report that includes, at a minimum, the following information:

- A. Contact information for the stewardship organization; [PL 2021, c. 455, §2 (NEW).]
- B. A list of participating producers and the brands and the UPCs of products associated with those producers; [PL 2021, c. 455, §2 (NEW).]
- C. 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 each participating producer as reported in accordance with subsection 7; [PL 2021, c. 455, §2 (NEW).]
- D. As applicable, the total amount, whether by weight or volume, of each type of packaging material collected and managed by each participating producer through alternative collection programs approved by the department under subsection 8; [PL 2021, c. 455, §2 (NEW).]
- E. A complete accounting of payments made to and by the stewardship organization during the prior calendar year, including information on how the stewardship organization determined the amount of such payments in accordance with subsections 6 and 10 and the rules adopted under subsection 13, paragraph A, subparagraphs (1) and (4); [PL 2021, c. 455, §2 (NEW).]
- F. A list of producers that are not participating in the program that are required to participate in the program and any product-specific noncompliance, if known by the stewardship organization; [PL 2021, c. 455, §2 (NEW).]
- G. A description of education and infrastructure investments made by the stewardship organization in prior calendar years and an evaluation of how those investments were designed to increase access to recycling in the State and to encourage the reuse of packaging material; [PL 2021, c. 455, §2 (NEW).]
- H. A description of the results of the representative audits required pursuant to subsection 13, paragraph A, subparagraph (6); [PL 2021, c. 455, §2 (NEW).]
- I. An assessment of the progress made toward the achievement of any program goals required by the department by rule pursuant to subsection 13, paragraph A, subparagraph (5); [PL 2021, c. 455, §2 (NEW).]
- J. An assessment of whether the payment schedule for producer payments adopted by the department by rule pursuant to subsection 13, paragraph A, subparagraph (1) has been successful in incentivizing improvements to the design of packaging material as encouraged through the allowance of payment adjustments in accordance with subsection 13, paragraph A, subparagraph (1), division (c); [PL 2021, c. 455, §2 (NEW).]
- K. Any proposals for changes to the packaging stewardship program or investments in education and infrastructure designed to reduce the amount of packaging material used, increase access to recycling, increase the recycling of or recyclability of packaging material, reduce program costs or otherwise increase program efficiency, which may include an analysis of best practices for municipal recycling programs; [PL 2021, c. 455, §2 (NEW).]
- L. The results of a 3rd-party financial audit of the stewardship organization; [PL 2021, c. 455, §2 (NEW).]

M. An estimate of the annual greenhouse gas emissions effects in the State associated with the operation of the stewardship program. As used in this paragraph, "greenhouse gas" has the same meaning as in section 574, subsection 1; and [PL 2021, c. 455, §2 (NEW).]

N. Any additional information required by the department. [PL 2021, c. 455, §2 (NEW).]
[PL 2021, c. 455, §2 (NEW).]

6. Producer payments. In accordance with the provisions of this subsection and the rules adopted by the department, no later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter, a producer shall make payments to the stewardship organization to be deposited into the packaging stewardship fund under subsection 12 based on the net 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 and not managed by the producer under an approved alternative collection program. The department shall adopt rules setting forth the manner in which such payments must be calculated for packaging material that is readily recyclable and packaging material that is not readily recyclable, which must be designed to incentivize the use by producers of packaging material that is readily recyclable and disincentivize the use by producers of packaging material that is not readily recyclable. [PL 2021, c. 455, §2 (NEW).]

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.
[PL 2021, c. 455, §2 (NEW).]

8. Alternative collection programs. In accordance with the requirements of this subsection and the rules adopted by the department, a producer or group of producers may develop and operate an alternative collection program to collect and manage a type or types of packaging material sold, offered for sale or distributed for sale in or into the State by the producer or producers. A producer that manages a type of packaging material under an approved alternative collection program through reuse, recycling and, where approved by the department, management of that packaging material through incineration may wholly or partially offset the producer's payment obligations under the packaging stewardship program with respect to that same type of packaging material only.

A. Beginning on the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, a producer or group of producers seeking to implement an alternative collection program shall submit a proposal for the establishment of that program to the department for approval. The department shall approve or deny the proposal within 120 days of receipt and shall provide an opportunity for public review and comment on the proposal prior to its approval or denial. The department may approve an alternative collection program for a term of 5 years and, at the expiration of such term, the producer or group of producers operating the program may submit an updated proposal to the department for approval. [PL 2021, c. 455, §2 (NEW).]

