Subcommittee of the
RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Exceptions Subcommittee

Tuesday, November 17, 1:00 p.m.

Location: State House, Room 202 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#202

1. Introductions
2. Review tabled Public Records Exceptions from October 30, 2026, meeting.
3. Review remaining Public Records Exceptions (Titles 37-B – 39-A)
4. Adjourn

Public Records Exceptions for Review by RTKAC in 2026

REF #	Statute	Statute PDF pg #	Description	Entity	Agency Proposed Action	Questionairre PDF pg #	Drafting Notes	Previous Meeting Notes
13	34-B MRSA §1207, sub-§1	8	Title 34-B, section 1207, subsection 1, relating to orders of commitment and medical and administrative records, applications and reports pertaining to any client of Department of Health and Human Services	DHHS	No response received as of 11/17/2026	N/A	"shall be kept confidential" can be simplified & "and may not be disclosed by any person" likely duplicative	Held open for agency feedback at last meeting, still haven't received response as of 11/17/2026
17	34-B MRSA §5005-A, sub-§5	13	Title 34-B, section 5005-A, subsection 5, relating to records and accounts concerning request for action by advocacy agency for persons with intellectual disabilities or autism	Disability Rights Maine	No response received as of 11/17/2026	N/A	Paragraph C could be modified with more affirmative construction & simplification "The records are confidential and may be released only with the written consent from…"	Held open for agency feedback at last meeting, still haven't received response as of 11/17/2026
18	34-B MRSA §5605, sub-§15	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving intellectual disabilities or autism services	Various Custodians	No response received as of 11/17/2026	N/A	Can be simplified	Held open for agency feedback at last meeting, still haven't received response as of 11/17/2026
23	35-A MRSA §1311-B, sub-§1, 2, 4	22	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	Public Utilities Commission	No changes recommended Continuation of exception supported	24	Defining confidential documents as "not a public record" may be duplicative per drafting manual	Tabled based on concerns regarding outdated terms in subsection 1
27	35-A MRSA §8703, sub-§5	27	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	Various Custodians	Would defer any changes to AG's Office Continuation of exception supported	29	No changes recommended	Tabled for AAG Bolton to confer with AG's office
29	35-A MRSA §9408, sub-§§1 and 2	31	Title 35-A, section 9408, subsection 1: Maine Connectivity Authority – information about communications service providers if public access could compromise security of public utility systems or specific information is of a competitive or proprietary nature	Maine Connectivity Authority	No changes recommended at this point, though there are clarifications sought in future legislation Continuation of exception supported	32	Defining confidential documents as "not a public record" may be duplicative per drafting manual. Language re: designating info as confidential could be simplified	Tabled based on similar concerns from REF 23
30	35-A MRSA §10106, sub-§1	34	Title 35-A, section 9207, subsection 1, paragraph A, relating to social security numbers included in certain records of the Efficiency Maine Trust	Efficiency Maine Trust	See questionnaire for suggested changes Continuation of exception supported	36	Can simplify language	Tabled for input from EMT, did not hear back as of 11/17/2026
34	36 MRSA §579	38	Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	DACF, Bureau of Forestry	Supports Continuation of Exception No Changes Recommended	40	Defining confidential documents as "not a public record" may be duplicative per drafting manual	Held open for agency feedback. Agency has since responded

35	36 MRSA §581-G, sub-§3	41	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	DACF, Bureau of Forestry	Supports Continuation of Exception No Changes Recommended	42	No changes recommended	Held open for agency feedback. Agency has since responded
36	36 MRSA §653, sub-§1 (OLD) 36 MRSA §684, sub-§6 (NEW)	43	Title 36, section 653, subsection 1, paragraph G, relating to applications and proof of entitlement for veterans property tax exemption	Maine Revenue Services, Various Custodians	No changes recommended Continuation of exception supported	45	The exemptions nuder this section are discontinued beginning with property tax years beginning 4/1/2027.	Tabled to review new statute that is replacing this statute
38	36 MRSA §4316, sub-§4	48	Title 36, section 4316, subsection 4, relating to wild blueberries audits, Department of Agriculture, Conservation and Forestry	DACF	Supports Continuation of Exception No Changes Recommended	50	Can simplify language	Held open for agency feedback. Agency has since responded
41	37-B MRSA §11, sub-§1	51	Title 37-B, section 11, subsection 1, relating to personally identifying information concerning a dependent of a member of the United States Armed Forces or state military forces who is deployed out of state	Maine Bureau of Veterans' Services	The Department has only seen this request under FOIA, not FOAA.	N/A	No changes recommended	N/A
42	37-B MRSA §506	52	Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	Maine Bureau of Veterans' Services	No changes recommended Continuation of exception supported	53	No changes recommended	N/A
43	37-B MRSA §708, sub-§3	55	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	Homeland Security Advisory Council	No changes recommended Continuation of exception supported	58	"Not a public record" is considered ambiguous per drating manual. However, it's unclear here whether a change to "confidential" would be appropriate based on intent of statute.	N/A
44	37-B MRSA §797, sub-§7	59	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	Maine Emergency Management Agency	No changes recommended Continuation of exception supported	61	No changes recommended	N/A
45	38 MRSA §100-A, sub-§1	63	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	Maine Pilotage Commission	MDOT Chief Counsel Anne Pare indicated she is not aware of this exception being used. No other input provided.	N/A	No changes recommended	N/A
46	38 MRSA §345-A, sub-§4	65	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	DEP, Board of Environmental Protection	No changes recommended Continuation of exception supported	67	No changes recommended	N/A

47	38 MRSA §414, sub-§6	84	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in license application procedures	DEP, Board of Environmental Protection	No changes recommended Continuation of exception supported	68	Unclear on potential changes	N/A
48	38 MRSA §470-D	86	Title 38, section 470-D, relating to individual water withdrawal reports	Various Custodians	No changes recommended Continuation of exception supported	69	Defining confidential documents as "not a public record" may be duplicative per drafting manual	N/A
49	38 MRSA §580-B, sub-§11	87	Title 38, section 580-B, subsection 11, relating to information about individual auctions administered under the carbon dioxide cap-and-trade program	DEP	No changes recommended Continuation of exception supported	70	No changes recommended	N/A
50	38 MRSA §1310-B, sub-§2	94	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	DEP	No changes recommended Continuation of exception supported	71	Defining confidential documents as "not a public record" may be duplicative per drafting manual	N/A
51	38 MRSA §1610, sub-§6-A	96	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	DEP	No changes recommended Continuation of exception supported	73	No changes recommended	N/A
52	38 MRSA §1615, sub-§4, ¶D	N/A	Title 38, section 1615, subsection 4, paragraph D: Proprietary information provided concerning post-consumer recycled plastic content in plastic beverage containers	DEP	No input, incorrectly provided DEP with bad citation.	73	No changes recommended	N/A
53	38 MRSA §1612, sub-§7	102	Title 38, section 1612, subsection 7: Proprietary information submitted in a drug take-back stewardship plan	DEP	No changes recommended Continuation of exception supported	74	No changes recommended	N/A
54	38 MRSA §1614(12)	111	Title 38, section 1614, subsection 12: Proprietary information submitted to the Department of Environmental Protection by manufacturers of products containing intentionally added PFAS	DEP	No changes recommended Continuation of exception supported	74	No changes recommended	N/A
55	38 MRSA §1661-A, sub-§4	121	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	DEP	No changes recommended Continuation of exception supported	75	No changes recommended	N/A
56	38 MRSA §1672, sub-§4	123	Title 38, section 1672, subsection 4, paragraph A, relating to proprietary information submitted to DEP relating to mercury-added lamps	DEP	No changes recommended Continuation of exception supported	76	No changes recommended	N/A

57	38 MRSA §1776, sub-§5	131	Title 38, section 1776, subsection 5, paragraph J, relating to proprietary sales information submitted to DEP as part of a product stewardship program	DEP	No changes recommended Continuation of exception supported	77	No changes recommended	N/A
58	38 MRSA §1776, sub-§10	131	Title 38, section 1776, subsection 10, relating to product stewardship plans and reports	DEP	No changes recommended Continuation of exception supported	77	No changes recommended	N/A
59	38 MRSA §2144, sub-§5	136	Title 38, section 2144, subsection 5, paragraph F, relating to architectural paint stewardship program reports	DEP	No changes recommended Continuation of exception supported	78	No changes recommended	N/A
60	38 MRSA §2145, sub-§3	144	Title 38, section 2145, subsection 3: Recycling establishment information submitted to DEP if designated as confidential	DEP	No changes recommended Continuation of exception supported	79	No changes recommended	N/A
61	38 MRSA §2146, sub-§15	145	Title 38, section 2146, subsection 15: Proprietary information provided concerning packaging materials	DEP	No changes recommended Continuation of exception supported	80	No changes recommended	N/A
62	38 MRSA §2324, sub-§3	162	Title 38, section 2324, subsection 3, relating to information submitted to the Department of Environmental Protection concerning priority toxic chemicals	DEP	No changes recommended Continuation of exception supported	81	No changes recommended	N/A
63	38 MRSA §3107(3-B)(H)	164	Title 38, section 3107, subsection 3-B, paragraph H: Proprietary information submitted to the Department of Environmental Protection under the commingling cooperative requirements of the container redemption program laws.	DEP	No changes recommended Continuation of exception supported	82	No changes recommended	N/A
64	38 MRSA §3119, sub-§3	173	Title 38, section 3119, subsection 3: Proprietary information submitted by initiator of deposit or pick-up agent submitted to DEP if designated as confidential	DEP	No changes recommended Continuation of exception supported	82	No changes recommended	N/A
65	39-A MRSA §153, sub-§5	174	Title 39-A, section 153, subsection 5, relating to the Workers Compensation Board abuse investigation unit	Workers' Compensation Board	No changes recommended Continuation of exception supported	179	No changes recommended	N/A
66	39-A MRSA §153, sub-§9	174	Title 39-A, section 153, subsection 9, relating to the Workers Compensation Board audit working papers	Workers' Compensation Board	No changes recommended Continuation of exception supported	155	No changes recommended	N/A

67	39-A MRSA §355-B, sub-§11	181	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers Compensation Supplemental Benefits Oversight Committee concerning individual claims	Supplemental Benefits Oversight Committee	No Questionnaire sent, I believe this committee is defunct.	N/A	"Not a public record" is considered ambiguous per drating manual. However, it's unclear here whether a change to "confidential" would be appropriate based on intent of statute.	N/A
68	39-A MRSA §403, sub-§3	184	Title 39-A, section 403, subsection 3, relating to workers compensation self-insurers proof of solvency and financial ability to pay	Maine Bureau of Insurance	No response received as of 11/10/2026	N/A	No changes recommended	N/A
69	39-A MRSA §403, sub-§15	184	Title 39-A, section 403, subsection 15, relating to workers compensation self-insurers	Maine Bureau of Insurance	No response received as of 11/10/2026	N/A	Defining confidential documents as "not a public record" may be duplicative per drafting manual	N/A
70	39-A MRSA §409	210	Title 39-A, section 409, relating to workers compensation information filed by insurers concerning the assessment for expenses of administering self-insurers workers compensation program	Maine Bureau of Insurance	No response received as of 11/10/2026	N/A	No changes recommended	N/A
71	34-A MRSA §1214, sub-§4	212	Title 34-A, section 1214, subsection 4, relating to requests for action submitted to the Office of Victim Services	Office of Victim Services	No changes recommended Continuation of exception supported	214	No changes recommended	N/A

§1207. Confidentiality of information

1. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person, except that:

A. A client, a client's legal guardian, if any, or, if the client is a minor, the client's parent or legal guardian may give informed written consent to the disclosure of information; [RR 2019, c. 2, Pt. B, §86 (COR).]

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the purposes of section 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B; [PL 2017, c. 475, Pt. A, §57 (AMD).]

B-1. [PL 2005, c. 397, Pt. A, §48 (RP).]

B-2. [PL 2007, c. 466, Pt. A, §56 (RP).]

B-3. [PL 2017, c. 475, Pt. A, §58 (RP).]

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; [PL 1983, c. 459, §7 (NEW).]

C-1. Within 48 hours of a death reportable by the commissioner to the Chief Medical Examiner pursuant to Title 22, section 3025, subsection 1, paragraph E, the commissioner shall provide information on that death to the chairs of the joint standing committee of the Legislature having jurisdiction over health and human services matters. Within 30 days of the reportable death, the commissioner shall provide the members of the committee with a copy of the death report. Information and reports provided pursuant to this paragraph must maintain the confidentiality of the identity of all persons mentioned or referred to in the information and reports. [PL 1997, c. 605, §1 (NEW).]

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to that client's spouse or next of kin; [RR 2019, c. 2, Pt. B, §87 (COR).]

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; [PL 1989, c. 335, §2 (AMD).]

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, as long as, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed; [PL 2011, c. 691, Pt. A, §39 (AMD).]

G. [PL 2011, c. 691, Pt. A, §40 (RP).]

H. The names and dates of death of individuals who died while patients at the Augusta Mental Health Institute, the Bangor Mental Health Institute, the Dorothea Dix Psychiatric Center, the Riverview Psychiatric Center or the Pineland Hospital and Training Center may be made available to the public in accordance with rules adopted by the department. The rules must require the department to notify the public regarding the release of the information and to maintain the confidentiality of information concerning any deceased individual whose surviving relatives notify the department that they object to public disclosure. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [PL 2015, c. 189, §1 (AMD).]

I. Nothing in this subsection precludes the disclosure of any information, except psychotherapy notes as defined in 45 Code of Federal Regulations, Section 164.501(2010), concerning a client to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which a client may choose to opt in to allow the state-designated statewide health information exchange to disclose that client's health care information covered under this section to a health care practitioner or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to a client at all times.

A state-designated statewide health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when, in a health care provider's judgment, disclosure is necessary to:

(1) Avert a serious threat to the health or safety of others, if the conditions, as applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010) are met; or

(2) Prevent or respond to imminent and serious harm to the client and disclosure is to a provider for diagnosis or treatment. [PL 2011, c. 347, §11 (NEW).]

[RR 2019, c. 2, Pt. B, §§86, 87 (COR).]

2. Statistical compilations and research. Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

(1) The access is approved by the chief administrative officer of the mental health facility or the chief administrative officer's designee;

(2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or the chief administrative officer's designee, where the person engaged in research or statistical compilation is to have access to communications and records; and

(3) The records are not removed from the mental health facility that prepared them, except that data that do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility. [RR 2019, c. 2, Pt. B, §88 (COR).]

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data that refer to the client by name, number or combination of characteristics that together could lead to the client's identification. [RR 2019, c. 2, Pt. B, §88 (COR).]

[RR 2019, c. 2, Pt. B, §88 (COR).]

3. Use by the commissioner. Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. A facility or a provider that receives funds from the department to provide services for persons eligible for such services under this Title shall send information and records to the commissioner, if requested by the commissioner pursuant to the department's obligation to maintain the overall responsibility for the care and treatment of persons receiving mental health services funded in full or in part by the State. [PL 2011, c. 542, Pt. A, §61 (RPR).]

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law. [PL 1983, c. 459, §7 (NEW).]

[PL 2011, c. 542, Pt. A, §61 (AMD).]

4. Prohibited acts.

[PL 2007, c. 310, §1 (RP).]

4-A. Violation. Disclosure of client information in violation of this section is an offense under the licensing standards of the mental health professional committing the violation and must be promptly reported to the licensing board with jurisdiction for review, hearing and disciplinary action.
[PL 2007, c. 310, §2 (NEW).]

5. Permitted disclosure.

[PL 2007, c. 310, §3 (RP).]

5-A. Disclosure to family, caretakers. Under the following circumstances, a licensed mental health professional providing care to an adult client may disclose to a family member, to another relative, to a close personal friend or caretaker of the client or to anyone identified by the client, the client's health information that is directly relevant to the person's involvement with the client's care.

A. If a client with capacity to make health care decisions is either present or available prior to disclosure, the professional may disclose the information:

(1) When the client gives oral or written consent;

(2) When the client does not object in circumstances in which the client has the opportunity to object; or

(3) When the professional may reasonably infer from the circumstances that the client does not object. [PL 2007, c. 310, §4 (NEW).]

B. The professional may disclose the information if in the professional's judgment it is in the client's best interests to make the disclosure and the professional determines either that the client

lacks the capacity to make health care decisions or an emergency precludes the client from participating in the disclosure. [PL 2007, c. 310, §4 (NEW).]

[PL 2007, c. 310, §4 (NEW).]

6. Duty to provide information.

[PL 2007, c. 310, §5 (RP).]

6-A. Disclosure of danger. A licensed mental health professional shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.

[PL 2009, c. 451, §7 (AMD).]

7. Disclosure to law enforcement. A licensed mental health professional shall disclose protected health information when the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer if the conditions, as applicable, are met as described in 45 Code of Federal Regulations, Section 164.512(f) (2008).

[PL 2009, c. 451, §8 (NEW).]

8. Disclosure of knowledge of firearms. A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.

[PL 2009, c. 451, §9 (NEW).]

9. Disclosure for care management or coordination of care. Notwithstanding any provision of this section to the contrary, a health care practitioner may disclose without authorization health information for the purposes of care management or coordination of care pertaining to a client as provided in this subsection.

A. Disclosure is permitted to a health care practitioner or health care facility as defined in Title 22, section 1711-C, subsection 1. [PL 2013, c. 326, §2 (NEW).]

B. Disclosure is permitted to a payor or person engaged in payment for health care for the purpose of care management or coordination of care. [PL 2013, c. 326, §2 (NEW).]

C. Disclosure of psychotherapy notes is governed by 45 Code of Federal Regulations, Section 164.508(a)(2). [PL 2013, c. 326, §2 (NEW).]

D. A person who has made a disclosure under this subsection shall make a reasonable effort to notify the individual or the authorized representative of the individual of the disclosure. [PL 2013, c. 326, §2 (NEW).]

[PL 2013, c. 326, §2 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1983, c. 580, §4 (AMD). PL 1983, c. 626 (AMD). PL 1985, c. 495, §23 (AMD). PL 1985, c. 582 (AMD). PL 1989, c. 7, §N3 (AMD). PL 1989, c. 190 (AMD). PL 1989, c. 335, §§2,3 (AMD). PL 1991, c. 250 (AMD). PL 1993, c. 593, §1 (AMD). PL 1995, c. 497, §5 (AMD). PL 1995, c. 560, §K19 (AMD). PL 1995, c. 691, §4 (AMD). PL 1997, c. 422, §2 (AMD). PL 1997, c. 605, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 563, §§1-3 (AMD). RR 2005, c. 2, §22 (COR). PL 2005, c. 397, §§A47,48 (AMD). PL 2005, c. 683, §A57 (AMD). PL 2007, c. 286, §2 (AMD). PL 2007, c. 310, §§1-6 (AMD). PL 2007, c. 466, Pt. A, §56 (AMD). PL 2007, c. 609, §1 (AMD). PL 2007, c. 670, §17 (AMD). PL 2009, c. 415, Pt. A, §20 (AMD). PL 2009, c. 451, §§7-9 (AMD). PL 2011, c. 347, §§9-11 (AMD). PL 2011, c. 420, Pt. C, §§6, 7 (AMD). PL 2011, c. 542, Pt. A, §61 (AMD). PL 2011, c. 691, Pt. A, §§39, 40 (AMD). PL 2013, c. 132, §1 (AMD). PL 2013, c. 326, §2 (AMD). PL 2013, c. 434, §§7, 8 (AMD). PL 2015, c. 189, §1

(AMD). PL 2015, c. 329, Pt. A, §§21, 22 (AMD). PL 2017, c. 93, §1 (AMD). PL 2017, c. 147, §§6, 7 (AMD). PL 2017, c. 475, Pt. A, §§57, 58 (AMD). RR 2019, c. 2, Pt. B, §§86-88 (COR).

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§5005-A. Advocacy agency

1. Agency. The department shall contract with the agency designated pursuant to Title 5, section 19502, referred to in this section as "the agency," to provide the services described in subsection 2 to individuals with intellectual disabilities or autism.
[PL 2011, c. 657, Pt. EE, §5 (NEW).]

2. Duties. The department shall contract with the agency to perform the following duties statewide in at least 5 geographically dispersed locations.

A. The agency shall receive complaints made by or on behalf of individuals with intellectual disabilities or autism and represent their interests in any matter pertaining to their rights and dignity. [PL 2013, c. 310, §2 (AMD).]

B. The agency shall investigate the claims, grievances and allegations of violations of the rights of individuals with intellectual disabilities or autism. [PL 2013, c. 310, §2 (AMD).]

C. The agency may pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with intellectual disabilities or autism who are or may be eligible for services administered, licensed or funded by the department, except that the agency may refuse to take action on any complaint that it considers to be trivial, to be moot or to lack merit or for which there is clearly another remedy available. [PL 2013, c. 310, §2 (AMD).]

D. [PL 2013, c. 310, §2 (RP).]

E. The agency may refer individuals with intellectual disabilities or autism to other agencies or entities and collaborate with those agencies or entities for the purpose of advocating for the rights and dignity of those individuals. [PL 2013, c. 310, §2 (AMD).]

F. The agency shall act as an information source regarding the rights of all individuals with intellectual disabilities or autism, keeping itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of those individuals and about relevant legal decisions and other developments related to the fields of mental health, intellectual disabilities and autism, both in this State and in other parts of the country. [PL 2013, c. 310, §2 (AMD).]

G. The agency may make and publish reports necessary to the performance of the duties described in this section. The agency may report its findings to groups outside the department, such as legislative bodies, advisory committees, commissions, law enforcement agencies and the press. At least annually, the agency shall report both in person and in writing to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the department regarding the performance of the duties described in this section. [PL 2013, c. 310, §2 (AMD).]

H. The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with intellectual disabilities or autism for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care. [PL 2013, c. 310, §2 (NEW).]
[PL 2013, c. 310, §2 (AMD).]

3. Participate in personal planning. The agency may participate in personal planning when the agency has concerns regarding the rights or dignity of a person with intellectual disabilities or autism. A person has the right to refuse such participation.
[PL 2011, c. 657, Pt. EE, §5 (NEW).]

4. Access to files and records. The agency has access, limited only by the Civil Service Law, to the files, records and personnel of any provider of services, including the files and records of any person

with an intellectual disability or autism held by any provider of service, administered, licensed or funded by the department and to all reports and related documents submitted pursuant to section 5604-A.
[RR 2025, c. 2, Pt. A, §151 (COR).]

4-A. Access to individuals. The agency has access to individuals pursuant to Title 5, section 19506.
[PL 2013, c. 310, §4 (NEW).]

5. Confidentiality. The following provisions govern confidentiality.

A. Any request by or on behalf of an individual with intellectual disabilities or autism for action by the agency and all written records or accounts related to the request are confidential as to the identity of the individual. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

B. The records and accounts under paragraph A may be released only as provided by law. [PL 2011, c. 657, Pt. EE, §5 (NEW).]

C. Records maintained by the agency are the sole property of the individual with intellectual disabilities or autism to whom the records pertain and the agency shall protect the records from loss, damage, tampering or use by unauthorized individuals. The agency shall keep the records confidential and may not release them without written consent from the individual with intellectual disabilities or autism or the individual's guardian. [PL 2013, c. 310, §5 (NEW).]
[PL 2013, c. 310, §5 (AMD).]

SECTION HISTORY

PL 2011, c. 657, Pt. EE, §5 (NEW). PL 2013, c. 310, §§2-5 (AMD). RR 2025, c. 2, Pt. A, §151 (COR).

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§5605. Rights and basic protections of a person with an intellectual disability, autism or an acquired brain injury

A person with an intellectual disability or autism is entitled to the following rights and basic protections. A person with an acquired brain injury is entitled to the rights and basic protections outlined in subsections 1 to 11. [PL 2021, c. 284, Pt. A, §11 (AMD).]

1. Humane treatment. A person with an intellectual disability, autism or an acquired brain injury is entitled to dignity, privacy and humane treatment.
[PL 2021, c. 284, Pt. A, §12 (AMD).]

2. Practice of religion. A person with an intellectual disability, autism or an acquired brain injury is entitled to religious freedom and practice without any restriction or forced infringement on that person's right to religious preference and practice.
[PL 2021, c. 284, Pt. A, §13 (AMD).]

3. Communications. A person with an intellectual disability, autism or an acquired brain injury is entitled to private communications.

A. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive, send and mail sealed, unopened correspondence. A person who is a provider may not delay, hold or censor any incoming or outgoing correspondence of any person with an intellectual disability, autism or an acquired brain injury, nor may any such correspondence be opened without the consent of the person or the person's legal guardian. [PL 2021, c. 284, Pt. A, §14 (AMD).]

B. A person with an intellectual disability, autism or an acquired brain injury is entitled to reasonable opportunities for telephone and Internet communication. [PL 2021, c. 284, Pt. A, §14 (AMD).]

C. A person with an intellectual disability, autism or an acquired brain injury is entitled to an unrestricted right to visitations during reasonable hours unless this right has been restricted pursuant to rules adopted pursuant to section 5604. [PL 2021, c. 284, Pt. A, §14 (AMD).]
[PL 2021, c. 284, Pt. A, §14 (AMD).]

4. Work. A person with an intellectual disability, autism or an acquired brain injury engaged in work programs that require compliance with state and federal wage and hour laws is entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.
[PL 2021, c. 284, Pt. A, §15 (AMD).]

5. Vote. A person with an intellectual disability, autism or an acquired brain injury may not be denied the right to vote.
[PL 2021, c. 284, Pt. A, §16 (AMD).]

6. Personal property. A person with an intellectual disability, autism or an acquired brain injury is entitled to the possession and use of that person's own clothing, personal effects and money, except when temporary custody of clothing or personal effects by a provider is necessary to protect the person or others from imminent injury or unless this right has been restricted pursuant to rules adopted pursuant to section 5604.
[PL 2021, c. 284, Pt. A, §17 (AMD).]

7. Nutrition. A person with an intellectual disability, autism or an acquired brain injury is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.
[PL 2021, c. 284, Pt. A, §18 (AMD).]

8. Medical care. A person with an intellectual disability, autism or an acquired brain injury is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment must be

consistent with the accepted standards of medical practice in the community, unless the religion of the person with an intellectual disability, autism or an acquired brain injury so prohibits.

A. Medication may be administered only at the written order of a physician. [PL 1983, c. 459, §7 (NEW).]

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities. [PL 1983, c. 459, §7 (NEW).]

C. Daily notation of medication received by each person with an intellectual disability, autism or an acquired brain injury must be kept in the records of the person with an intellectual disability, autism or an acquired brain injury. [PL 2021, c. 284, Pt. A, §19 (AMD).]

D. Periodically, but no less frequently than every 6 months, the drug regimen of each person with an intellectual disability, autism or an acquired brain injury must be reviewed by a physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. [PL 2021, c. 284, Pt. A, §19 (AMD).]

E. All prescriptions must have a termination date. [PL 1993, c. 326, §9 (AMD).]

F. [PL 2011, c. 186, Pt. A, §24 (RP).]

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent must be obtained from the person with an intellectual disability, autism or an acquired brain injury, unless the person has been found to be legally incompetent, in which case the person's guardian may consent.

(1) Before making a treatment or surgical decision, the person must be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The person or, if legally incompetent, that person's guardian may withdraw express and informed consent at any time, with or without cause, before treatment or surgery. [PL 2021, c. 284, Pt. A, §19 (AMD).]

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any person with an intellectual disability, autism or an acquired brain injury who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the person. [PL 2021, c. 284, Pt. A, §19 (AMD).]

[PL 2021, c. 284, Pt. A, §19 (AMD).]

9. Sterilization. A person with an intellectual disability, autism or an acquired brain injury may not be sterilized, except in accordance with chapter 7.

[PL 2021, c. 284, Pt. A, §20 (AMD).]

10. Social activity. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for behavioral and leisure time activities that include social interaction in the community, as set out in section 5610. This right may be waived or restricted only under the rules adopted pursuant to section 5604 or pursuant to a treatment plan approved pursuant to section 5603, subsection 1.

[PL 2021, c. 284, Pt. A, §21 (AMD).]

11. Physical exercise. A person with an intellectual disability, autism or an acquired brain injury is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.
[PL 2021, c. 284, Pt. A, §22 (AMD).]

12. Discipline. Discipline of persons with intellectual disabilities or autism is governed as follows.

A. [PL 2011, c. 186, Pt. A, §26 (RP).]

B. Corporal punishment or any form of inhumane discipline is not permitted. [PL 1983, c. 459, §7 (NEW).]

C. Seclusion as a form of discipline is not permitted. [PL 2011, c. 186, Pt. A, §26 (AMD).]

D. [PL 1993, c. 326, §9 (RP).]

E. [PL 2025, c. 276, §1 (RP); PL 2025, c. 276, §10 (AFF).]
[PL 2011, c. 542, Pt. A, §129 (AMD); PL 2025, c. 276, §1 (AMD); PL 2025, c. 276, §10 (AFF).]

13. Behavioral health support, modification and management for children. Behavior modification and behavior management of and supports for a person who has not attained 18 years of age with an intellectual disability or autism and who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. A person who has not attained 18 years of age with an intellectual disability or autism may not be subjected to a behavior modification or behavior management program to eliminate dangerous or maladaptive behavior without first being assessed by a physician to determine if the proposed program is medically contraindicated and that the dangerous or maladaptive behavior could not be better treated medically. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

A-1. Support programs may contain both behavior modification and behavior management components. [PL 2011, c. 186, Pt. A, §27 (AMD).]

A-2. The following practices are prohibited as elements of behavior modification or behavior management programs:

(1) Seclusion;

(2) Corporal punishment;

(3) Actions or language intended to humble, dehumanize or degrade the person;

(4) Restraints that do not conform to rules adopted pursuant to this section;

(5) Totally enclosed cribs or beds; and

(6) Painful stimuli. [PL 2011, c. 186, Pt. A, §27 (NEW).]

B. Behavior modification and behavior management programs may be used only to correct behavior more harmful to the person than the program and only:

(1) On the recommendation of the person's personal planning team; and

(3) With the approval, following a case-by-case review, of a review team composed of a representative from the advocacy agency designated pursuant to Title 5, section 19502, a team leader of the department's children's services division and the children's services medical director or the director's designee. The advocacy agency representative serves as a nonvoting member of the review team and shall be present to advocate on behalf of the person. The department shall provide sufficient advance notice of all scheduled review team meetings to the advocacy agency and provide the advocacy agency with any plans for which approval is sought along with any supporting documentation. Until rules are adopted by the department to govern behavioral treatment reviews for children, the team may not approve techniques any more

aversive or intrusive than are permitted in rules adopted by the United States Secretary of Health and Human Services regarding treatment of children and youth in nonmedical community-based facilities funded under the Medicaid program. [PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

C. [PL 2011, c. 186, Pt. A, §27 (RP).]

[PL 2025, c. 276, §2 (AMD); PL 2025, c. 276, §10 (AFF).]

13-A. Behavioral health support, modification and management for adults. Behavioral supports for an adult with an intellectual disability or autism who is not a patient in a psychiatric unit of an acute hospital or a psychiatric hospital as defined in section 3801, subsection 7-B are governed as follows.

A. An adult with an intellectual disability or autism may have a positive behavioral health support plan if recommended by the individual's person-centered support team or requested by the adult. If the positive support plan is to address dangerous or maladaptive behavior, it must be preceded by an assessment by a medical practitioner, as defined in section 3801, subsection 4-B, to rule out medical reasons for the behavior. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

B. A positive behavioral health support plan designed to support the adult to participate meaningfully in that adult's community life cannot include a waiver of any rights provided in this section and may be implemented upon recommendation of the adult's person-centered planning team. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

C. A modifying behavioral health support plan designed to modify or redirect the adult's behavior may include a waiver of rights with informed consent of the adult subject to the plan and must be approved by the department for approval prior to implementation. The plan must be reviewed and approved by a licensed clinical social worker or psychologist who is employed by or under contract with the department. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The following practices are prohibited as elements of positive behavioral health support plans and modifying behavioral health support plans for adults:

(1) Seclusion;

(2) Corporal punishment;

(3) Actions or language intended to humble, dehumanize or degrade the person;

(4) Planned use of restraints;

(5) Totally enclosed cribs or beds; and

(6) Painful stimuli. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

The department shall convene a support and safety committee, at least quarterly, to review data on the number and types of plans implemented for adults under this subsection. The department shall provide to the committee deidentified copies of positive behavioral health support plans for all individuals transitioning from a modifying behavioral health support plan to a positive behavioral health support plan. The committee must include, at a minimum, a self-advocate, a family member of the individual receiving services, a representative of the advocacy agency designated pursuant to Title 5, section 19502, a member of the Maine Developmental Services Oversight and Advisory Board established pursuant to Title 5, section 12004-J, subsection 15 and the licensed clinical social worker or psychologist employed by or under contract with the department under paragraph C.

For the purposes of this subsection, "adult" means a person 18 years of age or older; "modifying behavioral health support plan" means a support plan that outlines strategies to encourage positive behavior and address challenges, incorporating both proactive and corrective interventions; and "positive behavioral health support plan" means a behavioral health support plan that emphasizes using

positive reinforcement and proactive strategies to address behaviors that negatively impact the health, safety and well-being of the person.

For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion. [PL 2025, c. 276, §3 (NEW); PL 2025, c. 276, §10 (AFF).]

13-B. Safety devices for adults. The use of a safety device for an adult with an intellectual disability or autism is governed as follows.

A. For the purposes of this subsection, "safety device" means an implement, garment, gate, barrier, lock or locking apparatus, video monitoring or video recording device, helmet, mask, glove, strap, belt or protective glove, the effect of which is to reduce or inhibit the adult's movement with the sole purpose of maintaining the safety of the adult. "Safety device" does not include anything used as a means of behavior modification. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

B. The use of a safety device must be pursuant to a written recommendation from a licensed physician, certified nurse practitioner or licensed physician associate. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

C. The use of a safety device must be approved by the adult's personal planning team, and that approval must be recorded in a document that is part of the adult's planning record. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

D. The adult or the adult's guardian must consent to the use of the safety device. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

E. When a safety device is in use and that safety device may affect other adults residing in the home or participating in the program by restricting their rights, accommodations must be identified and implemented to minimize the effect on the other adults. The personal plan of each adult affected by the use of the safety device must indicate how that adult will be supported to minimize the negative effect of the restriction. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

F. When a video monitoring device or video recording device is in use and other adults residing in the home or participating in the program may trigger or appear on the video monitoring device or video recording device, the consent of that adult must be obtained. [PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF).]

[PL 2025, c. 276, §4 (NEW); PL 2025, c. 276, §10 (AFF); PL 2025, c. 316, §3 (REV).]

14. Physical restraints.

[PL 2007, c. 573, §1 (RP).]

14-A. Restraints for children. A person who has not attained 18 years of age with an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or [PL 2011, c. 186, Pt. A, §28 (AMD).]

B. The restraint has been approved as a behavior management program in accordance with this section. [PL 2011, c. 186, Pt. A, §28 (AMD).]

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the advocacy agency designated pursuant to Title 5, section 19502.
[PL 2025, c. 276, §5 (AMD); PL 2025, c. 276, §10 (AFF).]

14-B. Mechanical supports.
[PL 2011, c. 186, Pt. A, §29 (RP).]

14-C. Safety devices.
[PL 2011, c. 186, Pt. A, §30 (RP).]

14-D. Reimbursement provided. Notwithstanding any other provision of law, the department shall provide reimbursement within available resources for durable medical equipment that provides a safe sleeping environment for individuals under 16 years of age if:

A. The durable medical equipment is necessary to correct or ameliorate a behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

B. The durable medical equipment is the least restrictive alternative for the treatment of the behavioral health condition; [PL 2009, c. 100, §1 (NEW).]

C. The durable medical equipment is approved on a case-by-case basis by a review team composed of the same representatives as the team conducting children's behavioral treatment reviews under subsection 13, paragraph B, subparagraph (3); and [PL 2009, c. 100, §1 (NEW).]

D. The department determines that the durable medical equipment is cost-effective in comparison to the provision of other covered services or equipment that can sufficiently correct or ameliorate the behavioral health condition. [PL 2009, c. 100, §1 (NEW).]

The department may adopt rules as necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2009, c. 100, §1 (NEW).]

14-E. Restraints for adults. An adult with an intellectual disability or autism is entitled to be free from restraint unless the restraint is an emergency short-term step to protect the adult from imminent injury to that adult or others. Each use of restraint must be documented in accordance with the department's reportable event requirements. For the purposes of this subsection, "restraint" does not include blocking or physical redirection. Blocking is a momentary deflection of a person's movement without holding when that movement would be destructive or harmful. Physical redirection is steering a person without holding or coercion.
[PL 2025, c. 276, §6 (NEW); PL 2025, c. 276, §10 (AFF).]

15. Records. All records of persons receiving services must remain confidential as provided in section 1207.

A. The person with an intellectual disability or autism or, if the person is incompetent, a parent or guardian is entitled to have access to the records upon request. [PL 2011, c. 542, Pt. A, §129 (AMD).]

B. The commissioner is entitled to have access to the records of a provider if necessary to carry out the statutory functions of the commissioner's office. [PL 2011, c. 186, Pt. A, §31 (AMD).]
[PL 2011, c. 542, Pt. A, §129 (AMD).]

16. Therapeutic devices or interventions. Therapeutic devices or interventions must be prescriptively designed by a qualified professional and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use of therapeutic devices or interventions. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 186, Pt. A, §32 (NEW).]

17. Safety devices and practices. A safety device or practice must be prescribed by a physician. A safety device must be designed and applied with concern for principles of good body alignment and circulation and allowance for change of position. The department may adopt rules concerning the use and approval of safety devices or practices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 186, Pt. A, §33 (NEW).]

The department may adopt rules as necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 186, Pt. A, §34 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1987, c. 769, §A129 (AMD). PL 1993, c. 326, §9 (AMD). PL 2001, c. 245, §§1-4 (AMD). PL 2003, c. 368, §§1,2 (AMD). PL 2003, c. 564, §§1-3 (AMD). PL 2007, c. 356, §25 (AMD). PL 2007, c. 356, §31 (AFF). PL 2007, c. 573, §§1-4 (AMD). PL 2007, c. 695, Pt. D, §3 (AFF). PL 2009, c. 100, §1 (AMD). PL 2011, c. 186, Pt. A, §§18-34 (AMD). PL 2011, c. 542, Pt. A, §129 (AMD). PL 2011, c. 657, Pt. EE, §§9, 10 (AMD). PL 2013, c. 310, §7 (AMD). PL 2013, c. 500, §1 (AMD). PL 2021, c. 284, Pt. A, §§10-22 (AMD). PL 2025, c. 276, §§1-6 (AMD). PL 2025, c. 276, §10 (AFF). PL 2025, c. 316, §3 (REV).

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§1311-B. Security of certain utility information

1. Designation of information as confidential. If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.
[PL 2001, c. 135, §1 (NEW).]

2. Treatment of information by commission; generally. Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.
[PL 2001, c. 135, §1 (NEW).]

3. Access to information by parties in proceeding. Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.
[PL 2001, c. 135, §1 (NEW).]

4. Release of information to other state agencies. The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility within 2 business days of providing information about that utility to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility of the agency's intent.
[PL 2001, c. 135, §1 (NEW).]

5. Release by other state agencies. A state agency that receives information about a public utility pursuant to subsection 4:

A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities; [PL 2001, c. 135, §1 (NEW).]

B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and [PL 2001, c. 135, §1 (NEW).]

C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate. [PL 2001, c. 135, §1 (NEW).]
[PL 2001, c. 135, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 135, §1 (NEW).

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Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

1. *Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).*

Subsection 114(1)(utility personnel records)

An application of this exception would most likely arise following a utility rate proceeding or audit where the Commission has acquired and examined utility records for the purpose of a proposed rate increase or other regulatory function. To the extent this type of information is even filed in such proceedings, such proceedings occur as a rule of thumb roughly 3-4 times per year. Commission staff, however, do not recall a recent instance where a request has been denied on this basis.

Subsection 704(5)(customer information information)

Customer specific information is filed with the Commission very frequently, and in particular with the Commission's Consumer Assistance Division (CAD). Given the volume of this type of information housed at the Commission, this is a frequent exemption cited by the Commission to deny a request. The Commission, however, produces redacted versions to the extent possible (redacting, for example, customer medical conditions and credit history).

Subsection 1311-A(protective orders)

The Commission issues protective orders under this provision premised on other statutory or regulatory authority and Maine Rule of Civil Procedure 26(c) to designate information confidential. The Commission exercises this authority frequently with respect to customer specific information and proprietary business information. Given the volume of this type of information that is relevant in the Commission's proceedings, this is a frequent exemption cited by the Commission. The Commission's general practice, however, is to require the filing of redacted versions in its dockets, thus making them publicly available to the extent possible.

Subsections 1311-B(1), (2), (4)(protective orders regarding operations)

The Commission issues protective orders under this provision to designate information related to the technical operations of utilities confidential. The Commission exercises this authority on a routine basis to protect critical infrastructure. The Commission cites this exemption on a moderate basis to deny a request.

Subsection 1316-A(communications regarding violation of state law)

The Commission infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7221(5)(ILEC competitive information)

The Commission very infrequently receives information of this nature and Commission staff do not recall a recent instance where a request has been denied on this basis.

Subsection 7225-A(1)(ILEC service quality reports)

These reports are filed on a regular basis, however, Commission staff do not recall a recent instance where a request has been denied on this basis.

2. *Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position*.

The Commission supports the continuation of the subsections cited above. To the extent possible, the Commission provides public access to redacted materials. The information not made available publicly in a docket or in response to a request allows the Commission to conduct its work in the public interest. For example, if the Commission could not limit access to sensitive customer specific and proprietary business information, it would not be able to effectively regulate public utilities in the public interest.

Right to Know Advisory Committee
October 2, 2026, questionnaire
Maine Public Utilities Commission, Title 35-A

3. *Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?*

   The Commission has not experienced any problems. The exceptions are clear.

4. *Does your agency recommend changes to this exception?*

   No recommended changes.

5. *Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.*

   Public utilities and their customers (residential, commercial, interconnecting), the Office of the Public Advocate

6. *Please provide any further information that you believe is relevant to the Advisory Committee's review.*

   N/A

§8703. Requirements

Telecommunications relay services must conform to the following requirements. [PL 1989, c. 851, §7 (NEW).]

1. Geographic availability. Services must be available on a statewide basis to the extent that they are technologically feasible.
[PL 2009, c. 68, §12 (AMD).]

2. Temporal availability. Services must be available 24 hours a day for every calendar day of the year.
[PL 1989, c. 851, §7 (NEW).]

3. Accessibility. Relay service operators may not refuse calls or limit the length of calls.
[PL 1989, c. 851, §7 (NEW).]

4. Blockage level. The allowable blockage level for the telecommunications relay services must be reasonable. Complaints relating to the reasonableness of the blockage level may be brought to the commission by the council or by 10 or more aggrieved persons pursuant to section 1302, subsection 1.
[PL 2017, c. 408, §5 (AMD).]

5. Confidentiality. The providers of telecommunications relay services shall keep relay service communications confidential.
[PL 2015, c. 250, Pt. C, §6 (AMD).]

6. User fee prohibited. A separate fee for telecommunications relay services may not be assessed to users of the services.
[PL 1989, c. 851, §7 (NEW).]

7. Recovery of expenses and costs. The costs for telecommunications relay services must be recovered through the state universal service fund pursuant to section 7104, subsection 7.
[PL 2005, c. 305, §3 (AMD).]

8. Council. The providers of telecommunications relay services must take into consideration any comments from the council.
[PL 2017, c. 408, §5 (AMD).]

9. Restrictions. Upon request, the providers of telecommunications relay services shall make known to users of the services any restrictions on the types of calls handled such as collect calls and automated information services.
[PL 1989, c. 851, §7 (NEW).]

10. Notification of rates or charges. Upon request, the providers of telecommunications relay services shall make known to users any rates or charges for the services.
[PL 1989, c. 851, §7 (NEW).]

SECTION HISTORY

PL 1989, c. 851, §7 (NEW). PL 2005, c. 305, §3 (AMD). PL 2009, c. 68, §12 (AMD). PL 2015, c. 250, Pt. C, §6 (AMD). PL 2017, c. 408, §5 (AMD).