B. In determining whether to approve a proposed alternative collection program, the department shall consider:

- (1) Whether the alternative collection program will provide year-round, convenient, free, statewide collection opportunities for the types of packaging material to be collected under that program;
- (2) To what extent the alternative collection program intends to manage those types of packaging material to be collected under the program through reuse for an original purpose, through recycling or through disposal at an incineration facility. The department may not approve an alternative collection program that proposes management of a packaging material

type through disposal at an incineration facility unless that packaging material is not readily recyclable and the program proposes a process to begin reuse or recycling of that type of packaging material within a period of 3 years or less;

(3) Whether the education and outreach strategies proposed for the alternative collection program can be expected to significantly increase consumer awareness of the program throughout the State;

(4) How the alternative collection program intends to accurately measure the amount, whether by weight or volume, of each packaging material type collected, reused, recycled, disposed of at an incineration facility or otherwise managed under the program; and

(5) To what extent approval of the alternative collection program may disproportionately impact any community in the State. [PL 2021, c. 455, §2 (NEW).]

C. A proposed modification to an approved alternative collection program must be submitted to the department for written approval. The department shall approve or deny a proposed modification based on application of the criteria described in paragraph B. The department may waive payment of any fees associated with review and approval of a proposed modification to an approved alternative collection program if the review of the proposed modification does not require significant department staff time. [PL 2021, c. 455, §2 (NEW).]

D. In accordance with rules adopted by the department, a producer or producers managing an approved alternative collection program shall report annually to the stewardship organization and to the department the following information:

(1) The total tons of each type of packaging material collected, reused, recycled, disposed of at an incineration facility or otherwise managed under the alternative collection program in the prior calendar year, including a breakdown of the total tons of each type of material to be credited to each producer participating in the alternative collection program;

(2) A list of the collection opportunities in the State for the types of packaging material managed under the alternative collection program that were made available in the prior calendar year;

(3) A description of the education and outreach strategies implemented by the alternative collection program in the prior calendar year to increase consumer awareness of the program throughout the State; and

(4) Any additional information required by the department. [PL 2021, c. 455, §2 (NEW).]

E. If the department determines that an approved alternative collection program is not operating in a manner consistent with the proposal approved under this subsection or the provisions of this subsection, the department shall provide written notice to the producer or producers operating the alternative collection program regarding the nature of the deficiency, the actions necessary to correct the deficiency and the time by which such actions must be implemented. If the department determines that the producer or group of producers have failed to implement the actions described in the written notice within the required time frame, the department shall notify the producers or group of producers as well as the stewardship organization in writing that the producer or group of producers are ineligible to offset payment obligations under the packaging stewardship program based on packaging material managed under the alternative collection program. [PL 2021, c. 455, §2 (NEW).]

[PL 2021, c. 455, §2 (NEW).]

9. Requirements for participating municipalities. In accordance with the provisions of this subsection and the rules adopted by the department, a municipality may elect to, but is not required to,

participate in the packaging stewardship program under this section. To be eligible for reimbursement of costs under subsection 10 as a participating municipality, a municipality must, at a minimum:

- A. Provide for the collection and recycling of packaging material that is generated in the municipality and is readily recyclable; and [PL 2021, c. 455, §2 (NEW).]
- B. Annually report to the stewardship organization, on a form provided and approved by the department, all information necessary for the stewardship organization to determine the municipality's incurred costs associated with its collection, processing, transportation and recycling or other management of recyclable material and of municipal solid waste. [PL 2021, c. 455, §2 (NEW).]

Two or more municipalities, municipally owned solid waste processing facilities or quasi-municipal entities that manage waste materials on behalf of a municipality may elect to jointly report to the stewardship organization as required by paragraph B and to jointly receive reimbursement payments pursuant to subsection 10 from the stewardship organization. [PL 2021, c. 455, §2 (NEW).]

10. Municipal reimbursements. In accordance with the rules adopted by the department pursuant to subsection 13, paragraph A, subparagraph (4), the stewardship organization shall annually disburse to participating municipalities from the packaging stewardship fund established under subsection 12 reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and reimbursement payments for the median per-ton cost of managing packaging material that is not readily recyclable. For the purposes of this subsection, the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of packaging material, whether readily recyclable or not readily recyclable.