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STATUTE: 35-A MRSA §8703, sub-§5

AGENCY: Maine Telecommunications Relay Services Council

CONTACT PERSON: Ben Frech

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Records subject to exemption:

- Per statute, all relay service communications are confidential
- Any record containing personal information of a user of relay services
- Any record containing proprietary data belonging to a vendor

Frequency of application:

- Ben Frech was hired as the Executive Director in June of 2024. Prior to that, he represented the Office of the Public Advocate on the Council (appointed December of 2021). To his knowledge, the Council has not received a FOA request in that time period.

Frequency of citing exception in denying a request:

- (See above response)

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Council supports continuation of this exception in order to protect the privacy of relay users and the proprietary information of the vendors of relay services.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

While the statute does not explicitly state that consumer and provider data is confidential, the Council believes the language is sufficient.

4. Does your agency recommend changes to this exception?
The Council would defer to the Office of the Attorney General.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

- John Moore, Government – Sr. Executive Account Sales Manager (T-Mobile). 925-895-9176, john.e.moore@t-mobile.com
- Melissa McMahan, Relay State Programs Manager, Hamilton Relay. 301.338.0890, melissa.mcmahan@hamiltonrelay.com
- Phyllis Gardner, Chief Deputy Attorney General, Maine Office of the Attorney General. phyllis.gardiner@maine.gov

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§9408. Collection of data

Subject to the provisions of this section, the authority may collect data from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership. [PL 2021, c. 364, §3 (NEW).]

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers or wireless providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order that sets forth its designation of the information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest and the legitimate competitive or proprietary interests of a communications service provider or a wireless provider. The authority may not designate any information as confidential under this subsection until it has adopted rules to implement this subsection.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.
[PL 2021, c. 364, §3 (NEW).]

2. Protection of information. A communications service provider or a wireless provider may request that information provided to the authority that the provider requests be designated as confidential under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information. [PL 2021, c. 364, §3 (NEW).]

SECTION HISTORY

PL 2021, c. 364, §3 (NEW).

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Will Tew
Right to Know Advisory Committee
13 State House Station
Augusta, Maine 04333

RE: Response to Right to Know Advisory Committee Review of Public Record Exceptions Query

Dear Will,

This replies to your September 10, 2026 email on behalf of the Right to Know Advisory Committee requesting input from the Maine Connectivity Authority (MCA) on the following questions pertaining to the public record exceptions in the MCA charter law at 35-A MRS §9408. MCA has provided succinct responses, given the well-established nature of the MCA charter law exceptions to the Maine Freedom of Access Act (FOAA), but if you need any additional information please do not hesitate to contact us.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to a FOAA request or in administrative or other litigation).

Response 1:

- MCA has administered this public records exception since MCA's establishment with enactment of the MCA charter law, 35-A MRS 9401 et seq.
- Records subject to the exception include those pertaining to (i) specific information about communications service providers or wireless providers in the State that could compromise the security of public utility systems to the detriment of the public interest; or (ii) specific information is of a competitive or proprietary nature.
- MCA does not frequently rely upon this provision, instead relying upon general FOAA exceptions, or upon the Connect Maine Authority (CME) public records exception and implementing rule (35-A MRS §9201; 99-639 of the Code of Maine Regulations (C.M.R.) ch. 101) when dealing with data collected by CME. MCA and CME have been administratively aligned and consolidated, enabling MCA staff to use the established CME annual reporting data to satisfy most MCA and CME general data requirements.
- MCA, working with the Legislative Energy, Utilities and Technology Committee, is evaluating consolidation legislation for MCA and CME. Such legislation would include a combined version of the CME and MCA public records exception provisions, essential to assure that the State of Maine can gather information on the broadband sector in Maine to best advance the established legislative goals of universal connectivity.

- MCA has not encountered administrative or judicial litigation requests, and instead receives occasional general FOA inquires for information on various projects.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- MCA strongly supports continuation of this exception to provide protections for utility scale network diagrams and other critical infrastructure information. This is a priority for utility grid protection especially given the growing cyber security threats in the utility sector.
- MCA and CME need to secure information from Internet Service Providers concerning future construction plans in order to best allocate scarce public resources and avoid unnecessary overbuilding on planned private sector projects.
- MCA also needs to secure technical and financial information from Internet Service Providers concerning ISP-owned broadband construction projects funded by MCA grants to ensure effective grant oversight.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- MCA plans to propose clarifications to the FOAA exceptions listed in 34- MRS §9408 to give more specificity around the types or records to be protected. The consolidation legislation for MCA and CME provides an ideal opportunity to set out this proposal within the framework of the overall review of the MCA and CME laws.

4. Does your agency recommend changes to this exception?

- Not in the near term, but MCA will provide upgrades for legislative consideration in the potential future consolidation legislation.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

- The same stakeholders who are interested in the consolidation legislation, including the telecommunications sector, municipalities, and members of the public.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Best regards,

Quynh Nguyen
FOAA Officer, MCA

§10106. Freedom of access; confidentiality

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section. [RR 2009, c. 1, §25 (COR).]

1. Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or

(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and [PL 2017, c. 163, §2 (AMD).]

B. A financial statement or tax return. [PL 2009, c. 372, Pt. B, §3 (NEW).]

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

The trust shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.
[PL 2017, c. 163, §2 (AMD).]

2. Exceptions. Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. Any otherwise confidential information that has already lawfully been made available to the public; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Impersonal, statistical or general information. [PL 2009, c. 372, Pt. B, §3 (NEW).]
[PL 2009, c. 372, Pt. B, §3 (NEW).]

3. Disclosure prohibited; further exceptions. The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person; [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. To a financing institution or credit reporting service; [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance; [PL 2009, c. 372, Pt. B, §3 (NEW).]

D. If necessary to ensure collection of any obligation in which the trust has or may have an interest; [PL 2009, c. 372, Pt. B, §3 (NEW).]

E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and [PL 2009, c. 372, Pt. B, §3 (NEW).]

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

SECTION HISTORY

RR 2009, c. 1, §25 (COR). PL 2009, c. 372, Pt. B, §3 (NEW). PL 2011, c. 343, §1 (AMD). PL 2017, c. 163, §2 (AMD).

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STATUTE: 35-A MRSA §10106, sub-§1

ENTITY: Maine Efficiency Trust

RETURN BY: October 2, 2026

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 33 through 39-A by the end of 2028; the exception cited above is within the scope of that review. We would appreciate your input during this process.

QUESTIONS

1. **Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).**
    a. This provision enables the Efficiency Maine Trust ("the Trust") to efficiently and effectively administer programs to fulfill the statutory purposes enacted by the legislature.
    b. description of the records subject to the exception:
        i. The records subject to the exception are specified in 35-A MRSA §10106, sub-§1. In the relatively few cases where the Trust invokes the exceptions, it is most often related to requests for customer address, phone, and email information. Pursuant to the statute and at the request of entities wishing to share business-sensitive information as part of a project, we have received Board approval to designate certain business-sensitive information as confidential.
    c. estimate of the frequency of its application:
        i. The Trust accesses records that are subject to the exception daily because the programs run by the Trust require the collection of customer identifying information. Nevertheless, the Trust does not need to cite exceptions when responding to outside entities more than a few times per year.
    d. an estimate of how frequently the exception is cited in denying a request for production of records

i. The Trust estimates this happens less than five times a year. For example, in 2025, the Trust received a total of 27 FOA requests. Only two of the 27 were subject to the exemption because they included requests for customer address, phone, or email information.

2. **Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.**
    a. The Trust supports continuation of these exceptions.
3. **Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?**
    a. The process has worked relatively well, but the requirement to have Board approval to officially designate something as "confidential" is cumbersome. The Board meets monthly, and sometimes it would be in the public interest to handle issues of confidentiality more quickly, instead of awaiting the next available Board meeting to receive the designation.
4. **Does your agency recommend changes to this exception?**
    a. The Trust recommends the committee consider the following modifications:
        i. Modify the statute to authorize the Executive Director (instead of the Trust Board) to make the "confidentiality" designation under 35-A, Sec. 10106(1)(A)(1), while preserving an appropriate record of the rationale for the determination, to make the process more efficient and timely.
        ii. Extend the exception to include anything that is under a protective order or an non-disclosure agreement with another state agency or public utility.
        iii. Modify the exception to allow the Trust to provide information deemed "confidential" under the exemption criteria to be provided under protective order to the Maine Public Utilities Commission, if requested.
5. **Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.**
    a. The Trust recommends that the committee include the input of the Efficiency Maine Trust Board Chair, Mark Isaacson.
6. **Please provide any further information that you believe is relevant to the Advisory Committee's review**
    a. N/A

§579. Schedule, investigation

The owner or owners of forest land subject to valuation under this subchapter shall submit a signed schedule, on or before April 1st of the year in which that land first becomes subject to valuation under this subchapter, to the assessor upon a form prescribed by the State Tax Assessor, identifying the land to be valued under this subchapter, listing the number of acres of each forest type, showing the location of each forest type and representing that the land is used primarily for the growth of trees to be harvested for commercial use. Those schedules may be required at such other times as the assessor may designate upon 120 days' written notice. [PL 2011, c. 240, §6 (AMD).]

The assessor shall determine whether the land is subject to valuation and taxation under this subchapter and shall classify the land as to forest type. [PL 2011, c. 240, §6 (AMD).]

The assessor or the assessor's duly authorized representative may enter and examine the forest lands under this subchapter and may examine any information submitted by the owner or owners. A copy of the forest management and harvest plan required under section 574-B must be available to the assessor to review upon request and to the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry or the director's designee to review upon request when the assessor seeks assistance in accordance with section 575-A. For the purposes of this paragraph, "to review" means to see or possess a copy of a plan for a reasonable amount of time to verify that the plan exists or to facilitate an evaluation as to whether the plan is appropriate and is being followed. Upon completion of the review, the plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3. [PL 2003, c. 30, §1 (AMD); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

Upon notice in writing by certified mail, return receipt requested, or by another method that provides actual notice, any owner or owners shall appear before the assessor, at such reasonable time and place as the assessor may designate and answer questions or interrogatories the assessor considers necessary to obtain material information about those lands. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners of any parcel of forest land subject to valuation under this subchapter fails to submit the schedules as provided under this section or fails to provide information after notice duly received as provided under this section, such owner or owners are deemed to have waived all rights of appeal pursuant to section 583 for that property tax year, except for the determination that the land is subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

It is the obligation of the owner or owners to report to the assessor any change of use or change of forest type of land subject to valuation under this subchapter. [PL 2011, c. 240, §6 (AMD).]

If the owner or owners fail to report to the assessor a change of use as required by the foregoing paragraph, the assessor shall assess the taxes that should have been paid, shall assess the penalty provided in section 581 and shall assess an additional penalty equal to 25% of the penalty provided in section 581. The assessor may waive the additional penalty for cause. [PL 2011, c. 240, §6 (AMD).]

For the purposes of this section, the acts of owners specified in this section may be taken by an authorized agent of an owner. [PL 1979, c. 666, §16 (NEW).]

SECTION HISTORY

PL 1971, c. 616, §8 (NEW). PL 1973, c. 308, §§10,11 (AMD). PL 1975, c. 765, §§10,11 (AMD). PL 1977, c. 509, §§6,7 (AMD). PL 1979, c. 666, §16 (RPR). PL 1981, c. 625, §3 (AMD). PL 1981, c. 706, §9 (AMD). PL 1987, c. 852, §2 (AMD). PL 1987, c. 861, §41 (AMD). PL 1989, c. 555, §17 (AMD). PL 2001, c. 603, §6 (AMD). PL 2003, c. 30, §1 (AMD). PL 2007, c. 438, §17 (AMD). PL 2011, c. 240, §6 (AMD). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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Ref 34 STATUTE: 36 MRSA §579
Department of Agriculture and Forestry Questionnaire Response

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). We likely use this exception a dozen or more times a year withholding landowner reports.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
We definitely support.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? N/A

4. Does your agency recommend changes to this exception? No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§581-G. Report to Bureau of Forestry

1. Municipal report. The municipal assessor or chief assessor of a primary assessing area shall report annually to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry by November 1st or 30 days following the tax commitment date, whichever is sooner, the following information relating to land taxed according to this subchapter:

A. The names and addresses of forest landowners; [PL 2005, c. 358, §5 (NEW).]

B. The total number of acres taxed pursuant to this subchapter, including a breakdown of forest type, by softwood, mixed wood and hardwood; [PL 2005, c. 358, §5 (NEW).]

C. The year each parcel was first accepted for taxation under this subchapter; [PL 2005, c. 358, §5 (NEW).]

D. The year of the most recent recertification of each parcel; and [PL 2005, c. 358, §5 (NEW).]

E. The tax map number, plan number and lot number for each parcel listed. [PL 2005, c. 358, §5 (NEW).]

[PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

2. Forms. The Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall annually provide municipalities with forms for submitting the information required under subsection 1. To the extent that the Bureau of Forestry has the required information, the Bureau of Forestry shall include that information on the forms.

[PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

3. Confidentiality. Addresses, telephone numbers and electronic mail addresses of forest landowners owning less than 1,000 acres statewide contained in reports filed under this section are confidential when in possession of the Department of Agriculture, Conservation and Forestry, Bureau of Forestry and may be disclosed only in accordance with Title 12, section 8005.

[PL 2005, c. 358, §5 (NEW); PL 2011, c. 657, Pt. W, §§5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

SECTION HISTORY

PL 2005, c. 358, §5 (NEW). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

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Ref 35 - 36 MRSA §581-G, sub-§3
Department of Agriculture, Conservation and Forestry

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). We likely utilize this at least 30 times a year when providing records.

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position. Support continuing.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? N/A

4. Does your agency recommend changes to this exception? No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§684. Forms; application

1. Generally. The bureau shall provide to the assessor of each municipality access to forms to be filed by applicants for an exemption under this subchapter and shall determine the content of the forms. A municipality shall provide to its inhabitants reasonable notice of the availability of application forms. An individual claiming an exemption under this subchapter for the first time shall file the application form and proof of entitlement with the assessor or the assessor's representative. The application and proof of entitlement must be filed on or before April 1st of the year on which the taxes are based.
[PL 2025, c. 650, Pt. M, §9 (AMD).]

1-A. Cooperative housing corporations. An application for exemption under this subchapter filed by a cooperative housing corporation must include a list of all eligible shareholders and any information required by the assessor to verify the eligibility of those shareholders and the applicable exemption amount. The application must be updated annually to reflect changes in eligibility.
[PL 2025, c. 650, Pt. M, §10 (NEW).]

2. False filing. An individual who knowingly gives false information for the purpose of claiming a homestead exemption under this subchapter commits a Class E crime. Except for a person on active duty serving in the Armed Forces of the United States who is permanently stationed at a military or naval post, station or base in the State, an individual who claims to be a permanent resident of this State under this subchapter who also claims to be a permanent resident of another state for the tax year for which an application for a homestead exemption is made commits a Class E crime.
[PL 2009, c. 418, §2 (AMD); PL 2009, c. 418, §3 (AFF).]

2-A. Fraudulent conveyance. Property conveyed to a person for the purpose of obtaining an exemption under this subchapter is not entitled to the exemption, except for property conveyed between spouses. An applicant who obtains the exemption provided under this subchapter by means of fraudulent conveyance is subject to a fine of $100 or up to 2 times the amount of the taxes evaded by the fraudulent conveyance, whichever amount is greater.
[PL 2025, c. 650, Pt. M, §11 (NEW).]

3. Continuation of eligibility. The assessor shall evaluate annually the ongoing eligibility of property for which a homestead exemption has been approved under this subchapter. The evaluation must be based on the status of the property on April 1st of the year on which the homestead exemption is based. The evaluation must include, but is not limited to, a review of whether the ownership of the property has changed in any manner that would disqualify the property for an exemption under this subchapter or whether the owner has ceased to use the property as a homestead. Unless the assessor determines that the property is no longer entitled to an exemption under this subchapter, the owner is entitled to receive the exemption without having to reapply. If the assessor determines that the property is no longer entitled to an exemption under this subchapter, the assessor shall notify the owner as provided in section 686 that the property is no longer entitled to an exemption under this subchapter. Notwithstanding section 683-A, subsection 1, a permanent resident of this State who loses ownership of a homestead in this State due to a tax lien foreclosure and subsequently regains ownership of the homestead from the municipality that foreclosed on the tax lien is deemed to have continuously owned the homestead and may not be determined ineligible for the exemption provided under this subchapter due to the ownership of the homestead by the municipality.

If the assessor determines that the property is no longer entitled to an exemption under this subchapter, the assessor shall notify the owner of that determination as provided in section 686.
[PL 2025, c. 650, Pt. M, §12 (AMD).]

4. Owner notification. An owner of property receiving an exemption under this subchapter shall notify the assessor promptly when the ownership or use of the property or status of the owner changes so as to update the eligibility of the property for an exemption under this subchapter.
[PL 2025, c. 650, Pt. M, §13 (AMD).]

5. Application and proof of entitlement. An individual who desires to secure an exemption under this section shall, on or before the first day of April in the year in which such an exemption is first requested, make written application and, for an individual seeking an additional exemption for veterans under section 683-A, subsection 2, file written proof of entitlement with the assessors of the place in which the individual resides.
[PL 2025, c. 650, Pt. M, §14 (NEW).]

6. Confidentiality. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to subsection 5 are confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the bureau by the municipality upon request.
[PL 2025, c. 650, Pt. M, §15 (NEW).]

SECTION HISTORY

PL 1997, c. 643, §HHH3 (NEW). PL 1997, c. 643, §HHH10 (AFF). PL 2003, c. 13, §1 (AMD). PL 2007, c. 438, §21 (AMD). PL 2009, c. 418, §2 (AMD). PL 2009, c. 418, §3 (AFF). PL 2025, c. 113, Pt. A, §2 (AMD). PL 2025, c. 650, Pt. M, §§9-15 (AMD).

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MAINE MUNICIPAL ASSOCIATION SINCE 1936

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To: Right to Know Advisory Committee, Exceptions Sub-committee
From: Amanda Campbell, Legislative Advocate, MMA
Re: Reponses to Exceptions References Nos. 36, 37 and 39
Date: October 20, 2026
Sent via email to Will.Tew@legislature.maine.gov

Reference #36 – 36 MRS §653, sub-§1 (Exemptions related to the estates of veterans)

Question #1
36 MRS §653, sub-§1-G provides that applications and supporting documents for a property tax exemption available to eligible veterans is confidential. Municipal assessors or assessing agents are the primary local officials tasked with custody of the veteran's exemption application and supporting documentation. In municipalities with an assessing agent, it is likely a town manager/administrator or town clerk who maintains custody. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality. The confidential information included in these application materials may include social security numbers, date of birth, Veterans Administration disability rating documentation, and military discharge records.

While a listing of veteran property taxpayers receiving an exemption is likely to be requested, specific applications and supporting documentation for eligibility are much less likely to be the subject of a FOAA request. A survey of MMA members indicates that a FOAA request for these documents happens very rarely, if ever.

Question #2
Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3
36 MRS §653, sub-§1-G is clear that "an application and proof of entitlement filed pursuant to this paragraph is confidential and may not be made available for public inspection."

Municipal officials noted that while the statute is clear, it is still possible to glean exemption level status from a review of the municipal tax commitment book. Although that document would not include personally identifying information such as a social security number or birthday, under the new eligibility levels, anyone could determine a taxpayer's disability rating by the value of their exemption listed. Municipal officials only bring this to the attention of the committee and do not propose further confidentiality measures for municipal-level tax documents.

Question #4
During the second session of the 132nd Legislature, the sections of Title 36 that govern property tax exemptions for certain individuals were amended and consolidated. The application for the homestead exemption, the veterans exemption, and the exemption for persons who are legally blind are now all part of one application.

Newly enacted 36 MRS §684, sub-§6 reads:
6. Confidentiality. Notwithstanding Title 1, chapter 13, an application and proof of entitlement filed pursuant to subsection 5 are confidential and may not be made available for public inspection. The application and proof of entitlement must be made available to the bureau by the municipality upon request. (Section 5, referred to in this paragraph, outlines the application process and requirement for proof of entitlement.)

Reference #37 – 36 MRS §841, sub-§2 (Exemptions related to hardship or poverty abatements)

Question #1
36 MRS §841, sub-§2 provides that applications, supporting documents, files and communications relating to an application for a hardship or poverty abatement are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Municipal assessors or assessing agents are included in abatement proceedings. General Assistance administrators may also participate. In most communities, it is likely a town manager/administrator who maintains custody although in smaller communities this could be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record.

Question #2
Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3
36 MRS §841, sub-§2 is clear that “all applications, information submitted in support of the applications, files and communications relating to an application for abatement and the determination on the application for abatement are confidential.”

Municipal officials noted that while the statutory language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4
Committee members may wish to consider adding the FOAA statute reference to 36 MRS §841, sub-2.

Reference #39 – 36 MRS §6271, sub-§2 (Exemptions related to municipal property tax deferral programs)

Question #1
36 MRS §6271, sub-§2 provides that applications, supporting documents, files, and communications relating to an application for deferral of taxes are confidential. A wide variety of municipal officials could maintain custody of these records, depending on the municipality. Tax collectors, treasurers, and finance directors would likely take part in any application review process for deferral of taxes. In most communities, it is likely a town manager/administrator who maintains custody, although in smaller communities this could also be the chair of either a selectboard or board of assessors. These same officials, unless a community has a specific FOAA officer, would apply the exception to any request received by the municipality.

Municipal officials who responded to the survey reported no requests for this type of record

Question #2
Surveyed municipal officials overwhelmingly, although not unanimously, agree that this exception should be continued.

Question #3
36 MRS §6271, sub-§2 is clear that "an application, information submitted in support of an application and files and communications relating to an application for deferral of taxes under the program are confidential."

Municipal officials noted that while the statute language is clear, it does not specifically reference the FOAA statute under 1 MRS §402(3), which prompted some survey respondents to express concern regarding the possibility of overlooking the confidential nature of the records as they apply specifically to a FOAA request.

Question #4
Committee members may wish to consider adding the FOAA statute reference to 36 MRS §6271, sub-2.

Please feel free to contact me with any questions.
acampbell@memun.org

§4316. Receivers of wild blueberries

1. Record keeping required. A shipper or processor who transports or receives wild blueberries shall keep a permanent record of each lot or load of wild blueberries. The record must include the name of the driver of the vehicle used to deliver the wild blueberries, the date of delivery, the delivery point, the total pounds of wild blueberries delivered, the origin of the delivery and, if the origin is a location in the State, the name and address of the grower or seller and the grower's or seller's certificate number if the grower or seller is certified under section 4305.
[PL 2023, c. 18, §9 (AMD).]