A. In accordance with rules adopted by the department, the stewardship organization shall determine the amount of payments to participating municipalities under this subsection based on the following information:

- (1) Information provided by participating municipalities to the stewardship organization in accordance with subsection 9, paragraph B regarding the costs incurred by those municipalities in managing packaging material that is readily recyclable and packaging material that is not readily recyclable, which may include costs associated with the management of packaging material collected in public spaces and schools;
- (2) Information provided to the department by recycling establishments pursuant to section 2145 and made available by the department to the stewardship organization, including the tons of recyclable material received by each recycling establishment from each municipality and the tons of processed recyclable material sold by each recycling establishment;
- (3) Information provided to the department by recycling establishments not located in the State or by participating municipalities and made available by the department to the stewardship organization regarding the tons of recyclable material brokered by those municipalities to those recycling establishments and processed and sold by those recycling establishments;
- (4) Information obtained by the stewardship organization through the audits of facilities that process recyclable material generated in the State as required by subsection 13, paragraph A, subparagraph (6); and
- (5) Any other information specified by the department by rule. [PL 2021, c. 455, §2 (NEW).]

B. In accordance with procedures and requirements adopted by the department by rule, the stewardship organization shall use the information described in paragraph A to determine the total tons of each packaging material type recycled by all municipalities at each recycling establishment

and the percentage of those total tons attributable to each participating municipality. In the case of 2 or more municipalities that jointly send recyclable material to a recycling establishment, the stewardship organization shall assume that an equal amount of the jointly sent material is attributable to each resident of each municipality unless those municipalities by agreement identify an unequal per capita division of that jointly sent material for the purposes of this subsection. [PL 2021, c. 455, §2 (NEW).]

[PL 2021, c. 455, §2 (NEW).]

11. Investments in education and infrastructure. In accordance with the provisions of this subsection and the rules adopted by the department, the stewardship organization shall make investments in education and infrastructure that support the recycling of packaging material in the State.

A. The stewardship organization shall submit any proposed investment in education or infrastructure to the department for approval prior to making any expenditure for such investment. The proposal must incorporate any input received by the stewardship organization regarding the proposed investment from producers, recycling establishments and participating municipalities. [PL 2021, c. 455, §2 (NEW).]

B. The department shall adopt rules setting forth the criteria for evaluation and approval or denial of investments in education and infrastructure proposed by the stewardship organization. The department shall approve or deny a proposed investment within 90 days of receipt of the proposal from the stewardship organization. [PL 2021, c. 455, §2 (NEW).]

C. The department shall ensure that preference for funding is given to proposals that support the State's solid waste management hierarchy under section 2101, promote a circular economy for packaging material types for which producers were required to make payments under subsection 6, increase the recyclability of packaging material that is not readily recyclable, increase access to recycling infrastructure in the State, improve consumer education in the State regarding recycling and recyclability and equitably support recycling and education efforts in participating municipalities, particularly in those participating municipalities that have received minimal or no prior funding pursuant to this paragraph. [PL 2021, c. 455, §2 (NEW).]

[PL 2021, c. 455, §2 (NEW).]

12. Packaging stewardship fund; authorized expenditures. In accordance with the provisions of this subsection and the rules adopted by the department, the stewardship organization shall establish and manage a packaging stewardship fund. The stewardship organization shall deposit into the fund all payments received from producers in accordance with subsection 6 and shall expend those funds for the following purposes:

A. To reimburse participating municipalities in accordance with applicable provisions in subsections 9, 10 and 13 and the applicable rules adopted by the department pursuant to those subsections; [PL 2021, c. 455, §2 (NEW).]

B. To cover the operating costs of the stewardship organization, which must be annually verified by a 3rd-party financial audit paid for by the stewardship organization as required by subsection 5, paragraph L; [PL 2021, c. 455, §2 (NEW).]

C. To pay to the department all applicable fees required under subsection 13, paragraph B, including reimbursement of any costs incurred by the department in adopting rules and in administering and enforcing this section prior to the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3; and [PL 2021, c. 455, §2 (NEW).]

D. To support investments in education and infrastructure made in accordance with subsection 11. [PL 2021, c. 455, §2 (NEW).]

[PL 2021, c. 455, §2 (NEW).]

13. Administration and enforcement; rulemaking; fees; department report. The department shall administer and enforce this section and shall adopt rules as necessary to implement, administer and enforce this section. The department shall solicit input from interested parties in the development of any draft rules to implement this section, solicit public comment on the draft rules for a period of at least 30 days and hold a public hearing on the draft rules in the same manner as a public hearing must be conducted under Title 5, section 8052. Except as provided in paragraph D, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. Rules adopted by the department pursuant to this section must include, at a minimum:

(1) A process for annually determining a schedule of producer payments required under subsection 6, which must include, but is not limited to, provisions regarding the timing of producer payments and the timing of and information required to be provided in the annual producer report required by subsection 7.

(a) The payment schedule adopted under this subparagraph must provide for a flat fee option to be assessed on a tiered basis such that 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 stewardship organization under this section.

(b) For producers other than low-volume producers, the payment schedule adopted under this subparagraph must be based on and cover the cost of managing the amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State by a producer and not managed under an approved alternative collection program, adjusted as applicable in accordance with the adjustment criteria adopted pursuant to division (c).

(c) For producers other than low-volume producers, the payment schedule adopted under this subparagraph must delineate criteria to be used to adjust producer payments in a manner that incentivizes the use of recycled content in and increased recyclability of packaging material, lower toxicity in packaging material, a reduction of the amount of packaging material used, a reduction of litter from packaging material, increased reuse of packaging material and labeling of packaging material to reduce consumer confusion including by incentivizing accuracy in recyclability claims displayed on packaging material and that creates other incentives consistent with generally accepted industry standards.

(d) The rule must require as part of the annual producer reporting under subsection 7 the provision by a producer of all information necessary for the determination of the producer's payment obligation and the determination of the producer's compliance with respect to its products.

(i) For producers other than low-volume producers, the rule must require the producer to provide a description of the methods it used to determine the amount reported for each type of packaging material associated with its products, a description of the characteristics of each type of packaging material that are relevant to the adjustment criteria adopted pursuant to division (c) and a list of the producer's brands and the UPCs of the products associated with each type of packaging material.

(ii) For low-volume producers, the rule must require the reporting of only the information necessary for a calculation of the flat fee described in division (a) and a determination of the producer's compliance with the requirements of this section.

(iii) The rule must authorize a producer that is unable to fully satisfy the reporting requirements due to a failure to obtain sufficient information regarding the characteristics of the packaging material of products of the producer that are sold, offered for sale or distributed for sale in or into the State to alternatively report to the

stewardship organization an estimate of the total amount of that packaging material based on unit quantities as long as such alternative reporting includes a description of the methods used by the producer to calculate the estimate. When a producer alternatively reports an estimate in accordance with this subdivision, unless otherwise determined by the department, the estimate must be adjusted using the least favorable adjustment criteria adopted pursuant to division (c);

- (2) A process for determining on an annual basis those types of packaging material that are readily recyclable, which must involve consultation with the stewardship organization and recycling establishments and must include a transitional period between the time that a type of packaging material is determined to be readily recyclable or to not be readily recyclable and the time that such determinations will be effective for the purposes of calculating producer payments and municipal reimbursements in accordance with this section;
- (3) A process for determining on an annual basis which municipalities are similar municipalities, which must involve consultation with participating municipalities;
- (4) A process for determining municipal reimbursements, including a description of the information required from participating municipalities under subsection 9, a method for calculating the reimbursements required under subsection 10 and the timing for participating municipality reporting and payments to participating municipalities. The method for calculating reimbursements must include the median per-ton cost of managing packaging material that is readily recyclable and the median per-ton cost of managing packaging material that is not readily recyclable. The method for calculating reimbursements must involve consultation with participating municipalities and be designed to incentivize municipal waste management activities that represent higher priorities on the solid waste management hierarchy;
- (5) Requirements for the assessment of program performance, including the setting of program goals used to inform the producer payment schedule determined pursuant to subparagraph (1) and the investments in infrastructure and education made pursuant to subsection 11, which must include, but are not limited to, program goals supporting an overall reduction by producers in the amount of packaging material used, an increased reuse by producers of packaging material and an increased amount of post-consumer recycled content in packaging material used by producers; packaging material litter reduction goals; recycling access and collection rate goals for municipalities; and overall program and material-specific recycling rate goals.