2. Inspection of permit required.
[PL 2023, c. 18, §10 (RP).]

2-A. Tracking. Wild blueberries must be uniquely identified during transportation to a receiving facility by the field from which they were harvested.
[PL 2019, c. 222, §5 (NEW); PL 2019, c. 222, §7 (AFF).]

3. Violation; civil. The failure to keep the permanent records of wild blueberries transported or received as required in this section or any other violation of this section is a civil violation punishable by a fine of not more than $5,000 for a first-time violation and punishable by a fine of not more than $10,000 when the person is found to have committed a prior civil violation of this section within the prior 5 years.
[PL 2023, c. 18, §11 (AMD).]

3-A. Violation; criminal. A shipper or processor who violates this section when the shipper or processor is found to have committed 2 prior civil violations of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.
[PL 2007, c. 694, §10 (NEW).]

3-B. Strict liability crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2007, c. 694, §10 (NEW).]

4. Audits. The Wild Blueberry Commission of Maine may request the Department of Agriculture, Conservation and Forestry to conduct, and the department at its own discretion may conduct, an audit of the records of a shipper or a processor for the purpose of ascertaining compliance with this section. The Commissioner of Agriculture, Conservation and Forestry, or a duly authorized agent, has free access, during normal business hours, to all records required to be kept by shippers or processors pursuant to this section and also to shippers' or processors' accounts payable, accounts receivable, records of inventories, actual inventories, records of shipments and such other business records as are needed to ascertain compliance with this section. Any documents inspected or taken by the department in furtherance of the audit functions or any other information collected by the department pursuant to the audit must be kept confidential notwithstanding any provision to the contrary contained in Title 1, chapter 13, subchapter 1. This confidential status does not apply to any documents, records or information that is needed as evidence in any civil or criminal proceeding to enforce any law under this chapter or any other criminal law.
[PL 2019, c. 222, §6 (AMD); PL 2019, c. 222, §7 (AFF).]

SECTION HISTORY

PL 1989, c. 214, §2 (NEW). PL 1989, c. 859, §§2,3 (AMD). PL 1997, c. 511, §24 (AMD). PL 2007, c. 694, §10 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2019, c. 222, §§4-6 (AMD). PL 2019, c. 222, §7 (AFF). PL 2023, c. 18, §§9-11 (AMD).

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Ref 38 - 36 MRSA §4316, sub-§4
Department of Agriculture, Conservation and Forestry

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation). In 14 years of handling FOAA for DACF I don't recall a request asking for any related info.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Support continuation

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered? n/a

4. Does your agency recommend changes to this exception? No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§11. Information of dependents

1. Confidentiality; exceptions. Any personally identifying information obtained by the State under this Title concerning a dependent of a member of the United States Armed Forces or state military forces who is deployed out of state is confidential and may not be disclosed except:

A. By written consent of the subject of the information or, if the subject of the information is less than 18 years of age, a parent or guardian of the subject; [PL 2015, c. 295, §2 (NEW).]

B. By court order; [PL 2015, c. 295, §2 (NEW).]

C. For criminal justice purposes; or [PL 2015, c. 295, §2 (NEW).]

D. For official purposes of the department or the United States Department of Veterans Affairs. [PL 2015, c. 295, §2 (NEW).]

[PL 2015, c. 295, §2 (NEW).]

2. Dependent. For the purposes of this section, "dependent" has the same meaning as in 10 United States Code, Section 1072.

[PL 2015, c. 295, §2 (NEW).]

SECTION HISTORY

PL 2015, c. 295, §2 (NEW).

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§506. Certain documents confidential

All claims and documents pertaining to claims for benefits under this chapter, whether pending or adjudicated, are confidential and privileged. No disclosure of those claims or documents may be made without the written consent of the claimant, except that disclosure may be made: [PL 1983, c. 460, §3 (NEW).]

1. Claimant or representative. To the claimant personally, as to matters concerning the claimant alone, when, in the director's judgment, the disclosure would not be injurious to the claimant's physical or mental health, or to the claimant's duly appointed guardian or duly authorized representative holding a power or appointment approved by the supervisor;
[PL 1997, c. 455, §28 (AMD).]

2. Veterans' organization. To the representative of a veterans' organization holding power of appointment from the claimant, provided that the organization is recognized by the United States Government and duly certified as such by the state department of the organization;
[PL 1983, c. 460, §3 (NEW).]

3. Courts. To any court of competent jurisdiction, when required by the process of the court, in an action pending under the laws of this State or the United States; and
[PL 1983, c. 460, §3 (NEW).]

4. Agencies engaged in health and welfare work. To any public or private agency engaged in health, welfare, rehabilitation or child placement work, from whom a veteran or that veteran's dependents have requested services, when, in the veteran advocate's judgment, disclosure is essential to the proper evaluation of the request.
[PL 2001, c. 662, §68 (AMD).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1991, c. 626, §19 (AMD). PL 1993, c. 694, §9 (AMD). PL 1997, c. 455, §28 (AMD). PL 2001, c. 662, §68 (AMD).

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Response regarding 37-B MRSA § 506 (MBVS related) – REF #42

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records.

37-B MRSA § 506. Certain documents confidential. This statute protects certain records maintained by the Maine Bureau of Veterans' Services (MBVS) and requires the claimant's consent before confidential claimant information may be disclosed. The exception primarily applies to records containing information provided by or concerning veterans and their dependents in connection with claims and requests for assistance.

MBVS applies this confidentiality requirement routinely in the course of providing veterans' services. However, the exception is rarely, if ever, cited as the sole basis for denying a public records request because requests for confidential claimant records are uncommon. When such records are requested, MBVS must ensure that disclosure is authorized by the claimant and consistent with applicable federal confidentiality requirements.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MBVS supports the continuation of this exception. As an accredited Veterans Service Organization (VSO), MBVS represents veterans and their dependents before the U.S. Department of Veterans Affairs (VA). When providing representation, MBVS completes VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, with the claimant. Through this appointment, MBVS is subject to federal requirements governing the confidentiality and disclosure of claimant information, including 38 CFR § 14.631, Powers of attorney; disclosure of claimant information.

Maintaining the confidentiality of claimant records is essential to protecting the privacy of veterans and their dependents and to preserving the trust necessary for MBVS to assist claimants effectively. Unauthorized disclosure of claimant information could also jeopardize MBVS's accreditation as a VA-recognized VSO. Continuing the state public records exception helps ensure that MBVS can comply with both state and federal confidentiality requirements while protecting sensitive claimant information.

1. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

None

2. Does your agency recommend changes to this exception?

No

3. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

N/A

4. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§708. Homeland Security Advisory Council

The Homeland Security Advisory Council, as established in Title 5, section 12004-I, subsection 91 and referred to in this section as "the council," shall advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds. [PL 2005, c. 634, §12 (NEW).]

1. Membership. The council is composed of the following 11 members:

A. The director or the director's designee; [PL 2025, c. 195, §1 (AMD).]

B. The Commissioner of Defense, Veterans and Emergency Management or the commissioner's designee; [PL 2025, c. 195, §1 (AMD).]

C. The Commissioner of Public Safety or the commissioner's designee; [PL 2025, c. 195, §1 (AMD).]

D. The Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services or the director's designee; [PL 2025, c. 195, §1 (AMD).]

E. The Chief of the State Police within the Department of Public Safety or the chief's designee; [PL 2025, c. 195, §1 (AMD).]

F. A representative of the Governor; [PL 2011, c. 529, §1 (AMD).]

G. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee; [PL 2011, c. 529, §1 (NEW).]

H. The Commissioner of Marine Resources or the commissioner's designee; [PL 2025, c. 195, §1 (AMD).]

I. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's designee; [PL 2025, c. 195, §1 (AMD).]

J. The Chief Information Officer of the Office of Information Technology within the Department of Administrative and Financial Services or the officer's designee; and [PL 2025, c. 195, §1 (NEW).]

K. The director of the Maine School Safety Center established within the Department of Education or the director's designee. [PL 2025, c. 195, §1 (NEW).]

The director is the chair of the council. The Commissioner of Defense, Veterans and Emergency Management is the advisor of the council. Commissioner designees must be uniformed law enforcement personnel.
[PL 2025, c. 195, §1 (AMD).]

2. Duties of council. The council shall:

A. Advise the Governor with regard to the vulnerability of the State to terrorist activity; [PL 2005, c. 634, §12 (NEW).]

B. Advise the Governor with regard to the adequacy of the plans to enhance homeland security; [PL 2005, c. 634, §12 (NEW).]

C. Ensure that the homeland security activities of state agencies are coordinated; [PL 2005, c. 634, §12 (NEW).]

D. Advise the Governor with regard to the implementation of state programs using federal funds and administration of federal grants for homeland security, in order to ensure coordination among agencies and the most effective use of grant funds; [PL 2005, c. 634, §12 (NEW).]

E. Advise the Governor with regard to the appropriateness of the federal homeland security threat advisory level for the State, based upon intelligence gathered in the State and from federal sources; [PL 2005, c. 634, §12 (NEW).]

F. Advise the Governor with regard to the appropriate response to any terrorist threat; [PL 2007, c. 462, §2 (AMD).]

G. Periodically advise an emergency response team with pertinent information that could assist in the team's response to an event ; and [PL 2007, c. 462, §3 (AMD).]

H. Beginning January 15, 2008 and annually thereafter, report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding homeland security training and communications exercises and other homeland security initiatives and issues. [PL 2007, c. 462, §4 (NEW).]

[PL 2007, c. 462, §§2-4 (AMD).]

3. Procedures. The council shall meet:

A. At times and places as determined by the chair or the Governor and with assistance from state agencies as necessary and appropriate for the council's execution of its responsibilities as described in subsection 2; [PL 2005, c. 634, §12 (NEW).]

B. Either in person or via telecommunication, as determined by the chair, immediately upon notification that the federal homeland security threat advisory level will be changed, in order to develop a recommendation to the Governor of the appropriate threat advisory level for the State and actions to be taken in the State; and [PL 2005, c. 634, §12 (NEW).]

C. At the call of the chair or at the call of the Governor at any time the Governor requires the advice of the council. [PL 2005, c. 634, §12 (NEW).]

The state response to any suspected terrorist event must be coordinated through the State Emergency Operations Center, in accordance with a state emergency operations plan as described in subsection 4, paragraph A. Meetings of the council are not public proceedings for purposes of Title 1, chapter 13, but may be open to the public at the discretion of the chair. Documents collected or produced by the council are not public records for the purposes of Title 1, chapter 13.

[PL 2005, c. 634, §12 (NEW).]

4. Resources and support. The agency shall provide staff and administrative support to the council from existing resources. The agency is the coordinating agency within State Government for homeland security operational preparedness, response, recovery and mitigation. As the coordinating agency, the agency shall:

A. Develop and maintain a state emergency operations plan, which must incorporate by reference any internal operational plans developed by other state agencies for emergency response; [PL 2005, c. 634, §12 (NEW).]

B. Coordinate the State Emergency Operations Center with the council; [PL 2005, c. 634, §12 (NEW).]

C. Coordinate with other state agencies in the development of their emergency response plans; [PL 2005, c. 634, §12 (NEW).]

D. Administer the review and approval of all grant applications developed by local and state agencies for homeland security funds; and [PL 2005, c. 634, §12 (NEW).]

E. Administer homeland security grant funds. [PL 2005, c. 634, §12 (NEW).]

[PL 2005, c. 634, §12 (NEW).]

SECTION HISTORY

PL 2005, c. 634, §12 (NEW). PL 2007, c. 462, §§2-4 (AMD). PL 2011, c. 529, §1 (AMD). PL 2011, c. 657, Pt. W, §6 (REV). PL 2025, c. 195, §1 (AMD).

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STATUTE: 37-B MRSA §708, sub-§3

Reference #43

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
    a. *Response:* MEMA is unaware of any application of this exception.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
    a. *Response:* MEMA supports continuation of this exception because the Homeland Security Advisory Council's discussions involve homeland security matters, including current and anticipated threats, vulnerabilities, ongoing initiatives, and areas of concern. Public disclosure of these discussions or related minutes could inhibit candid deliberation or adversely affect ongoing security efforts.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
    a. *Response:* MEMA is not aware of any problems arising from application of this exception. The current statutory language clearly identifies the records intended to be confidential and is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?
    a. *Response:* MEMA does not recommend any changes to the current statutory language.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
    a. *Response:* Relevant stakeholders may include Commissioner and Homeland Security Advisor to the Governor, MG Diane Dunn (diane.l.dunn@maine.gov), Director and Council Chair, Peter Rogers (peter.j.rogers@maine.gov), or other members of the Council as outlined in §708, sub-§1.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
    a. *Response:* None.

§797. Maine chemical inventory report

A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory report to the commission, the local emergency planning committee and the local fire department with jurisdiction over the facility. The inventory report and fee must be submitted by March 1st annually for the previous calendar year. Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required in the report. This report must state, at a minimum: [PL 2009, c. 479, §1 (AMD).]

1. Chemical name. The chemical name of each substance listed;
[PL 1989, c. 464, §3 (NEW).]

2. Maximum weight. The maximum number of pounds of each substance present at any time during the preceding year;
[PL 1989, c. 464, §3 (NEW).]

3. Average amount. The average daily amount of each substance present during the preceding year;
[PL 1989, c. 464, §3 (NEW).]

4. Chemical storage. A brief description of the manner of the chemical's storage;
[PL 1989, c. 464, §3 (NEW).]

5. Chemical location. The chemical's location at the facility;
[PL 1989, c. 464, §3 (NEW).]

6. Information withholding. An indication if the person is electing to withhold information from disclosure under section 800; and
[PL 2009, c. 579, Pt. B, §1 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]

7. Transportation. A description of the manner in which the substance is shipped to the facility, including standard and alternate transportation routes taken through the State from point of origin or entry to the facility. Records held by the commission regarding standard and alternate transportation routes are confidential records for the purposes of Title 1, chapter 13, subchapter 1. The commission may provide those records to state, county or local emergency management agencies or public officials, as the commission determines necessary, but shall require those agencies or officials to hold those records as confidential.
[PL 2009, c. 579, Pt. B, §2 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]

8. Progress toward toxics use reduction goals.
[PL 2009, c. 579, Pt. B, §3 (RP); PL 2009, c. 579, Pt. B, §13 (AFF).]

SECTION HISTORY

PL 1989, c. 464, §3 (NEW). PL 1989, c. 929, §§2,3 (AMD). PL 1993, c. 355, §1 (AMD). PL 1995, c. 411, §1 (AMD). PL 2001, c. 533, §1 (AMD). PL 2009, c. 252, §5 (AMD). PL 2009, c. 479, §1 (AMD). PL 2009, c. 579, Pt. B, §§1-3 (AMD). PL 2009, c. 579, Pt. B, §13 (AFF).

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STATUTE: 37-B MRSA §797, sub-§7

Reference #44

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
    a. *Response:* MEMA receives approximately twelve or fewer requests related to Title 37-B, section 797, each year. When responsive records include transportation information protected by section 797, that information is redacted and the statutory exception is cited in the response. MEMA has not experienced any challenges with its use.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
    a. *Response:* MEMA supports continuation of this exception because it provides appropriate protection for sensitive transportation information where public disclosure could create security or operational risks. The exception allows such information to remain confidential while still permitting disclosure to state, county, and local emergency management agencies and public officials when necessary for official purposes.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
    a. *Response:* MEMA has not experienced any problems in applying this exception. The statute clearly identifies the records as confidential, and the language is sufficiently clear in describing the records covered.

4. Does your agency recommend changes to this exception?
    a. *Response:* MEMA does not recommend any changes to the current statutory language.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

a. *Response:* Relevant stakeholders may include members of the State Emergency Response Commission (SERC), whose responsibilities relate directly to emergency planning, hazardous materials preparedness, and related information-sharing considerations. A current list of SERC members is available on MEMA's website at: https://www.maine.gov/mema/hazards/serc/about/members-duties-funding.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
   a. *Response:* None.

§100-A. Confidentiality of complaints and investigative records

1. During investigation. All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued; [PL 1999, c. 355, §22 (NEW).]

B. The complaint has been listed on a meeting agenda of the commission; [PL 1999, c. 355, §22 (NEW).]

C. A consent agreement has been executed; or [PL 1999, c. 355, §22 (NEW).]

D. A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 1999, c. 355, §22 (NEW).]

[PL 1999, c. 355, §22 (NEW).]

2. Exceptions. Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To department employees designated by the commissioner; [PL 1999, c. 355, §22 (NEW).]

B. To designated complaint officers of the commission; [PL 1999, c. 355, §22 (NEW).]

C. By a department employee or complaint officer designated by the commissioner when and to the extent considered necessary to facilitate the investigation; [PL 1999, c. 355, §22 (NEW).]

D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies; [PL 1999, c. 355, §22 (NEW).]

E. When and to the extent considered necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure may not be delegated; [PL 1999, c. 355, §22 (NEW).]

F. Pursuant to rules adopted by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and [PL 1999, c. 355, §22 (NEW).]

G. To the person investigated on that person's request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated. [RR 1999, c. 1, §53 (COR).]

[RR 1999, c. 1, §53 (COR).]

3. Violation. A person who knowingly or intentionally makes a disclosure in violation of this section commits a civil violation for which a forfeiture not to exceed $1,000 may be adjudged.

[PL 1999, c. 355, §22 (NEW).]

SECTION HISTORY

RR 1999, c. 1, §53 (COR). PL 1999, c. 355, §22 (NEW).

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§345-A. Hearings

1. Hearings.
[PL 1989, c. 890, Pt. A, §28 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

1-A. Department hearings. The board and commissioner may hold public hearings as necessary to carry out responsibilities under this Title.
[PL 1989, c. 890, Pt. A, §29 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

2. Maine Administrative Procedure Act. Except as provided elsewhere, all hearings of the department must be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.
[PL 1989, c. 890, Pt. A, §30 (AMD); PL 1989, c. 890, Pt. A, §40 (AFF).]

2-A. Intervenor procedures. The board shall adopt rules that define the procedures and scope of participation for intervenors.
[PL 1991, c. 804, Pt. A, §4 (NEW).]

3. Fees. The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.
[PL 1983, c. 566, §6 (NEW).]

4. Subpoena power. The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.
[PL 1985, c. 746, §10 (NEW).]

5. Public meetings. At the board's or commissioner's discretion, the board or commissioner may schedule and hold public meetings in the geographic area of a proposed project for the purpose of collecting comments that become part of the record in a pending action. Any such meeting must be held during the period when written public comments may be submitted to the department. This subsection and the conduct of a public meeting do not change any other obligation the department has to hold public hearings that are mandatory by statute or required after a timely request is filed.
[PL 2007, c. 43, §1 (NEW).]

SECTION HISTORY

PL 1983, c. 566, §6 (NEW). PL 1983, c. 743, §3 (AMD). PL 1985, c. 589, §2 (AMD). PL 1985, c. 746, §10 (AMD). PL 1989, c. 890, §§A28-30,40 (AMD). PL 1991, c. 804, §A4 (AMD). PL 2007, c. 43, §1 (AMD).

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Joshua Biermann

FOAA Records Officer

MDEP

Right to Know Advisory Committee Exception Survey

REF 46

- 38 MRSA §345-A, sub-§4; **Subpoena power.** The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- While this exception has a limited use case, keeping it would be consistent with how the Department interprets and applies "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- see above

4. Does your agency recommend changes to this exception?

- No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

- unknown

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

- n/a

REF 47

- 38 MRSA §414, sub-§6: Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

- Potential issues exist here re: the burden of demonstrating the privilege. The party asserting the exemption must demonstrate that they are seeking to apply the exemption and that they can sufficiently support that the materials they would like exempted meet the CBI/Trade Secret standard. This may not be obvious in the language of the statute to parties not legally trained.

REF 48

38 MRSA §470-D: Individual water withdrawal reports filed under this article are confidential and are not public records as defined in Title 1, section 402, subsection 3

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 49

38 MRSA §580-B, sub-§11: To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.
A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:
(1) Auction bid and award information specific to any one account holder;
(2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and
(3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.
This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.
The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program. [PL 2009, c. 200, §11 (NEW).]
B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:
(1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and
(2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity. [PL 2009, c. 200, §11 (NEW).]
Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an

estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- MDEP supports the continuation of this exception

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception and has no problems to report

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 50

38 MRSA §1310-B, sub-§2: **2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting

the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 51

38 MRSA §1610, sub-§6-A; F. Annual national sales data on the weight, number and type of covered electronic devices sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 52 (provided DEP wrong statute)

38 MRSA §1612, sub-§4, ¶D: D. At any time, the department may require an operator to implement amendments to its approved plan or to submit to an independent financial audit of its stewardship program.

- It is not evident that the cited provision contains an exemption

REF 53

38 MRSA §1612, sub-§7; Proprietary information submitted to the department in a drug take-back stewardship plan under this section, in an amendment to a plan or pursuant to the reporting requirements of 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.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- Continuation of the exception would be consistent with the underlying purposes of the Waste Management statutes.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 54

38 MRSA §1614(12); Proprietary information submitted to the department by a manufacturer pursuant to the requirements of this section that is identified by the manufacturer 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

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has received multiple submissions claiming this exception. The Department has utalized this exemption on three occasions in the previous three years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department must expend resources verifying that the proprietary information identified by submitting companies meets the statutory and case law standards. This process can be laborious when processing large amounts of simultaneous FOAA requests. At this time, MDEP is on track to significantly exceed the number of requests compared to last year.

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

- MDEP Staff evaluating these claims would be myself (Joshua Biermann) and Director of Policy Kevin Martin.

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 55

38 MRSA §1661-A, sub-§4: Information submitted to the department pursuant to this section may be kept confidential as provided under sections 1310-B and 1671.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 56

38 MRSA §1672, sub-§4; The methodology for estimating the number of mercury-added lamps available for recycling, which must include an assumption of the average lifespan of a lamp by type of lamp and number of lamps sold by type in the years on which the percentage under division (b) is calculated. Proprietary information submitted to the department pursuant to this division that is identified by the manufacturer 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;

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the

exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 57 & 58

38 MRSA §1776, sub-§5; A description of how program performance will be assessed, including performance goals to show success of the program. When a performance goal is expressed as a recycling rate or a diversion from disposal rate, the plan must include a description of the methodology and the relevant historic sales data used to develop the rate. Sales information submitted to the department pursuant to this paragraph that is identified by the producer or stewardship organization as proprietary information is confidential and must be handled by the department in accordance with subsection 10.

38 MRSA §1776, sub-§10; **Proprietary information.** Proprietary information submitted to the department in a product stewardship plan, in an amendment to a product stewardship plan or pursuant to reporting requirements of this section that is identified by the submittor 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.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an

estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 59

38 MRSA §2144, sub-§5(F); Reports submitted to the department under this section must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this section that is identified by the submittor 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.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 60

38 MRSA §2145, sub-§3; information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions of section 1310-B and, if the information is so designated, the provisions of section 1310-B apply

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 61

38 MRSA §2146, sub-§15; 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 submittor 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

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 62

38 MRSA §2324, sub-§3; **Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 63

38 MRSA §3107(3-B)(H); Reports submitted to the department under this subsection must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this subsection 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;

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

REF 64

38 MRSA §3119, sub-§3; **Proprietary information.** Proprietary information submitted to the department in a report required under this section that is identified by the submittor 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

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

- MDEP has not used this exception, to my knowledge, withing the previous 3 years.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

- This exception is consistent with the Department's understanding and application of the "Trade Secret"/CBI exceptions in the broader context.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

- The Department has not applied the exception in this statute's context

4. Does your agency recommend changes to this exception?

-no

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

-n/a

6. Please provide further information that you believe is relevant to the Advisory Committee's review.

§414. Applications for licenses

1. Administration.
[PL 1977, c. 300, §17 (RP).]

2. Terms of licenses. Licenses are issued by the department for a term of not more than 5 years.
[PL 2003, c. 246, §7 (AMD).]

2-A. Relicensing. The relicensing of an existing licensed waste discharge prior to or after the expiration of the term of the existing license is subject to all of the requirements of this chapter. For the purposes of this chapter, the term "relicense" includes, without limitation, the terms "renewal," "renew," "reissue" and "extend." Relicensing of a waste discharge may be denied for any of the reasons set forth in section 341-D.
[PL 1997, c. 794, Pt. A, §20 (AMD).]

3. Inspection and records. Authorized representatives of the commissioner and the Attorney General have access at any reasonable time, to and through any premises where a discharge originates or is located or where required records are kept, including records of industrial users of publicly owned treatment works, for the purposes of inspection, testing and sampling. The department may order a discharger to produce and has the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating to the handling, treatment or discharge of pollutants as the department determines necessary. The department also may order, in writing, a discharger or industrial user of publicly owned treatment works to produce such records, reports and other information as may reasonably be required in order to determine if that person is in violation of any law, order, rule, license, permit, approval or decision of the board or commissioner related to a wastewater discharge.
[PL 1997, c. 794, Pt. A, §20 (AMD).]

3-A. Inspection of overboard discharge systems. The department shall inspect all licensed overboard discharge systems. The cost of the inspections must be assessed as part of the annual license fee. For residential overboard discharges owned by individuals, the department shall provide a fee reduction based on the adjusted gross income of the license holder on the most recent tax return under the federal Internal Revenue Code of 1986. If the license holder's adjusted gross income is less than 50% of the median household income as specified in section 411, the license holder may reduce the total fee by 50%. Any overboard discharge license owner with a mechanical treatment system must provide annual proof of a private maintenance contract for maintenance of that system.

A. [PL 2003, c. 246, §8 (RP).]

B. [PL 2003, c. 246, §8 (RP).]
[PL 2025, c. 44, §11 (AMD).]

3-B. Waiver of inspection; reduced fees.
[PL 2003, c. 246, §9 (RP).]

4. Schedule of fees for discharge licenses.
[PL 1973, c. 712, §6 (RP).]

5. Unlawful to violate license. After the issuance of a license by the department, it is unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.
[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §29 (AMD).]

6. Confidentiality of records. Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the

department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.
[PL 2015, c. 250, Pt. C, §7 (AMD).]

7. Processing.
[PL 1977, c. 300, §19 (RP).]

8. Effect of license. Issuance of a license under section 413 does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, Section 307, as amended, compliance with a license issued under section 413 during its terms constitutes compliance with sections 413 to 414-C and section 423-D. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license that has a reasonable likelihood of adversely affecting human health or the environment.
[PL 2009, c. 537, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 431, §§3-A (AMD). PL 1969, c. 499, §10 (RPR). PL 1969, c. 567 (AMD). PL 1971, c. 256, §2 (AMD). PL 1971, c. 461, §4 (AMD). PL 1971, c. 618, §12 (AMD). PL 1971, c. 622, §§136,137 (AMD). PL 1973, c. 450, §§11-14 (AMD). PL 1973, c. 712, §6 (AMD). PL 1977, c. 300, §§17-19 (AMD). PL 1979, c. 444, §4 (AMD). PL 1983, c. 566, §18 (AMD). PL 1987, c. 180, §2 (AMD). PL 1989, c. 442, §2 (AMD). PL 1989, c. 807 (AMD). PL 1989, c. 890, §§A40,B29 (AMD). PL 1991, c. 66, §A6 (AMD). PL 1991, c. 294, §§1,2 (AMD). PL 1993, c. 410, §G5 (AMD). PL 1997, c. 794, §§A19-21 (AMD). PL 2003, c. 246, §§7-9 (AMD). PL 2009, c. 537, §1 (AMD). PL 2015, c. 250, Pt. C, §7 (AMD). PL 2025, c. 44, §11 (AMD).

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§470-D. Filing of reports by users; aggregation of data

Unless exempted under section 470-C, a person withdrawing more than the threshold volume of water established in this article must file an annual water withdrawal report on December 1, 2003 and on every December 1st thereafter as provided in this section. [PL 2001, c. 619, §1 (NEW).]

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Agriculture, Conservation and Forestry or the Commissioner of Health and Human Services in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner except that the required information must be collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement the reporting provisions of this article. [PL 2011, c. 120, §7 (AMD); PL 2011, c. 657, Pt. W, §5, 6 (REV).]

Individual water withdrawal reports filed under this article are confidential and are not public records as defined in Title 1, section 402, subsection 3. [PL 2001, c. 619, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 619, §1 (NEW). PL 2003, c. 689, §§B6,7 (REV). PL 2011, c. 120, §7 (AMD). PL 2011, c. 657, Pt. W, §5, 6 (REV).

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§580-B. Cap-and-trade program established

A carbon dioxide cap-and-trade program, referred to in this section as "the program," is established in accordance with this section. [PL 2007, c. 317, §17 (NEW).]

1. Application. All carbon dioxide budget units are subject to the carbon dioxide cap-and-trade program, except that a carbon dioxide budget unit is exempt from the program if:

A. It is incapable of producing enough energy to generate 25 megawatts or more of electrical output; [PL 2007, c. 317, §17 (NEW).]

B. Its sale of electricity to any power distribution system is less than 10% of its gross electrical generation on an annual basis. In calculating this percentage, all electricity transmitted to the regional grid over the facilities of a transmission and distribution utility as a result of verifiable conservation and demand-side management initiatives or any emergency mandate of the regional transmission organization or lawful order of a governmental authority is not included in the calculation of annual sales; or [PL 2007, c. 317, §17 (NEW).]

C. Fifty percent or more of its annual heat input comes from the combustion of fuels other than fossil fuels. [PL 2007, c. 317, §17 (NEW).]

[PL 2007, c. 317, §17 (NEW).]

2. Contingent on initiation of comparable programs. The carbon dioxide cap-and-trade program commences no earlier than January 1, 2009 and only when other states that are participating in the regional greenhouse gas initiative that produce a minimum of 35,000,000 tons of annual carbon dioxide emissions budget and participate in a wholesale electricity market administered and overseen by the regional transmission organization have initiated a comparable carbon dioxide cap-and-trade program. Nothing in this section precludes the department from initiating air emissions licensing of carbon dioxide budget sources or from participating in auctions for the sale of carbon dioxide allowances.

[PL 2007, c. 608, §6 (AMD).]

2-A. Condition for withdrawal. The State shall withdraw from the regional greenhouse gas initiative when a sufficient number of other independent system operator participating states have withdrawn such that the total carbon dioxide emissions budget for the calendar year 2009, as specified in the Memorandum of Understanding, of the remaining other independent system operator participating states is less than 35,000,000 tons. If the condition is met for withdrawal from the regional greenhouse gas initiative, the department shall:

A. Immediately take all necessary steps to withdraw the State from all memoranda of understanding and contracts with states participating in the regional greenhouse gas initiative relating to the regional greenhouse gas initiative; and [PL 2011, c. 277, §2 (NEW).]

B. Submit legislation to the Legislature to make the necessary changes in law to reflect the State's withdrawal from the regional greenhouse gas initiative. [PL 2011, c. 277, §2 (NEW).]

[PL 2011, c. 277, §2 (NEW).]

3. Base annual budget. Until January 1, 2014, the base annual carbon dioxide emissions budget is established at 5,948,902 tons of carbon dioxide. For the year 2014, the base annual carbon dioxide emissions budget is established at 3,277,250 tons of carbon dioxide. Beginning with the year 2015, the annual carbon dioxide emissions budget must decline by 2.5% each year through the year 2020. For the year 2021, the department shall establish the base annual carbon dioxide emissions budget in accordance with the model rule and with rules adopted pursuant to subsection 4. Beginning with the year 2022, the annual carbon dioxide emissions budget must decline by 2.5% of the 2014 base annual carbon dioxide emissions budget each year through the year 2026. Beginning with the year 2027, the base annual carbon dioxide emissions budgets are as follows.

A. For the year 2027, the base annual carbon dioxide emissions budget is 2,065,595 tons. [PL 2025, c. 550, §1 (NEW).]

B. For the year 2028, the base annual carbon dioxide emissions budget is 1,807,395 tons. [PL 2025, c. 550, §1 (NEW).]

C. For the year 2029, the base annual carbon dioxide emissions budget is 1,549,196 tons. [PL 2025, c. 550, §1 (NEW).]

D. For the year 2030, the base annual carbon dioxide emissions budget is 1,290,997 tons. [PL 2025, c. 550, §1 (NEW).]

E. For the year 2031, the base annual carbon dioxide emissions budget is 1,032,797 tons. [PL 2025, c. 550, §1 (NEW).]

F. For the year 2032, the base annual carbon dioxide emissions budget is 774,598 tons. [PL 2025, c. 550, §1 (NEW).]

G. For the year 2033, the base annual carbon dioxide emissions budget is 516,399 tons. [PL 2025, c. 550, §1 (NEW).]

H. For the year 2034, the base annual carbon dioxide emissions budget is 442,627 tons. [PL 2025, c. 550, §1 (NEW).]

I. For the year 2035, the base annual carbon dioxide emissions budget is 368,856 tons. [PL 2025, c. 550, §1 (NEW).]

J. For the year 2036, the base annual carbon dioxide emissions budget is 295,085 tons. [PL 2025, c. 550, §1 (NEW).]

K. For the year 2037 and each subsequent year, the base annual carbon dioxide emissions budget is 221,314 tons. [PL 2025, c. 550, §1 (NEW).]

[PL 2025, c. 550, §1 (AMD).]

3-A. Interim adjustments for banked allowances. The 2014 base annual carbon dioxide emissions budget of 3,277,250 tons of carbon dioxide and base annual budgets for 2015 to 2020 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2013. The base annual carbon dioxide emissions budgets for 2021 to 2025 must be reduced by an amount equivalent to the quantity of banked allowances in excess of the quantity of allowances required for compliance at the end of 2020. The State's interim adjustments for banked allowances must be made in proportion to the State's share of the total annual carbon dioxide emissions budget for all states participating in the regional greenhouse gas initiative. [PL 2017, c. 323, §2 (AMD).]

4. Rules implementing program. The department shall adopt rules to implement the program. Rules must be consistent with the model rule. The rules must include, but are not limited to:

A. Provisions for the establishment of a system for the annual assignment, sale and distribution of carbon dioxide emissions allowances consistent with the carbon dioxide emissions budget; [PL 2007, c. 317, §17 (NEW).]

B. Provisions for the establishment of carbon dioxide budget unit compliance obligation accounts; [PL 2007, c. 317, §17 (NEW).]

C. [PL 2025, c. 550, §2 (RP).]

D. Provisions for the implementation of a licensing process for carbon dioxide budget units; [PL 2007, c. 317, §17 (NEW).]

E. Provisions for the establishment of a carbon dioxide emissions and carbon dioxide allowance tracking program; and [PL 2007, c. 317, §17 (NEW).]

F. Provisions to manage the carbon dioxide allowance auction developed in coordination with other states and jurisdictions in the regional greenhouse gas initiative and in a manner that is consistent with provisions adopted by those states and jurisdictions and, to the extent feasible, that:

(1) Ensure close monitoring of allowance transactions in a manner that guards against collusion and market manipulation;

(2) Ensure ongoing authentic price discovery and minimize price volatility;

(3) Facilitate open participation for bidding to all individuals or entities that meet the financial requirements jointly adopted by the participating states;

(4) Minimize administration and transaction costs and provide for an open and transparent user-friendly system;

(5) Provide that ongoing monitoring of market activity is undertaken by entities that have complete financial independence from any market participant;

(6) For purposes of civil and criminal enforcement authority under section 349, establish a contract term at the time an allowance is purchased at the regional auction for violations of market rules jointly adopted by the participating states and jurisdictions or through another method of ensuring state jurisdiction; and

(7) Guarantee that the Attorney General, the Commissioner of Energy Resources and the commissioner have access to all auction information and information concerning allowance trading activity, including reports provided to the regional organization by a market monitor. [PL 2025, c. 597, Pt. B, §11 (AMD).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2025, c. 550, §2 (AMD); PL 2025, c. 597, Pt. B, §11 (AMD).]

5. Enforcement. Violations of this chapter are enforceable, and penalties may be imposed in accordance with sections 347-A, 348 and 349.
[PL 2007, c. 317, §17 (NEW).]

6. Waiver of enforcement; suspension of compliance obligation. The commissioner has authority, under the exceptional circumstances set out in paragraphs A and B, to waive or suspend requirements of this chapter.

A. If the regional greenhouse gas initiative results in price levels for allowances that will result in immediate and irreparable harm to the operations of a carbon dioxide budget unit regulated under this chapter, including but not limited to the termination of business at that location, the commissioner may, in consultation with the Attorney General and the Commissioner of Energy Resources, grant a temporary waiver of enforcement not to exceed one year for any violation by an individual regulated carbon dioxide budget unit of a requirement of this chapter. [PL 2025, c. 597, Pt. B, §12 (AMD).]

B. In cases of emergency events that are beyond the control of a carbon dioxide budget unit, the commissioner may temporarily suspend the compliance obligation under a particular permit until such time as the emergency no longer is in effect. [PL 2007, c. 317, §17 (NEW).]

The department shall adopt rules for the implementation of this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 15, 2008 for review by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 123rd Legislature.
[PL 2025, c. 597, Pt. B, §12 (AMD).]

7. Allocation of carbon dioxide emissions allowances. The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in Title 35-A, section 10109. Except as provided in subsections 7-A and 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4. Revenue resulting from the sale of allowances must be deposited in the Regional Greenhouse Gas Initiative Trust Fund established under Title 35-A, section 10109.
[PL 2009, c. 652, Pt. A, §60 (RPR).]

7-A. Voluntary renewable energy market set-aside. The department shall set aside a portion of the State's annual carbon dioxide emissions budget in a voluntary renewable market set-aside account. The allowances from this account must be retired in an amount equal to the amount of carbon dioxide emissions reduced by the voluntary purchase of eligible renewable energy credits by persons in the State up to the amount held in the set-aside account. For purposes of this subsection, "eligible renewable energy credits" means renewable energy credits generated within the states that are participating in the regional greenhouse gas initiative.

Before February 1, 2010, the portion of the State's annual carbon dioxide emissions budget that is set aside in a voluntary renewable market set-aside account pursuant to this subsection may not exceed 2% of that budget. The department shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15, 2010 as to whether that 2% cap is appropriate. By January 31, 2010, the Efficiency Maine Trust, established under Title 35-A, section 10103, in consultation with the department, shall establish the cap on the portion of the State's annual carbon dioxide emissions budget that is set aside in a set-aside account.
[PL 2009, c. 372, Pt. B, §5 (AMD).]

8. Combined heat and power incentive; set aside. The department shall set aside a portion of the State's annual carbon dioxide emissions allowances in an allowance account for carbon dioxide budget units that are combined heat and power units and are located at integrated manufacturing facilities. The department shall use these allowances for existing carbon dioxide budget units to reflect only that portion of each unit's emissions related to electricity and thermal power generated at a carbon dioxide budget unit that is a combined heat and power unit, whether it is a combined cycle system or other energy generation configuration of which the carbon dioxide budget unit is a part, that are not transmitted across the facilities of a transmission and distribution utility.

The department shall adopt rules setting forth the proper treatment of combined heat and power units. The rules may distinguish between combined heat and power units that commence operation after July 1, 2007 and those that commence operation before July 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2007, c. 317, §17 (NEW).]

9. Integrated manufacturing facilities. This subsection governs the treatment of integrated manufacturing facilities under this chapter.

A. The compliance obligation for a carbon dioxide budget unit at an integrated manufacturing facility is the carbon dioxide emissions associated with electricity resulting from the combustion of fossil fuels and transmitted over the facilities of a transmission and distribution utility. Absent any contractual arrangement to the contrary, the department shall presume that electricity from sources other than carbon dioxide budget units is transmitted first. The department shall adopt rules governing the compliance obligation for electricity generated at integrated manufacturing facilities and transmitted over the facilities of a transmission and distribution utility. [PL 2007, c. 317, §17 (NEW).]

B. The department shall establish the Integrated Manufacturing Facility Retirement Account to ensure proper accounting for carbon emissions from the generation of electricity and heat from fossil fuels at integrated manufacturing facilities. [PL 2007, c. 317, §17 (NEW).]

C. The purchase of electricity pursuant to a long-term electricity contract renders the purchaser an owner of a carbon dioxide budget unit for purposes of this chapter and obligates the owner to obtain the carbon dioxide emissions allowances applicable to the compliance obligation associated with the carbon dioxide budget unit. For purposes of this paragraph, "owner" means:

(1) The holder of any portion of the legal or equitable title in a carbon dioxide budget unit;

(2) The holder of a leasehold interest in a carbon dioxide budget unit, other than a passive lessor or a person who has an equitable interest through such lessor whose rental payments are not based, either directly or indirectly, upon the revenues or income from that unit; or

(3) A purchaser of electricity from a carbon dioxide budget unit under a contractual arrangement for greater than a 3-year period.

If no person has title to the electricity under subparagraphs (1) to (3), the owner is any holder of any portion of the legal or equitable title to the output of a carbon dioxide budget unit or any holder of a leasehold interest in such a unit. [PL 2007, c. 317, §17 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2007, c. 317, §17 (NEW).]

10. Annual report. The department, the Commissioner of Energy Resources and the trustees of the Efficiency Maine Trust established pursuant to Title 35-A, section 10103 shall submit a joint report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters by March 15th annually. The report must assess and address:

A. The reductions of greenhouse gas emissions from carbon dioxide budget units, conservation programs funded by the Regional Greenhouse Gas Initiative Trust Fund pursuant to Title 35-A, section 10109 and carbon dioxide emissions offset projects; [PL 2009, c. 652, Pt. A, §61 (RPR).]

B. The improvements in overall carbon dioxide emissions and energy efficiency from sources that emit greenhouse gases including electrical generation and fossil fuel fired units; [PL 2009, c. 652, Pt. A, §61 (RPR).]

C. The maximization of savings through systemic energy improvements statewide; [PL 2009, c. 652, Pt. A, §61 (RPR).]

D. [PL 2025, c. 550, §3 (RP).]

E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts funded by the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109; [PL 2009, c. 652, Pt. A, §61 (RPR).]

F. The extent to which funds from the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109, serve customers from all classes of the State's transmission and distribution utilities; and [PL 2009, c. 652, Pt. A, §61 (RPR).]

G. The revenues and expenditures of the Regional Greenhouse Gas Initiative Trust Fund, established pursuant to Title 35-A, section 10109. [PL 2009, c. 652, Pt. A, §61 (RPR).]

The department, the Commissioner of Energy Resources and the trustees of the Efficiency Maine Trust may include in the report any proposed changes to the program established under this chapter.

The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program.

The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation relating to areas within the committee's jurisdiction in connection with the program.
[PL 2025, c. 550, §3 (AMD); PL 2025, c. 597, Pt. B, §13 (AMD).]

11. Confidentiality. To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.

A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:

(1) Auction bid and award information specific to any one account holder;

(2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and

(3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.

This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.

The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program. [PL 2009, c. 200, §11 (NEW).]

B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:

(1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and

(2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity. [PL 2009, c. 200, §11 (NEW).]

Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.
[PL 2009, c. 200, §11 (NEW).]

SECTION HISTORY

PL 2007, c. 317, §17 (NEW). PL 2007, c. 608, §§6, 7 (AMD). PL 2009, c. 200, §§7-11 (AMD). PL 2009, c. 372, Pt. B, §§4-6 (AMD). PL 2009, c. 652, Pt. A, §§60, 61 (AMD). PL 2011, c. 277, §2 (AMD). PL 2013, c. 369, Pt. D, §§4-7 (AMD). PL 2017, c. 323, §§1, 2 (AMD). PL 2025, c. 550, §§1-3 (AMD). PL 2025, c. 597, Pt. B, §§11-13 (AMD).

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§1310-B. Confidential information

1. Public records. Except as provided in subsections 2 and 3, information obtained by the department under this chapter is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.
[PL 1989, c. 794, §3 (AMD).]

2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals; recyclables. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information related to priority toxic chemicals submitted to the department under chapter 27, information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 or information related to reporting on reportable recyclable materials submitted to the department under section 2145 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.
[PL 2019, c. 291, Pt. B, §1 (AMD).]

3. Release of information. The commissioner shall not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.
[PL 1979, c. 699, §17 (NEW).]

4. License and enforcement information. Information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under subsection 2.

[PL 1979, c. 699, §17 (NEW).]

5. Rules. The board may adopt rules to carry out the purposes of this section. The rules shall be consistent with the provisions of Title 1, chapter 13, subchapter I.
[PL 1981, c. 470, Pt. A, §173 (AMD).]