To the maximum extent practicable, material-specific recycling rate goals adopted pursuant to this subparagraph must reflect the following recycling standards:

- (a) Sorted glass is considered recycled if it does not require further processing before entering a glass furnace or before use in the production of filtration media, abrasive materials, glass fiber insulation or construction materials;
 - (b) Sorted metal is considered recycled if it does not require further processing before entering a smelter or furnace;
 - (c) Sorted paper is considered recycled if it does not require further processing before entering a pulping operation; and
 - (d) Plastic separated by polymer is considered recycled if it does not require further processing before entering a pelletization, extrusion or molding operation or, in the case of plastic flakes, does not require further processing before use in a final product;
- (6) Requirements for the stewardship organization to conduct representative audits of recyclable material processed and sold by facilities that process recyclable material generated

in the State, of municipal solid waste disposed of in the State and of waste littered in the State, which must include, but are not limited to:

- (a) Provisions regarding the sampling techniques to be used in those audits, which must include random sampling;
- (b) For audits of recyclable material, provisions regarding:
 - (i) How those audits must be designed to collect information regarding the extent to which recyclable material processed and sold by those facilities reflects the tons of each type of packaging material collected in the State for recycling and the tons of each type of packaging material recycled in the State, as well as the ultimate destination of and intended use for that recycled material;
 - (ii) How those audits must be designed so that information collected through the audit of one facility will not be used to infer information about a different facility that uses different processing equipment, different sorting processes or different staffing levels to conduct processing; and
 - (iii) The process by which a facility will be allowed to request and receive an audit if it can credibly demonstrate that an audit result being applied to its material output is not representative of its current operations;
- (c) For audits of municipal solid waste, provisions regarding how the audits will be designed to collect information regarding the types and amount, whether by weight or volume, of packaging material in the waste stream and the percentage by weight and volume of the waste stream that is composed of packaging material; and
- (d) For audits of waste littered in the State, provisions regarding how the audits will be designed to collect information regarding the packaging material type by amount, whether by weight or volume, in sampled litter, identification of the producer or producers of the packaging material in sampled litter, if identifiable, and an evaluation based on those audits regarding the areas of the State in which litter accumulation is greatest;
- (7) A schedule by which the stewardship organization must annually report to the department pursuant to subsection 5 and a schedule by which a producer or group of producers operating an approved alternative collection program must annually report to the stewardship organization and to the department pursuant to subsection 8, paragraph D; and
- (8) A process by which the stewardship organization will develop and submit for department review and a process by which the department shall review and approve or deny a proposed investment in education and infrastructure pursuant to subsection 11. The process must set forth the manner in which the stewardship organization is required to solicit and incorporate input in the development of proposed investments from producers, recycling establishments and participating municipalities. [PL 2023, c. 589, §1 (AMD).]

B. At the time that the stewardship organization submits its annual report to the department pursuant to subsection 5, the stewardship organization shall pay to the department a reasonable annual fee established by the department, not to exceed \$300,000, to cover the department's costs for review of the stewardship organization's annual report and the department's costs in the prior fiscal year for its oversight, administration and enforcement of the packaging stewardship program. In accordance with subsection 12, paragraph C, the annual fee required under this paragraph may include reimbursement of any costs incurred by the department in adopting rules and in administering and enforcing this section prior to the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3. [PL 2021, c. 455, §2 (NEW).]

C. A producer or group of producers, when submitting a proposal to the department for the establishment of an alternative collection program or submitting a proposal to the department for modifications to an approved alternative collection program under subsection 8, shall pay to the department a reasonable fee established by the department to cover the department's actual costs for review of the proposal or proposed modifications. A producer or group of producers operating an approved alternative collection program under subsection 8 shall pay to the department a reasonable annual fee established by the department, not to exceed \$10,000 per participating producer, to cover the department's costs for review of the producer's or group's annual report and the department's costs for the oversight, administration and enforcement of the alternative collection program, which may be waived by the department if those activities by the department do not require significant department staff time. [PL 2021, c. 455, §2 (NEW).]