6. Prohibition; penalties.

A. It is unlawful to disclose designated information to any person not authorized by this section. [PL 1979, c. 699, §17 (NEW).]

B. Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime and to the civil penalty of paragraph C. [PL 1979, c. 699, §17 (NEW).]

C. Any person who knowingly discloses designated information, knowing that the person is not authorized to do so, is subject to a civil penalty of not more than $5,000. [RR 2021, c. 2, Pt. B, §285 (COR).]

D. In any action under this subsection, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [PL 1979, c. 699, §17 (NEW).]
[RR 2021, c. 2, Pt. B, §285 (COR).]

SECTION HISTORY

PL 1979, c. 699, §17 (NEW). PL 1981, c. 470, §§A172,A173 (AMD). PL 1985, c. 267, §2 (AMD). PL 1987, c. 517, §24 (AMD). PL 1989, c. 794, §3 (AMD). PL 1989, c. 890, §§A40,B233 (AMD). PL 2001, c. 373, §1 (AMD). PL 2003, c. 661, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 561, §7 (AMD). PL 2005, c. 590, §3 (AMD). PL 2007, c. 466, Pt. A, §72 (AMD). PL 2009, c. 397, §1 (AMD). PL 2009, c. 579, Pt. A, §1 (AMD). PL 2009, c. 610, §1 (AMD). PL 2011, c. 420, Pt. A, §35 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2015, c. 250, Pt. C, §10 (AMD). PL 2019, c. 291, Pt. B, §1 (AMD). RR 2021, c. 2, Pt. B, §285 (COR).

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§1610. Electronic waste

(REALLOCATED FROM TITLE 38, SECTION 1609)

1. Findings; purpose. The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, consolidators, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.
[PL 2007, c. 292, §39 (AMD).]

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

A. [PL 2017, c. 391, §1 (RP).]

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect covered electronic devices at collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph (1). [PL 2011, c. 250, §2 (AMD).]

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility. [PL 2007, c. 292, §41 (NEW).]

B-2. "Covered entity" means a household in this State, a business or nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) that employs 100 or fewer individuals, a primary school or a secondary school. [PL 2011, c. 250, §3 (NEW).]

C. "Covered electronic device" means a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment; other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act; or a cellular telephone subject to section 2143. [PL 2017, c. 391, §1 (AMD).]

C-1. "Desktop printer" means a device weighing 100 pounds or less that prints text or illustrations on paper or 3-dimensional objects and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile. [PL 2017, c. 391, §1 (AMD).]

D. "Manufacturer" means a person who:

(1) Manufactures or has manufactured a covered electronic device under its own brand or label;

(2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;

(3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or

(4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device. [PL 2007, c. 292, §42 (AMD).]

D-1. "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices. [PL 2009, c. 231, §1 (NEW); PL 2009, c. 231, §7 (AFF).]

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. [PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

F. [PL 2011, c. 250, §4 (RP).]

G. [PL 2017, c. 391, §1 (RP).]

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy recovery or energy generation by means of combustion. [PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling. [PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

J. "Retailer" means a person who sells or provides a platform for the sale of a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including wholesale transactions with a distributor or other retailer. [PL 2017, c. 391, §1 (AMD).]

K. [PL 2017, c. 391, §1 (RP).]

L. "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game. [PL 2009, c. 397, §6 (NEW).]

[PL 2017, c. 391, §1 (AMD).]

3. Sales prohibition. Beginning January 1, 2006 the following sales prohibitions apply to manufacturers and retailers.

A. A manufacturer not in compliance with this section is prohibited from offering a covered electronic device for sale in this State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's covered electronic devices are not offered for sale in this State. [PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

B. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this section. [PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

[PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

4. Manufacturer label required. Beginning January 1, 2005, a manufacturer may not offer for sale in this State a covered electronic device unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to it.

[PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

5. Responsibility for recycling. Municipalities, consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that covered electronic devices generated as waste from covered entities within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system. [PL 2017, c. 391, §2 (AMD).]

A-1. A covered entity may deliver no more than 7 covered electronic devices at one time to a municipal collection site or consolidator collection event, unless the municipal collection site or consolidator is willing to accept additional covered electronic devices. [PL 2011, c. 250, §6 (NEW).]

B. A consolidator is subject to the requirements of this paragraph.

(1-A) A consolidator shall maintain a written log of the total weight of each type of covered electronic device delivered each month to the consolidator and identified as generated by a covered entity in the State. By March 1st each year, a consolidator shall provide this accounting to the department.

(3) A consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system with costs calculated on a basis proportional to the manufacturer's national market share of each type of covered electronic device sold in the State multiplied by the total pounds recycled. At a minimum, a consolidator shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidator shall transport covered electronic devices to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidator and shall

provide the department with a copy of these records within 24 hours of request by the department. [PL 2017, c. 391, §2 (AMD).]

C. A recycling and dismantling facility shall provide to a consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department. [PL 2007, c. 292, §43 (AMD).]

D. Covered electronic device manufacturers are subject to the requirements of this paragraph.

(1) Manufacturers shall pay the reasonable operational costs of the consolidator attributable to the handling of all covered electronic devices received at consolidation facilities in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. "Reasonable operational costs" includes the costs associated with ensuring that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The recycling of each type of covered electronic device must be funded by allocating the cost of the program among the manufacturers selling covered electronic devices in the State on a basis proportional to the manufacturer's national market share of the type of covered electronic device. The department shall annually determine each manufacturer's recycling share based on readily available national market share data. If the department determines that a manufacturer's market share is less than 1/10 of 1%, the department may determine that market share de minimus. A manufacturer whose market share is determined de minimus by the department is not responsible for payment of a pro rata share for the corresponding billing year. The total market shares determined de minimus by the department must be proportionally allocated to and paid for by the manufacturers that have 1/10 of 1% or more of the market of each type of covered electronic device.

(2) Each manufacturer shall work cooperatively with consolidators to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidator for allowable costs incurred by that consolidator. [PL 2017, c. 391, §2 (AMD).]

E. Annually by January 1st the department shall provide manufacturers and consolidators with a listing of each manufacturer's proportional market share responsibility for the recycling of covered electronic devices for the subsequent calendar year. [PL 2017, c. 391, §2 (AMD).]

[PL 2017, c. 391, §2 (AMD).]

6. Manufacturer plan and reporting requirements.

[PL 2009, c. 397, §8 (RP); PL 2009, c. 397, §14 (AFF).]

6-A. Manufacturer registration. Prior to offering a covered electronic device and by April 1st annually, a manufacturer that offers or has offered within the preceding calendar year a covered electronic device for sale in or into this State shall submit a registration to the department. The annual registration must include:

A. The name, contact and billing information of the manufacturer; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

B. The manufacturer's brand name or names and the type of covered electronic device on which each brand is used, including:

(1) All brands sold in the State in the preceding calendar year; and

(2) All brands currently being sold in the State; [PL 2017, c. 391, §3 (AMD).]

C. When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

D. When a logo, mark or image is used as a label, the manufacturer must include a graphic representation of the logo, mark or image and a general description of the logo, mark or image as it appears on the manufacturer's electronic products; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

E. The method or methods of sale used in the State; [PL 2009, c. 397, §9 (NEW); PL 2009, c. 397, §14 (AFF).]

F. Annual national sales data on the weight, number and type of covered electronic devices sold by the manufacturer in this State over the 5 years preceding the filing of the plan. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B; [PL 2017, c. 391, §3 (AMD).]

G. The manufacturer's consolidator handling option for the next calendar year, as selected in accordance with rules adopted pursuant to subsection 10; and [PL 2011, c. 250, §9 (AMD).]

H. A registration fee paid by a manufacturer as follows:

(1) Seven hundred and fifty dollars for manufacturers with less than 0.1% national market share as determined by the department based on the most recent readily available national market share data; and

(2) Three thousand dollars for all other manufacturers. [PL 2017, c. 391, §3 (AMD).]

A manufacturer's annual registration filed subsequent to its initial registration must clearly delineate any changes in information from the previous year's registration. Whenever there is any change to the information on the manufacturer's registration, the manufacturer shall submit an updated form within 14 days of the change. Registration fees collected by the department pursuant to this subsection must be deposited in the Maine Environmental Protection Fund established in section 351.
[PL 2017, c. 391, §3 (AMD).]

7. Enforcement; cost recovery. The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to subsection 5, paragraph D, subparagraph (1), the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.
[PL 2017, c. 391, §4 (AMD).]

8. Reports to Legislature. The department shall submit a report on the recycling of electronic waste in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters as part of each product stewardship report submitted in accordance with section 1772. The report may include an evaluation of the recycling rates in the State for covered electronic devices and recommendations for any changes to the system of collection and recycling of electronic devices in the State.
[PL 2011, c. 250, §10 (AMD).]

9. State procurement. All vendors of electronic devices to the State shall provide take-back and management services for their products at the end of life of those products and must be in compliance with all the requirements of this section. Vendors shall provide assurances that all take-back and management services will operate in compliance with all applicable environmental laws. Purchasing

preference must be given to electronic devices that incorporate design for the preservation of the environment.
[PL 2003, c. 661, §2 (NEW); RR 2003, c. 2, §119 (RAL).]

10. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A as necessary to implement, administer and enforce this chapter. The rules must identify the criteria that consolidators must use to determine reasonable operational costs attributable to the handling of covered electronic devices.
[PL 2017, c. 391, §5 (AMD).]

11. Interstate clearinghouse for electronic waste. The department may participate in the establishment and implementation of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.
[PL 2009, c. 397, §12 (NEW).]

SECTION HISTORY

PL 2003, c. 661, §2 (NEW). RR 2003, c. 2, §119 (RAL). PL 2005, c. 330, §§37-40 (AMD). PL 2005, c. 561, §8 (AMD). PL 2007, c. 292, §§39-44 (AMD). PL 2009, c. 231, §§1-5 (AMD). PL 2009, c. 231, §7 (AFF). PL 2009, c. 397, §§2-12 (AMD). PL 2009, c. 397, §14 (AFF). PL 2011, c. 250, §§2-10 (AMD). PL 2017, c. 391, §§1-5 (AMD).

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§1612. Drug take-back stewardship program

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

A. "Authorized collector" means:

(1) A person, company, corporation or other entity registered with the United States Department of Justice, Drug Enforcement Administration to collect controlled substances and noncontrolled substances for the purposes of safe disposal and destruction;

(2) A law enforcement agency; or

(3) A person, company, corporation or other entity authorized by the department to provide alternative collection methods for covered drugs that are household pharmaceutical waste and that are noncontrolled substances.

"Authorized collector" includes a mandatory pharmacy collector. [PL 2021, c. 94, §2 (NEW).]

B. [PL 2023, c. 504, §1 (RP).]

C. "Collection receptacle" means a secure box, kiosk or other container:

(1) Into which a person may deposit for disposal covered drugs that are household pharmaceutical waste and that is prominently labeled in a manner indicating that only such types of covered drugs may be deposited for disposal;

(2) That meets applicable federal standards for the use described in subparagraph (1); and

(3) That is located on the premises of an authorized collector participating in a stewardship program under this section. [PL 2021, c. 94, §2 (NEW).]

D. "Covered drug" means any substance recognized as a drug under 21 United States Code, Section 321(g)(1), as amended, and any regulations adopted pursuant to that provision, that is sold, offered for sale or dispensed in the State, whether directly or through a wholesaler, in any form, including, but not limited to, prescription and nonprescription drugs, drugs in medical devices and combination products, brand name and generic drugs and drugs for veterinary use.

"Covered drug" does not include:

(1) Vitamins or supplements;

(2) Herbal-based remedies and homeopathic drugs, products or remedies;

(3) Cosmetics, soap with or without germicidal agents, laundry detergent, bleach, household cleaning products, shampoo, sunscreen, toothpaste, lip balm, antiperspirant or other personal care products that are regulated as both cosmetics and nonprescription drugs under the Federal Food, Drug, and Cosmetic Act;

(4) Pet pesticide products contained in pet collars, powders, shampoos, topical applications or other forms and prescription pet food;

(5) Drugs that are biological products, as defined in 21 Code of Federal Regulations, Section 600.3(h), if the manufacturer provides a program to take back that drug;

(6) Drugs for which a manufacturer provides a program to take back those drugs as part of a United States Department of Health and Human Services, Food and Drug Administration managed risk evaluation and mitigation strategy;

(7) Emptied syringes or emptied medical devices or the component parts or accessories of those products or devices;

(8) Drugs that are used solely in a clinical setting; and

(9) Dialysate drugs required to perform home kidney dialysis. [PL 2023, c. 504, §2 (AMD).]

E. "Drug take-back stewardship organization" or "stewardship organization" means a corporation, nonprofit organization or other legal entity created by one or more manufacturers to implement a stewardship program under this section. [PL 2021, c. 94, §2 (NEW).]

F. "Drug take-back stewardship plan" or "plan" means a plan designed by a manufacturer or stewardship organization for the establishment of a stewardship program. [PL 2021, c. 94, §2 (NEW).]

G. "Drug take-back stewardship program" or "stewardship program" means a system implemented under this section for the collection, transportation and disposal of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

H. "Household pharmaceutical waste" means useless, unwanted, expired or discarded drugs generated by a household.

For the purposes of this paragraph, "household" includes, but is not limited to, a single residential unit, a multifamily residential unit, an apartment and an independent living community. "Household" does not include a hospital, health clinic, hospice facility, skilled nursing facility or other long-term care facility, physician's office, pharmacy or veterinary office or clinic. [PL 2021, c. 94, §2 (NEW).]

I. "Mail-back envelope" means a prepaid, preaddressed mailing envelope, as authorized by federal law and regulation, that is provided by or through a company or organization licensed or otherwise authorized to dispose of covered drugs that are household pharmaceutical waste received in such mailing envelopes and that is made available through a stewardship program to persons seeking to dispose of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

J. "Mandatory pharmacy collector" means a pharmacy licensed by the Maine Board of Pharmacy pursuant to Title 32, section 13751.

For the purposes of this paragraph, "pharmacy" has the same meaning as in Title 32, section 13702-A, subsection 24, except that "pharmacy" does not include a pharmacy that purchases drugs for and dispenses drugs to a limited, institutional patient population. [PL 2021, c. 94, §2 (NEW).]

K. "Manufacturer" means:

(1-A) Except as provided in subparagraph (2), a manufacturer of a covered drug that is sold or offered for sale in or into the State; or

(2) If the manufacturer of a covered drug that is sold or offered for sale in or into the State has no physical presence in the United States and is not a participant in a stewardship program, a person that imports a covered drug that is sold or offered for sale in or into the State.

"Manufacturer" does not include a wholesaler that sells or offers for sale in the State at wholesale a covered drug if the covered drug is manufactured by a manufacturer that is a participant in a stewardship program.

"Manufacturer" does not include a retailer that sells or offers for sale in the State at retail a covered drug under the retailer's store label if the covered drug is manufactured by a manufacturer that is a participant in a stewardship program. [PL 2023, c. 504, §3 (AMD).]

L. "Operator" means a manufacturer or a stewardship organization that implements and operates a stewardship program. [PL 2021, c. 94, §2 (NEW).]

M. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [PL 2021, c. 94, §2 (NEW).]

[PL 2023, c. 504, §§1-3 (AMD).]

2. Manufacturer responsibility. A manufacturer shall:

A. Individually or jointly with one or more manufacturers, implement, administer and operate a stewardship program pursuant to a plan that has been approved by the department; or [PL 2021, c. 94, §2 (NEW).]

B. Enter into an agreement with a stewardship organization to implement, administer and operate a stewardship program pursuant to a plan that has been approved by the department. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

3. Submittal of plan. A manufacturer, individually or jointly with one or more manufacturers, or a stewardship organization contracted by one or more manufacturers, shall submit to the department for approval a proposed plan. The plan must include, at a minimum:

A. A certification that the stewardship program will accept all covered drugs that are household pharmaceutical waste regardless of who manufactured the covered drugs; [PL 2021, c. 94, §2 (NEW).]

B. Contact information for the person submitting the plan to whom the department shall direct all related inquiries, a list of participating manufacturers and their covered drugs, contact information for each participating manufacturer and a list of the covered drugs manufactured by any participating manufacturer that are labeled for sale in the State by a retailer under the retailer's own store label; [PL 2023, c. 504, §4 (AMD).]

C. A description of how the stewardship program will make available free, convenient and ongoing collection opportunities for covered drugs that are household pharmaceutical waste to all persons seeking to dispose of such covered drugs and how the collection opportunities will be geographically distributed in a way to ensure access in rural and underserved areas, as determined based on geographic information systems modeling. The plan must include a list of authorized collectors and collection locations; [PL 2021, c. 94, §2 (NEW).]

D. A description of the collection methods to be used to ensure that only covered drugs that are household pharmaceutical waste will be collected by authorized collectors under the stewardship program and a description of how separation of those covered drugs from packaging by consumers will be encouraged to reduce transportation and disposal costs. The plan must ensure that collection methods used under the program include mail-back envelopes and collection receptacles and do not include home disposal methods involving packets, bottles or other containers that a person may use to render nonretrievable or destroy a covered drug that is household pharmaceutical waste by means of a chemical process; [PL 2021, c. 94, §2 (NEW).]

E. A certification that, upon implementation of the plan, the operator, jointly with the operators of other approved plans if any, will develop and administer a publicly accessible website that includes:

(1) A list of authorized collectors, collection locations and the collection methods available at each collection location available under each stewardship program, updated as necessary;

(2) General information regarding the purpose and scope of the stewardship program or programs and the opportunities available to consumers under the program or programs for the safe disposal of covered drugs that are household pharmaceutical waste; and

(3) A statement that the stewardship program or programs are designed for the collection of covered drugs that are household pharmaceutical waste only; [PL 2021, c. 94, §2 (NEW).]

F. Information on how covered drugs that are household pharmaceutical waste will be safely and securely tracked, handled and transported from collection through final disposition and policies to ensure security and compliance with all applicable federal and state laws, rules and regulations

including, but not limited to, 21 Code of Federal Regulations, Section 1317.90 and 40 Code of Federal Regulations, Sections 239 to 282; [PL 2021, c. 94, §2 (NEW).]

G. A description of how the collection system will be designed and monitored to prevent tampering; [PL 2021, c. 94, §2 (NEW).]

H. A description of how the stewardship program will measure the amount of collected and disposed of covered drugs that are household pharmaceutical waste; [PL 2021, c. 94, §2 (NEW).]

I. A description of the education and outreach materials that will be used by the stewardship program to encourage consumer awareness and participation and to meet the performance goals established pursuant to paragraph J, including, but not limited to, a publicly accessible website with the information described in paragraph E and printed materials, including brochures and signage, containing similar information for use by authorized collectors and at collection locations. The plan must ensure that the program provides education and outreach materials to authorized collectors for distribution to consumers in accordance with subsection 8, paragraph E; [PL 2021, c. 94, §2 (NEW).]

J. A description of the performance goals to be established under the stewardship program to measure the success of the program and a description of how the program will be designed to achieve or exceed those goals. Performance goals must include, but are not limited to, the implementation of education and outreach efforts designed to:

(1) Ensure awareness of the program by 60% of residents of the State after one year of stewardship program implementation, by 70% of residents of the State after 2 years of implementation and by 75% of residents of the State after 4 years of implementation; and

(2) Discourage the use of improper disposal methods for covered drugs that are household pharmaceutical waste, such as flushing the drugs or placing them in the garbage; [PL 2021, c. 94, §2 (NEW).]

K. A description of how the manufacturer or stewardship organization will fund a representative survey of residents of the State by an independent 3rd party prior to implementation of the stewardship program to assess baseline public awareness regarding proper disposal methods for unwanted drugs; and [PL 2021, c. 94, §2 (NEW).]

L. Information on how the stewardship program will be financed in accordance with subsection 5. [PL 2021, c. 94, §2 (NEW).]

[PL 2023, c. 504, §4 (AMD).]

4. Approval of plan; amendments to plan; program audits. Within 120 business days of receipt of a plan submitted under subsection 3, the department shall review the plan and approve, approve with conditions or reject the plan. The department may hold a public hearing prior to deciding whether to approve, approve with conditions or reject a submitted plan. The department shall notify the person or persons that submitted the plan in writing of the department's determination and, if the plan is approved with conditions or rejected, include in the notification the basis for the department's determination.

A. A manufacturer or stewardship organization whose plan is rejected shall submit a revised plan to the department within 60 days after receiving a notice of rejection. If the department rejects the revised plan, the manufacturer or manufacturers that submitted the plan or that would have been participating under the plan are considered noncompliant with the requirements of this section. [PL 2021, c. 94, §2 (NEW).]

B. A manufacturer that begins to sell or offer for sale in the State a covered drug after the date that an approved plan is first implemented under subsection 6 shall, within 30 days after the manufacturer's initial sale or offer for sale in the State of that covered drug, demonstrate to the department that it is participating in an existing stewardship program under this section or submit a

proposed plan consistent with subsection 3 for a new stewardship program to the department for approval. [PL 2021, c. 94, §2 (NEW).]

C. Prior to implementing an amendment to an approved plan, an operator shall submit the proposed amendment to the department for review. If the amendment is not substantive, such as the addition of or a change to a collection location or the addition of a manufacturer to the stewardship program, approval by the department is not needed, but the operator shall inform the department of the amendment within 14 days of implementing the amendment. The department shall review plan amendments in accordance with paragraphs A and B. [PL 2021, c. 94, §2 (NEW).]

D. At any time, the department may require an operator to implement amendments to its approved plan or to submit to an independent financial audit of its stewardship program. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

5. Costs. A manufacturer, individually or jointly with one or more manufacturers, shall pay all costs associated with the implementation, administration and operation of the manufacturer's stewardship program, including, but not limited to:

A. Costs of installing, managing and servicing collection receptacles at and collecting covered drugs that are household pharmaceutical waste from participating authorized collectors, transporting such covered drugs for disposal, disposing of such covered drugs and providing mail-back envelopes; [PL 2021, c. 94, §2 (NEW).]

B. Costs related to the development of, with input from authorized collectors and the department, a readily recognizable, consistent design for collection receptacles, as well as clear, standardized instructions for consumers regarding the use of collection receptacles; [PL 2021, c. 94, §2 (NEW).]

C. Costs incurred by the department in accordance with subsection 11 in the review of submitted plans and plan amendments, the review of annual reports and the administration and enforcement of this section; and [PL 2021, c. 94, §2 (NEW).]

D. Costs associated with the stewardship program assessments required under this section. [PL 2021, c. 94, §2 (NEW).]

When 2 or more manufacturers participate in a stewardship program, or if multiple stewardship programs exist, the costs of implementing, administering and operating the program or programs must be fairly and reasonably allocated between each participating manufacturer so that the share of the costs that is allocated to each manufacturer is reasonably related to the revenue-based market share of covered drugs that the manufacturer sells in the State.

[PL 2021, c. 94, §2 (NEW).]

6. Implementation of plan. A manufacturer or stewardship organization that submitted a plan under subsection 3 that was approved by the department under subsection 4 shall implement that plan no later than 180 days after the date the plan was approved.

[PL 2021, c. 94, §2 (NEW).]

7. Confidential information. Proprietary information submitted to the department in a drug take-back stewardship plan under this section, in an amendment to a plan or pursuant to the reporting requirements of 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. 94, §2 (NEW).]

8. Authorized collectors; collection locations. This subsection governs the activities of authorized collectors and the operation of collection locations.

A. A mandatory pharmacy collector shall participate in a stewardship program and shall provide for the safe collection of covered drugs that are household pharmaceutical waste under that program through the use of:

(1) Mail-back envelopes made available to consumers of covered drugs upon request;

(2) Collection receptacles; or

(3) Any other method of collection that complies with applicable United States Department of Justice, Drug Enforcement Administration regulations under 21 Code of Federal Regulations, Part 1300, 1301, 1304, 1305, 1307 or 1317 and that has been approved by the department as a method of collection for use in the stewardship program, except that the department may not approve for use in any stewardship program under this section a method of home disposal involving packets, bottles or other containers that a person may use to render nonretrievable or destroy a covered drug that is household pharmaceutical waste by means of a chemical process.

A mandatory pharmacy collector that is a pharmacy not located in the State that provides covered drugs to residents in the State by mail shall provide for the safe collection of covered drugs that are household pharmaceutical waste through the use of mail-back envelopes and shall ensure that consumers in the State purchasing covered drugs from the pharmacy are provided with information regarding the availability of such envelopes upon request and instructions regarding how the customer can request an envelope. [PL 2021, c. 94, §2 (NEW).]

B. An operator shall notify all authorized collectors that are not mandatory pharmacy collectors of the opportunity to serve on a voluntary basis as a collection location under the stewardship program and shall ensure that any such authorized collector that requests to participate in the program is added to the program within 90 days of the operator's receipt of the request. A participating authorized collector that is not a mandatory pharmacy collector may use any of the collection methods described under paragraph A. [PL 2021, c. 94, §2 (NEW).]

C. The operator shall ensure that all collection receptacles located at a collection location under the stewardship program are emptied and serviced as often as necessary to avoid the receptacles reaching storage capacity and to ensure proper operation. [PL 2021, c. 94, §2 (NEW).]

D. A mandatory pharmacy collector participating in a stewardship program shall provide information on covered drug collection and safe drug disposal options to a consumer upon dispensing a covered drug, including the availability of mail-back envelopes upon request. An authorized collector that is located in the State that is providing for the collection of covered drugs that are household pharmaceutical waste through the use of mail-back envelopes shall ensure that information regarding the availability of such envelopes upon request is prominently posted, displayed or otherwise provided to consumers purchasing covered drugs. [PL 2021, c. 94, §2 (NEW).]

E. As part of a stewardship program, all collection mechanisms, program information and other program services must be provided by the operator free of charge to authorized collectors, including, but not limited to, the installation, maintenance and emptying of collection receptacles; the provision of mail-back envelopes, educational materials, brochures and signage; and drug-disposal-specific surveillance. [PL 2021, c. 94, §2 (NEW).]

F. Collection of covered drugs that are household pharmaceutical waste at collection locations under a stewardship program must be made available to consumers free of charge. An operator and an authorized collector may not charge a point-of-sale fee to consumers, a fee that could be passed on to consumers or any other fee relating to the collection and disposal of covered drugs that are household pharmaceutical waste. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

9. Education and outreach assessment. During the 2nd and 3rd years of implementation of a stewardship program, and every 2 years after that 3rd year, the operator of the program shall fund an independent 3rd-party assessment of the effectiveness of the program's education and outreach efforts, including, but not limited to, progress achieving the consumer awareness goal described in subsection 3, paragraph J, subparagraph (1) and efforts under the program to discourage the use of improper disposal methods for covered drugs that are household pharmaceutical waste, as described in subsection 3, paragraph J, subparagraph (2). The methods and scope of the assessment under this subsection must be developed with input from the department. The operator shall implement changes as necessary to the stewardship program's education and outreach efforts if demonstrated by the results of the assessment. [PL 2021, c. 94, §2 (NEW).]

10. Annual stewardship program reporting. Within 90 days after the first full year of implementation of a stewardship program, and annually thereafter, the operator of the program shall submit to the department a report describing the activities of the program during the prior calendar year, which must include, at a minimum:

A. A list of manufacturers participating in the stewardship program, including contact information; [PL 2021, c. 94, §2 (NEW).]

B. The amount by weight of material collected under the stewardship program in the prior calendar year, including the amount by weight from each collection method used, both in total and by county; [PL 2021, c. 94, §2 (NEW).]

C. Details regarding the stewardship program's collection system, including a list of authorized collectors and associated collection locations with addresses; a list of locations where mail-back envelopes were provided under the program; a list of collection locations where collection receptacles were made available under the program; dates and locations of collection events held under the program; and a list of the transporters and disposal facilities used under the program for the transportation and disposal of collected covered drugs that are household pharmaceutical waste; [PL 2021, c. 94, §2 (NEW).]

D. Information regarding any safety or security issues encountered in the collection, transportation or disposal of covered drugs that are household pharmaceutical waste under the program during the prior calendar year and, if such issues occurred, a description of completed or anticipated changes to program policies, procedures or tracking mechanisms to address those issues; [PL 2021, c. 94, §2 (NEW).]

E. A description of the public education, outreach and evaluation activities implemented in accordance with the approved plan pursuant to subsection 3, paragraph I. For the 2nd year and 3rd year of stewardship program implementation, and every 2 years after that 3rd year, the report must include the results of the 3rd-party assessment required under subsection 9; [PL 2021, c. 94, §2 (NEW).]

F. A description of how packaging collected under the program was recycled, to the extent feasible; [PL 2021, c. 94, §2 (NEW).]

G. A description of the methods used under the stewardship program to collect, transport and dispose of covered drugs that are household pharmaceutical waste, including information regarding efforts by the operator to ensure that only covered drugs that are household pharmaceutical waste were collected, and how the methods are consistent with the federal hazardous waste regulations identified in subsection 3, paragraph F; [PL 2021, c. 94, §2 (NEW).]

H. A summary of the stewardship program's achievement of its performance goals as set forth in the approved plan pursuant to subsection 3, paragraph J. If any performance goals were not achieved, the report must include a description of the efforts that will be made to achieve those goals the following year; [PL 2021, c. 94, §2 (NEW).]

I. An analysis of the convenience of the collection system under the stewardship program for people living in various regions of the State, as determined based on geographic information systems modeling; [PL 2021, c. 94, §2 (NEW).]

J. The total cost of implementing, administering and operating the stewardship program in the prior calendar year, which must include an accounting of the program's expenditures in the prior calendar year, as verified through an independent 3rd-party audit; [PL 2021, c. 94, §2 (NEW).]

K. Any recommendations for changes to the stewardship program to improve the convenience of the collection system, to increase consumer awareness and education or to better evaluate program performance; and [PL 2021, c. 94, §2 (NEW).]

L. An analysis of the revenue-based market share of covered drugs sold by participating manufacturers in the State and any other information required by the department for determining appropriate cost allocation in accordance with subsection 5. [PL 2021, c. 94, §2 (NEW).]

[PL 2021, c. 94, §2 (NEW).]

11. Administration and enforcement; rulemaking; fees. The department shall administer and enforce this section and may adopt rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The department shall charge a reasonable fee to be paid by a manufacturer or stewardship organization for review of a plan or amendments to an approved plan submitted under subsection 4. The department may establish a reasonable annual fee to cover the department's actual costs for annual report review, oversight, administration and enforcement of a stewardship program, except that the fee may not exceed the greater of $100,000 per year and 1% of total stewardship program costs, as verified through the independent 3rd-party audit required under subsection 10, paragraph J.

[PL 2021, c. 94, §2 (NEW).]

12. Private right of action. A manufacturer or stewardship organization implementing an approved plan under this section that is in compliance with all applicable requirements of this section may bring a civil action against a manufacturer for damages when:

A. The plaintiff manufacturer or stewardship organization has incurred more than $3,000 in actual, direct costs in collecting, handling and disposing of covered drugs that are household pharmaceutical waste sold or offered for sale in the State by a defendant manufacturer or manufacturers that are not in compliance with all applicable requirements of this section; [PL 2021, c. 94, §2 (NEW).]

B. The defendant manufacturer or manufacturers can be identified as the manufacturer or manufacturers of the covered drugs described in paragraph A from a brand or marking on the covered drugs or from other information available to the plaintiff manufacturer or stewardship organization; [PL 2021, c. 94, §2 (NEW).]

C. The plaintiff manufacturer or stewardship organization has submitted a reimbursement request for the costs described in paragraph A to the defendant manufacturer or manufacturers; and [PL 2021, c. 94, §2 (NEW).]

D. The plaintiff manufacturer or stewardship organization has not received reimbursement for the costs described in paragraph A within:

(1) Sixty days after the request for reimbursement under paragraph C, if the plaintiff manufacturer or stewardship organization did not request an independent audit under subparagraph (2); or

(2) Thirty days after completion of an independent audit, if the plaintiff manufacturer or stewardship organization requested an independent audit and the audit verified the validity of the reimbursement request. [PL 2021, c. 94, §2 (NEW).]

As used in this subsection, "damages" means the actual, direct costs a plaintiff manufacturer or stewardship organization incurs in collecting, handling and disposing of covered drugs that are household pharmaceutical waste reasonably identified as having originated from a defendant manufacturer or manufacturers that are not in compliance with all applicable requirements of this section; punitive or exemplary damages not exceeding 3 times those incurred costs; and the plaintiff manufacturer's or stewardship organization's attorney's fees and costs of bringing the action under this subsection.
[PL 2021, c. 94, §2 (NEW).]

13. Annual report to Legislature. The department shall annually report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters on the status of stewardship programs established pursuant to this section and shall recommend amendments to the provisions of this section as necessary. After reviewing the report under this subsection, the committee may report out legislation related to the report. The report under this subsection may be included in the report required pursuant to section 1772, subsection 1.
[PL 2021, c. 94, §2 (NEW).]

14. Preemption. To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of government-mandated, manufacturer-funded drug take-back, collection or disposal programs. A local government may not adopt an ordinance mandating a manufacturer-funded drug take-back, collection or disposal program and any ordinance or regulation that violates this subsection is void and has no force or effect.
[PL 2021, c. 94, §2 (NEW).]

REVISOR'S NOTE: §1612. Hydrofluorocarbon use restrictions (As enacted by PL 2021, c. 192, §1 is REALLOCATED TO TITLE 38, SECTION 1613)

REVISOR'S NOTE: §1612. Products containing PFAS (As enacted by PL 2021, c. 477, §1 is REALLOCATED TO TITLE 38, SECTION 1614)

REVISOR'S NOTE: §1612. Plastic beverage containers (As enacted by PL 2021, c. 742, §3 is REALLOCATED TO TITLE 38, SECTION 1615)

SECTION HISTORY

PL 2021, c. 94, §2 (NEW). PL 2023, c. 504, §§1-4 (AMD).

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§1614. Products containing PFAS

(REALLOCATED FROM TITLE 38, SECTION 1612)

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

A. "Carpet or rug" means a consumer product made from natural or synthetic fabric intended to be used as a floor covering inside commercial or residential buildings. "Carpet or rug" includes, but is not limited to, a carpeted doormat, but does not include:

(1) A carpet or rug intended solely for outdoor use;

(2) A carpet or rug intended solely for use inside an aircraft, train, watercraft, automobile, light duty truck, van, bus or any other vehicle and any aftermarket or replacement part marketed solely for use in a vehicle;

(3) A resilient floor covering;

(4) Artificial turf;

(5) A wall hanging or covering;

(6) A table mat; or

(7) A camping sleeping mat. [PL 2023, c. 630, §1 (AMD).]

A-1. "Adult mattress" means a mattress that is not a crib mattress or a toddler mattress. [PL 2023, c. 630, §1 (NEW).]

A-2. "Aerosol propellant" has the same meaning as in section 1613, subsection 1, paragraph A. [PL 2023, c. 630, §1 (NEW).]

A-3. "Air care product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to enhance or condition an indoor environment by eliminating odors or freshening the air. [PL 2023, c. 630, §1 (NEW).]

A-4. "Aircraft" means a contrivance operated by direct physical contact from a human that is used or designed for navigation of or flight in the air that requires certification and registration as prescribed by federal law or regulation. "Aircraft" does not include:

(1) A lighter-than-air balloon operated by direct physical contact from a human; or

(2) An ultralight vehicle, as defined in 14 Code of Federal Regulations, Part 103, regardless of whether the ultralight vehicle is certified by the United States Department of Transportation, Federal Aviation Administration. [PL 2023, c. 630, §1 (NEW).]

A-5. "Alternative" means a substance or chemical that, if used in place of a PFAS in a product, would result in a functionally equivalent product and would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential harm to human health or the environment as the PFAS. "Alternative" includes:

(1) A reformulated version of a product in which the intentionally added PFAS in the product has been removed; and

(2) Changes to a product's manufacturing process that result in the removal of the PFAS from the product. [PL 2023, c. 630, §1 (NEW).]

A-6. "Architectural fabric structure" means a permanent fabric structure that is intrinsic to the design or construction of a building. [PL 2023, c. 630, §1 (NEW).]

A-7. "Artificial turf" means an artificial product made from synthetic material that simulates the appearance of natural turf, grass, sod or lawn. [PL 2023, c. 630, §1 (NEW).]

A-8. "Automotive maintenance product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to maintain the appearance of a motor vehicle. "Automotive maintenance product" includes products for washing, waxing, polishing, cleaning or treating the exterior or interior surface of a motor vehicle, but does not include automotive paint or automotive paint repair products. [PL 2023, c. 630, §1 (NEW).]

A-9. "Cleaning product" means a finished product used primarily for domestic, commercial or institutional cleaning purposes, including, but not limited to, an air care product, an automotive maintenance product, a general cleaning product and a polish or floor maintenance product. [PL 2023, c. 630, §1 (NEW).]

A-10. "Cookware product" means a durable houseware product intended to be used to prepare, dispense or store food, foodstuffs or beverages, including, but not limited to, a pot, pan, skillet, grill, baking sheet, baking mold, tray, bowl and cooking utensil. [PL 2023, c. 630, §1 (NEW).]

A-11. "Cosmetic product" means a product intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering the appearance. "Cosmetic product" includes any product intended for use as a component of another cosmetic product, but does not include soap or a product that requires a prescription for distribution or dispensing. [PL 2023, c. 630, §1 (NEW).]

B. "Currently unavoidable use" means a use of PFAS that the department has determined by rule under this section to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

B-1. "Essential for health, safety or the functioning of society" means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in:

(1) A significant increase in negative health outcomes;

(2) An inability to mitigate significant risks to human health or the environment; or

(3) A significant disruption of the daily functions on which society relies. [PL 2023, c. 630, §1 (NEW).]

C. "Fabric treatment" means a substance applied to fabric to give the fabric one or more characteristics, including but not limited to stain resistance or water resistance. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

C-1. "Foam" has the same meaning as in section 1613, subsection 1, paragraph K. "Foam" does not include a firefighting or fire-suppressing foam or related product regulated under section 424-C. [PL 2023, c. 630, §1 (NEW).]

D. "Intentionally added PFAS" means PFAS added to a product or one of its product components to provide a specific characteristic, appearance or quality or to perform a specific function. "Intentionally added PFAS" also includes any degradation by-products of PFAS. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

D-1. "Juvenile product" means a product designed or marketed for use by infants and children under 12 years of age including, but not limited to: a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; child restraint system for use in motor vehicles and aircraft; co-sleeper; crib mattress; highchair; highchair pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad or pillow; portable foam nap mat; portable infant sleeper; portable hook-on chair; soft-sided portable crib; stroller; and toddler

mattress. "Juvenile product" does not include an adult mattress or an electronic product marketed for use by children under 12 years of age, including a personal computer, audio and video equipment, calculator, wireless telephone, game console, handheld device incorporating a video screen and any associated peripheral, such as a mouse, keyboard, power supply unit or power cord. [PL 2023, c. 630, §1 (NEW).]

D-2. "Known to or reasonably ascertainable by" means, with respect to a person, all information in the person's possession or control as well as all information that a reasonable person similarly situated might be expected to possess, control or know. [PL 2023, c. 630, §1 (NEW).]

E. "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

E-1. "Medical device" has the same meaning as the term "device" as defined in 21 United States Code, Section 321(h). [PL 2023, c. 630, §1 (NEW).]

E-2. "Off-highway vehicle" means a vehicle designed to be or marketed as capable of off-highway operation, including, but not limited to:

(1) A motorcycle or motor-driven cycle;

(2) A snowmobile or other vehicle designed to travel over snow or ice;

(3) A sand buggy, dune buggy or similar all-terrain vehicle;

(4) A motor vehicle commonly referred to as a jeep; and

(5) A recreational off-highway vehicle. [PL 2023, c. 630, §1 (NEW).]

E-3. "Outdoor apparel for severe wet conditions" means a clothing item that is an extreme and extended use product designed for outdoor sports experts for applications that provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions to protect the health and safety of the user and that are not marketed for general consumer use, including, but not limited to, such extreme and extended use products designed for offshore fishing, offshore sailing, whitewater kayaking and mountaineering. [PL 2023, c. 630, §1 (NEW).]

F. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

G. "Product" means an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial or industrial use, including for use in making other products. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

H. "Product component" means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

H-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [PL 2023, c. 630, §1 (NEW).]

I. "Publicly owned treatment works" has the same meaning as in section 361-A. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

J. "Refrigerant" has the same meaning as in section 1613, subsection 1, paragraph Y. [PL 2023, c. 630, §1 (NEW).]

K. "Single-use" means, with respect to a product, conventionally disposed of after one use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable. [PL 2023, c. 630, §1 (NEW).]

L. "Ski wax" means a lubricant applied to the bottom of snow runners, including, but not limited to, skis and snowboards, to improve grip or glide properties. "Ski wax" includes related tuning products. [PL 2023, c. 630, §1 (NEW).]

M. "Textile" means an item made in whole or in part from natural or synthetic fiber, yarn or fabric, including, but not limited to, leather, cotton, silk, jute, hemp, wool, viscose, nylon and polyester. "Textile" does not include a single-use absorbent hygiene product or a single-use paper hygiene product, including, but not limited to, toilet paper, paper towels or tissues. [PL 2023, c. 630, §1 (NEW).]

N. "Textile article" means a textile good of a type customarily and ordinarily used in households and businesses. "Textile article" includes, but is not limited to, apparel, accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins and tablecloths, but does not include:

(1) A carpet or rug;

(2) A treatment for use on converted textiles or leathers;

(3) A textile used in or designed for laboratory analysis and testing;

(4) A stadium shade or other architectural fabric structure; or

(5) Filtration media or a filter product used in industrial applications, including, but not limited to, chemical or pharmaceutical manufacturing and environmental control technologies. [PL 2023, c. 630, §1 (NEW).]

O. "Upholstered furniture" means an article of furniture that is designed to be used for sitting, resting or reclining and that is wholly or partly stuffed or filled with any filling material. [PL 2023, c. 630, §1 (NEW).]

P. "Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a way but does not include such a device that is moved exclusively by human power or that is used exclusively upon stationary rails or tracks. [PL 2023, c. 630, §1 (NEW).]

[PL 2023, c. 630, §1 (AMD).]

2. Notification. Except as provided pursuant to paragraph D or subsection 3, a manufacturer of a product for sale in the State that contains intentionally added PFAS and for which the department has determined that the use of PFAS in the product is a currently unavoidable use in accordance with subsection 5, paragraph F shall comply with the requirements of this subsection.

A. The manufacturer shall submit to the department a written notification that includes, to the extent known to or reasonably ascertainable by the manufacturer:

(1) A brief description of the product, including an estimate of the total number of units of the product sold annually in the State or nationally;

(2) The purpose for which PFAS are used in the product, including in any product components;

(3) The amount of each of the PFAS, identified by its chemical abstracts service registry number or in the absence of this number a description approved by the department, in the product, reported as an exact quantity, or as the amount of total organic fluorine if the amount of each of the PFAS is not known, determined using commercially available analytical methods or

based on information provided by a supplier as falling within a range approved for reporting purposes by the department or, if the manufacturer is unable to provide information regarding the amount of each of the PFAS in the product, the total weight of the product;

(4) The name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer;

(4-A) The identification of the applicable determination adopted by the department by rule pursuant to subsection 5, paragraph F that the use of PFAS in the product is a currently unavoidable use; and

(5) Any additional information required by the department by rule. [PL 2021, c. 477, §1 (NEW); PL 2023, c. 138, §1 (AMD); PL 2023, c. 630, §1 (AMD); RR 2021, c. 1, Pt. A, §54 (RAL).]

A-1. At the time the manufacturer submits to the department the written notice required in paragraph A, the manufacturer shall also pay to the department the applicable fee established by the department by rule pursuant to subsection 6. [PL 2023, c. 630, §1 (NEW).]

B. With the approval of the department, the manufacturer may supply the information required in paragraph A for a category or type of product rather than for each individual product. [PL 2021, c. 477, §1 (NEW); PL 2023, c. 630, §1 (AMD); RR 2021, c. 1, Pt. A, §54 (RAL).]

C. In accordance with rules adopted by the department, the manufacturer shall update and revise the information in the written notification whenever there is significant change in the information or when requested to do so by the department. [PL 2021, c. 477, §1 (NEW); PL 2023, c. 630, §1 (AMD); RR 2021, c. 1, Pt. A, §54 (RAL).]

D. The requirements of this subsection do not apply to a manufacturer that employs 100 or fewer people. [PL 2023, c. 138, §2 (NEW); PL 2023, c. 630, §1 (AMD).]

[PL 2023, c. 630, §1 (AMD).]