D. The department shall review packaging material associated with certain federally regulated products to determine whether that packaging material should be excluded from the definition of "packaging material" under subsection 1, paragraph I. In making such a determination, the department shall, at a minimum, consider whether the packaging material for such products is required by federal law or regulation to meet specific content or construction standards that may preclude or significantly diminish the producer's ability to increase the recyclability or reduce the volume of the packaging material. If the department determines that any such product or its associated packaging material should be excluded from the definition of "packaging material," the department shall adopt an exclusion by rule. At a minimum, the department shall conduct a review in accordance with this paragraph of the packaging material associated with the following federally regulated products:

- (1) Material that is used for the containment, protection, delivery, presentation or distribution of a drug, as that term is defined under Section 321 of the federal Food, Drug, and Cosmetic Act, as regulated by the United States Food and Drug Administration under the federal Food, Drug, and Cosmetic Act or as collected under a stewardship program in the State that has been approved for operation by the department and has been established to collect and dispose of such drugs, including, but not limited to, prescription and nonprescription drugs, drugs in medical devices and combination products, branded and generic drugs and drugs for veterinary use;
- (2) Material that is a medical device or a biological product, or is used for the containment, protection, delivery, presentation or distribution of a medical device or a biological product, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Parts 200, 300 and 800;
- (3) Material that is used for the containment, protection, delivery, presentation or distribution of an over-the-counter human drug product for which tamper-evident packaging is required, as regulated by the United States Food and Drug Administration under 21 Code of Federal Regulations, Section 211.132; and
- (4) Material that is used for the containment, protection, delivery, presentation or distribution of a substance regulated by the United States Consumer Product Safety Commission pursuant to the federal Poison Prevention Packaging Act of 1970 for which special packaging is required under 16 Code of Federal Regulations, Part 1700.

Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 455, §2 (NEW).]

E. Beginning February 15, 2025, and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding the packaging stewardship program and alternative collection programs implemented pursuant to this section.

(1) The report must include, at a minimum, data on the amount and type of packaging material associated with products sold, offered for sale or distributed for sale in or into the State; data regarding how that packaging material was managed; and any recommendations for amendments to the programs implemented under this section, including, but not limited to, the establishment of new program goals or the imposition of a prohibition on the sale, offer for sale or distribution for sale in or into the State of products associated with packaging material that the department has determined is nonessential, is contaminating collected recyclable material, is a common source of litter or exhibits toxicity, particularly if that toxicity is demonstrated to have a disproportionate impact on any community in the State.

(2) Beginning February 15, 2028, and every 5 years thereafter, the report under this paragraph must describe the results of a comprehensive review of the rules adopted by the department pursuant to this section and must include recommendations by the department for any legislative changes to this section determined necessary as a result of that review, including, but not limited to, changes to the flat fee that may be paid by a low-volume producer pursuant to subsection 13, paragraph A, subparagraph (1), division (a), as well as a description of any changes to those rules that the department intends to propose in future rulemaking.

(2-A) The report under this paragraph due February 15, 2028 must include:

(a) Information regarding the criteria and standards adopted by other jurisdictions to regulate recyclability claims displayed on packaging material, including, but not limited to, the recyclability criteria and standards adopted by the California Department of Resources Recycling and Recovery pursuant to the California Public Resources Code, Division 30, Part 3, Chapter 5.7; and

(b) An evaluation of options for further incentivizing or ensuring accuracy in recyclability claims displayed on packaging material through amendments to the producer payment schedule adopted pursuant to paragraph A, subparagraph (1), through amendments to the criteria and standards for determining recyclability adopted pursuant to paragraph A, subparagraph (2) or through other amendments to this section or the rules adopted pursuant to this section.

This subparagraph applies only to the report due February 15, 2028.

(3) The report required under this paragraph may be included in the report required pursuant to section 1772, subsection 1. [PL 2023, c. 589, §2 (AMD).]

[PL 2023, c. 589, §§1, 2 (AMD).]

14. Antitrust exclusions. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a packaging stewardship program or an alternative collection program under this section, is immune from liability for the producer's or stewardship organization's conduct under state laws relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or commerce only to the extent necessary to plan and implement the producer's or stewardship organization's packaging stewardship program or alternative collection program consistent with the provisions of this section.

[PL 2021, c. 455, §2 (NEW).]

15. Proprietary information. Proprietary information submitted to the department pursuant to the requirements of this section or the rules adopted pursuant to this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

[PL 2021, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2021, c. 455, §2 (NEW). PL 2023, c. 589, §§1, 2 (AMD).

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