3. Waiver of notification; coordination with other states. The department may waive all or part of the notification requirement under subsection 2 if the department determines that substantially equivalent information is already publicly available. The department may enter into an agreement with one or more other states or political subdivisions of a state to collect notifications and may accept notifications to a shared system as meeting the notification requirement under subsection 2.

[PL 2023, c. 630, §1 (AMD).]

4. Exemptions. The following are exempt from this section:

A. A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority; [PL 2023, c. 138, §3 (AMD); PL 2023, c. 138, §5 (AFF).]

B. A package, as defined in Title 32, section 1732, subsection 4, for a product, except when the package is the product of the manufacturer. The exemption under this paragraph does not apply to the package of a product prohibited from sale, offer for sale or distribution for sale pursuant to subsection 5, paragraph B, B-1, D or E if that package is a fluorinated container or a container that otherwise contains intentionally added PFAS; [PL 2023, c. 630, §1 (AMD).]

C. A used product or used product component; [PL 2023, c. 630, §1 (AMD).]

D. A firefighting or fire-suppressing foam or related product regulated under section 424-C; [PL 2023, c. 630, §1 (NEW).]

E. A prosthetic or orthotic device or any product that is a medical device, drug or biologic or that is otherwise used in a medical setting or in medical applications that are regulated by or under the jurisdiction of the United States Food and Drug Administration; [PL 2023, c. 630, §1 (NEW).]

F. A veterinary product intended for use in or on animals, including diagnostic equipment or test kits and their components and any product that is a veterinary medical device, drug, biologic or parasiticide or that is otherwise used in a veterinary medical setting or in veterinary medical applications that are regulated by or under the jurisdiction of:

(1) The United States Food and Drug Administration;

(2) The United States Department of Agriculture pursuant to the federal Virus-Serum-Toxin Act; or

(3) The United States Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, except that any such products approved by the United States Environmental Protection Agency pursuant to that law for aerial or land application are not exempt from this section; [PL 2023, c. 630, §1 (NEW).]

G. A product developed or manufactured for the purposes of public health, environmental or water quality testing; [PL 2023, c. 630, §1 (NEW).]

H. A product required to meet standards or requirements of the United States Department of Transportation, Federal Aviation Administration, the National Aeronautics and Space Administration, the United States Department of Defense or the United States Department of Homeland Security, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2023, c. 630, §1 (NEW).]

I. A motor vehicle or motor vehicle equipment regulated under a federal motor vehicle safety standard, as defined in 49 United States Code, Section 30102(a)(10), and any other motor vehicle, including an off-highway vehicle or specialty motor vehicle, such as an all-terrain vehicle, a side-by-side vehicle, construction, forestry or farm equipment or a personal assistive mobility device, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2025, c. 67, §1 (AMD).]

J. A watercraft, as defined in Title 12, section 13001, subsection 28, or a seaplane, except that the exemption under this paragraph does not apply to any textile article or refrigerant that is included in or as a component part of such products; [PL 2023, c. 630, §1 (NEW).]

K. A semiconductor, including semiconductors incorporated in electronic equipment, and equipment and materials used in the manufacture of semiconductors; [PL 2023, c. 630, §1 (NEW).]

L. Nonconsumer electronics and nonconsumer laboratory equipment not ordinarily used for personal, family or household purposes; and [PL 2023, c. 630, §1 (NEW).]

M. Equipment directly used in the manufacture or development of the products described in paragraphs E to L. [PL 2023, c. 630, §1 (NEW).]

[PL 2025, c. 67, §1 (AMD).]

5. Prohibition on sale of products containing intentionally added PFAS. This subsection governs sales of products containing intentionally added PFAS.

A. Except as provided pursuant to paragraph F or G, effective January 1, 2023, a person may not sell, offer for sale or distribute for sale in this State a carpet or rug that contains intentionally added PFAS. The prohibition under this paragraph does not apply to the sale, offer for sale or distribution for sale of any carpet or rug in used condition. [PL 2023, c. 630, §1 (AMD).]

B. Except as provided pursuant to paragraph F or G, effective January 1, 2023, a person may not sell, offer for sale or distribute for sale in this State a fabric treatment that contains intentionally added PFAS.

The prohibition under this paragraph applies to a fabric treatment that does not contain intentionally added PFAS but that is sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS. The prohibition under this paragraph does not apply to the sale, offer for sale or distribution for sale of any fabric treatment in used condition. [PL 2023, c. 630, §1 (AMD).]

B-1. Except as provided pursuant to paragraph F or G, effective January 1, 2026, a person may not sell, offer for sale or distribute for sale in this State:

(1) A cleaning product containing intentionally added PFAS;

(2) A cookware product containing intentionally added PFAS;

(3) A cosmetic product containing intentionally added PFAS;

(4) Dental floss containing intentionally added PFAS;

(5) A juvenile product containing intentionally added PFAS;

(6) A menstruation product containing intentionally added PFAS;

(7) A textile article containing intentionally added PFAS. The prohibition under this subparagraph does not include:

(a) Outdoor apparel for severe wet conditions; or

(b) A textile article that is included in or a component part of a watercraft, aircraft or motor vehicle, including an off-highway vehicle;

(8) Ski wax containing intentionally added PFAS; or

(9) Upholstered furniture containing intentionally added PFAS.

The prohibition under this paragraph applies to any of the products listed in subparagraphs (1) to (9) that do not contain intentionally added PFAS but that are sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS. The prohibition under this paragraph does not apply to any of the products listed in subparagraphs (1) to (9) that are sold, offered for sale or distributed for sale in used condition. [PL 2023, c. 630, §1 (NEW).]

B-2. Except as provided pursuant to paragraph F or G, effective January 1, 2029, a person may not sell, offer for sale or distribute for sale in this State:

(1) Artificial turf containing intentionally added PFAS; or

(2) Outdoor apparel for severe wet conditions containing intentionally added PFAS, unless the apparel is accompanied by a legible, easily discernable disclosure that includes the following statement: "Made with PFAS chemicals." The disclosure requirement under this subparagraph applies to all sales, offers for sale or distributions for sale in this State of outdoor apparel for severe wet conditions containing intentionally added PFAS, including those conducted using the Internet.

The prohibition under this paragraph does not apply to any of the products listed in subparagraphs (1) and (2) that are sold, offered for sale or distributed for sale in used condition. [PL 2023, c. 630, §1 (NEW).]

C. The department may by rule identify products by category or use that may not be sold, offered for sale or distributed for sale in this State if they contain intentionally added PFAS. The department shall prioritize the prohibition of the sale of product categories that, in the department's judgment, are most likely to cause contamination of the State's land or water resources if they contain intentionally added PFAS. The department may not prohibit by rule pursuant to this paragraph the sale, offer for sale or distribution for sale of products in used condition.

Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 630, §1 (AMD).]

D. Except as otherwise provided in this paragraph or pursuant to paragraph F or G, effective January 1, 2032, a person may not sell, offer for sale or distribute for sale in this State any product that contains intentionally added PFAS that is not already prohibited from sale, offer for sale or distribution for sale pursuant to paragraph A, B, B-1, B-2 or C, unless the department has determined by rule in accordance with paragraph F that the use of PFAS in the product is a currently unavoidable use.

The prohibition under this paragraph applies to any such products that do not contain intentionally added PFAS but that are sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS. The prohibition under this paragraph does not apply to:

(1) Any such products sold, offered for sale or distributed for sale in used condition;

(2) Cooling, heating, ventilation, air conditioning and refrigeration equipment, including parts and other servicing needs for such equipment; or

(3) Refrigerants, foams and aerosol propellants that are listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits by the United States Environmental Protection Agency pursuant to the Significant New Alternatives Policy program, 40 Code of Federal Regulations, Part 82, Subpart G, as long as the refrigerant, foam or aerosol propellant is sold, offered for sale or distributed for sale for the use for which it is listed pursuant to that program. [PL 2023, c. 630, §1 (AMD).]

E. Except as provided pursuant to paragraph F or G, effective January 1, 2040, a person may not sell, offer for sale or distribute for sale in this State:

(1) Cooling, heating, ventilation, air conditioning or refrigeration equipment that contains intentionally added PFAS; or

(2) Refrigerants, foams or aerosol propellants that contain intentionally added PFAS.

The prohibition under this paragraph applies to any of the products listed in subparagraphs (1) and (2) that do not contain intentionally added PFAS but that are sold, offered for sale or distributed for sale in a fluorinated container or in a container that otherwise contains intentionally added PFAS. The prohibition under this paragraph does not apply to any such products sold, offered for sale or distributed for sale in used condition or to parts and other servicing needs for cooling, heating, ventilation, air conditioning or refrigeration equipment, including refrigerants used in the servicing of such equipment as long as the refrigerant is listed as acceptable, acceptable subject to use conditions or acceptable subject to narrowed use limits by the United States Environmental Protection Agency pursuant to the Significant New Alternatives Policy program, 40 Code of Federal Regulations, Part 82, Subpart G and sold, offered for sale or distributed for sale for the use for which the refrigerant is listed pursuant to that program. [PL 2023, c. 630, §1 (NEW).]

F. The department may by rule identify specific products or product categories containing intentionally added PFAS for which it has determined the use of PFAS in the product is a currently unavoidable use. If the department determines by rule that the use of PFAS in a product or product category is a currently unavoidable use:

(1) The product is exempt from the otherwise applicable prohibition in this subsection, or in the rules adopted pursuant to paragraph C, on the sale, offer for sale or distribution for sale of the product for one of the following periods of time, whichever provides a longer period of exemption:

(a) Five years from the effective date of the rule determining that the use of PFAS in the product or product category is a currently unavoidable use; or

(b) Five years from the effective date of the otherwise applicable prohibition in this subsection or in the rules adopted pursuant to paragraph C; and

(2) A manufacturer of the product that sells, offers for sale or distributes for sale the product in this State shall comply with the notification requirement of subsection 2. [PL 2023, c. 630, §1 (NEW).]

G. The prohibitions in this subsection do not apply to a retailer in the State unless the retailer sells, offers for sale or distributes for sale a product containing intentionally added PFAS in the State for which the retailer has received a notification pursuant to subsection 8, paragraph B that the sale of the product is prohibited. [PL 2023, c. 630, §1 (NEW).]

[PL 2023, c. 630, §1 (AMD).]

6. Fees. The department may establish by rule and assess a fee payable by a manufacturer that is required to comply with the notification requirement of subsection 2 to cover the department's reasonable costs in administering the requirements of this section. Notwithstanding Title 5, section 8071, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 630, §1 (AMD).]

7. Failure to provide notice. Beginning January 1, 2032, a person may not sell, offer for sale or distribute for sale in the State a product containing intentionally added PFAS for which the department has determined that the use of PFAS in the product is a currently unavoidable use pursuant to subsection 5, paragraph F if the manufacturer of the product has failed to provide the information required under subsection 2. This prohibition does not apply to a retailer in the State unless the retailer sells, offers for sale or distributes for sale a product containing intentionally added PFAS in the State for which the retailer has received a notification pursuant to subsection 8, paragraph B that the sale of the product is prohibited.

A. [PL 2023, c. 630, §1 (RP).]

B. [PL 2023, c. 630, §1 (RP).]

C. [PL 2023, c. 630, §1 (RP).]

D. [PL 2023, c. 630, §1 (RP).]

E. [PL 2023, c. 630, §1 (RP).]

[PL 2023, c. 630, §1 (AMD).]

8. Certificate of compliance. If the department has reason to believe that a product contains intentionally added PFAS and is being sold, offered for sale or distributed for sale in violation of subsection 5 or 7, the department may direct the manufacturer of the product to, within 30 days:

A. Provide the department with a certificate attesting that the product does not contain intentionally added PFAS; or [PL 2023, c. 630, §1 (AMD).]

B. Notify persons that sell, offer for sale or distribute for sale the product in this State that the sale of the product is prohibited in this State and provide the department with a list of the names and addresses of those persons notified. [PL 2023, c. 630, §1 (AMD).]

[PL 2023, c. 630, §1 (AMD).]

9. PFAS source reduction program. To the extent funds are available and in consultation with relevant stakeholders, the department shall develop and implement a program to reduce the presence of PFAS in discharges to air, water and land by encouraging the use of alternatives to and the proper management of materials containing PFAS. The program may include:

A. Information resources targeted to industrial or commercial users of PFAS; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

B. Education of the general public; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

C. To the extent funds are available, grants to operators of publicly owned treatment works for the purposes of developing, expanding or implementing pretreatment standards for PFAS and education of users on sources of PFAS and proper management; [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

D. To the extent funds are available, grants to municipalities for the purposes of educating solid waste disposal users on sources of PFAS and proper management; and [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

E. Other efforts determined by the department to be prudent to achieve the program's purpose. [PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

[PL 2023, c. 630, §1 (AMD).]

10. Rules. The department shall adopt rules to implement this section. Except as provided in subsection 5, paragraph C, rules adopted to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 477, §1 (NEW); RR 2021, c. 1, Pt. A, §54 (RAL).]

11. Report. By January 1, 2026, and biennially thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters a report regarding the implementation of this section and other state and federal laws governing the presence of PFAS in products, including any recommendations for necessary legislative changes to this section. After reviewing the report, the committee may report out legislation relating to the report.

[PL 2023, c. 630, §1 (NEW).]

12. Proprietary information. Proprietary information submitted to the department by a manufacturer pursuant to the requirements of this section that is identified by the manufacturer 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 2023, c. 630, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 477, §1 (NEW). RR 2021, c. 1, Pt. A, §54 (RAL). PL 2023, c. 138, §§1-4 (AMD). PL 2023, c. 138, §5 (AFF). PL 2023, c. 630, §1 (AMD). PL 2025, c. 67, §1 (AMD).

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§1661-A. Notification

1. Prior written notice required. Effective January 1, 2002, a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture, may not be offered for final sale or use or distributed for promotional purposes in the State unless the manufacturer of the product or product component or a trade association representing manufacturers of the product or component has provided written notice to the department in accordance with this section. The requirements of this section do not apply to drugs approved by the United States Food and Drug Administration. The notice must include the following information on a form provided by the department or the clearinghouse under section 1671:

A. A brief description of the product or product component; [PL 2001, c. 373, §3 (NEW).]

B. The purpose for which mercury is used in the product or product component; [PL 2001, c. 373, §3 (NEW).]

C. The amount of mercury in each unit of the product or product component, reported as an exact number, as an average per product or component with an upper or lower limit or as falling within a range approved by the department; [PL 2001, c. 373, §3 (NEW).]

D. The total amount of mercury in all units of the product or product components sold in the United States during the most recent calendar year for which sales figures are available, reported either for the units or components sold by the manufacturer or as aggregated by a manufacturer trade association for all units of the product or components made by the industry; and [PL 2001, c. 373, §3 (NEW).]

E. The name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer. [PL 2001, c. 373, §3 (NEW).]

[PL 2001, c. 373, §3 (NEW).]

2. Exemption. A mercury-added product or product component for which federal law governs notice in a manner that preempts state authority is exempt from the requirements of this section.
[PL 2001, c. 373, §3 (NEW).]

3. Product category information. With the approval of the department, the manufacturer may supply the information required in subsection 1 for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The information required under subsection 1, paragraph D must be updated and provided to the department every 3 years.
[PL 2001, c. 373, §3 (NEW).]

4. Confidentiality. Information submitted to the department pursuant to this section may be kept confidential as provided under sections 1310-B and 1671.
[PL 2001, c. 373, §3 (NEW).]

5. Product components. Notwithstanding subsection 1, paragraph C, the manufacturer of a product containing one or more mercury-added components is not required to include information on the amount of mercury in the component in the notice to the department if the component manufacturer has provided that information to the department and the manufacturer of the product that contains the component identifies the component and component manufacturer in the notice.
[PL 2001, c. 626, §20 (AMD).]

An importer of the product or product component from a foreign country may not sell, use or distribute the product or product component in the State unless the manufacturer of the product or product component is in compliance with this section, except that this prohibition does not apply to retailers for whom importing is not a primary business. [PL 2001, c. 373, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 373, §3 (NEW). PL 2001, c. 626, §20 (AMD).

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§1672. Mercury-added lamps

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

A. "Manufacturer" means a person who manufactures a mercury-added lamp and has a presence in the United States or a person who imports a mercury-added lamp manufactured by a person who does not have a presence in the United States. [PL 2009, c. 272, §1 (NEW).]

A-1. "Covered entity" means a person who at any one time presents for drop off at a collection location participating in a department-approved program for the recycling of mercury-added lamps under this subsection:

(1) Any number of compact fluorescent mercury-added lamps; or

(2) Ten or fewer mercury-added lamps that are not compact fluorescent mercury-added lamps. [PL 2019, c. 286, §1 (NEW).]

A-2. "Compact fluorescent mercury-added lamp" means a compact, low-pressure, mercury-containing, electric-discharge light source, whether integrally ballasted or nonintegrally ballasted and regardless of the tube diameter or length and the shape or size of the lamp, in which a fluorescent coating transforms a portion of the ultraviolet energy generated by the mercury discharge into visible light and that:

(1) Has a single base or end cap of any type, including, but not limited to, a screw base type, a bayonet base type or a 2-pin or 4-pin base type; and

(2) Provides a light emission between a correlated color temperature of 1,700K and 24,000K and a Duv of +0.024 and -0.024 in the International Commission on Illumination (CIE) Uniform Color Space (CAM02-UCS). [PL 2023, c. 384, §1 (NEW).]

A-3. "Linear fluorescent mercury-added lamp" means a low-pressure, mercury-containing, electric-discharge light source, regardless of the tube diameter and the shape of the lamp, in which a fluorescent coating transforms a portion of the ultraviolet energy generated by the mercury discharge into visible light and that:

(1) Has 2 bases or end caps of any type, including, but not limited to, a one-pin or 2-pin base type and a recessed double contact base type;

(2) Provides a light emission between a correlated color temperature of 1,700K and 24,000K and a Duv of +0.024 and -0.024 in the International Commission on Illumination (CIE) Uniform Color Space (CAM02-UCS); and

(3) Has a tube length of 0.5 feet to 8 feet. [PL 2023, c. 384, §2 (NEW).]

B. "Mercury-added lamp" means an electric lamp to which mercury is intentionally added during the manufacturing process, including, but not limited to, a linear fluorescent mercury-added lamp, a compact fluorescent mercury-added lamp and a black light, high-intensity discharge, ultraviolet or neon mercury-added lamp. [PL 2023, c. 384, §3 (AMD).]

C. "Municipal collection location" means a solid waste disposal facility, transfer station, storage facility or recycling facility at which mercury-added lamps from a covered entity are collected for recycling that is municipally owned or operated or operated by a regional association. [PL 2019, c. 286, §2 (AMD).]

D. "Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, government agency or other entity. [PL 2009, c. 272, §1 (NEW).]

E. "Population center" means an urbanized area or urban cluster, as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater. [PL 2019, c. 286, §3 (NEW).]

F. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and which is not otherwise publicly available. [PL 2019, c. 286, §3 (NEW).]
[PL 2023, c. 384, §§1-3 (AMD).]

2. Mercury content standards. The following provisions govern mercury content standards.

A. The department shall adopt rules establishing mercury content standards for lamps sold or manufactured in the State on or after January 1, 2012. The standards must be based on mercury content standards for lamps established in California. If one or more categories of lamps are not covered by the mercury content standards established in California, the department may adopt standards minimizing the mercury content of lamps within those categories, including adoption of a no-mercury standard if a nonmercury alternative is available at a cost comparable to a mercury alternative. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 272, §1 (NEW).]

B. The rules adopted under paragraph A must provide that:

(1) A manufacturer of mercury-added lamps sold or being offered for sale in the State shall prepare and, at the request of the department, submit within 28 days of the date of the request technical documentation or other information showing that the manufacturer's mercury-added lamps sold or offered for sale in the State comply with the rules. If the manufacturer of a mercury-added lamp being sold or offered for sale does not provide the documentation requested, that manufacturer may not be allowed to sell or offer for sale mercury-added lamps in the State; and

(2) A manufacturer of mercury-added lamps sold or being offered for sale in the State shall provide upon request a certification to a person who sells or offers for sale a mercury-added lamp of that manufacturer. The certification must attest that the mercury-added lamp does not contain levels of mercury that would result in the prohibition of that lamp being sold or offered for sale in the State. If the manufacturer of a mercury-added lamp being sold or offered for sale does not provide the certification requested, that manufacturer may not be allowed to sell or offer mercury-added lamps for sale in the State. [PL 2009, c. 272, §1 (NEW).]
[PL 2009, c. 272, §1 (NEW).]

3. Mercury-added lamp purchasing. When making purchasing decisions on mercury-added lamps and ballasts, the Department of Administrative and Financial Services, in consultation with the department and the Public Utilities Commission, shall request information on mercury content, energy use, lumen output and lamp life from potential suppliers and shall issue specifications and make purchasing decisions that favor models at comparable cost with high energy efficiency, lower mercury content and longer lamp life. Information obtained on mercury content, energy use and lamp life must be made available by the Department of Administrative and Financial Services to other purchasers who purchase a large number of mercury-added lamps. This information must also be posted on the State's publicly accessible website.
[PL 2009, c. 272, §1 (NEW).]

4. Manufacturer recycling programs for mercury-added lamps. Each manufacturer of mercury-added lamps sold or distributed in the State for use by a covered entity on or after January 1, 2001 shall individually or collectively implement a department-approved program for the recycling of mercury-added lamps from a covered entity.

A. The recycling program required under this subsection must include, but is not limited to:

(1) Convenient collection locations adequate to serve the needs of covered entities in rural and urban areas throughout the State where a covered entity can drop off mercury-added lamps without cost, including but not limited to municipal collection locations and participating retail establishments. The program must include a method of determining the adequate number and geographic distribution of collection locations based on geographic information system modeling.

No later than January 1, 2020, the collection system implemented under the program must provide at least 90% of the residents of the State with a permanent collection location or a nonpermanent collection location available on a periodic basis within 15 miles of their residence unless the commissioner determines that this requirement is not practicable due to geographic constraints, in which case the commissioner may approve an alternative collection system that includes a geographic distribution of collection locations but that does not otherwise meet this requirement.

Unless otherwise approved by the commissioner, the collection system implemented under the program:

(a) Must provide at least 2 collection locations within a population center of at least 30,000 residents and an additional collection location for each additional 30,000 residents within the population center; and

(b) Must ensure that the collection locations required under division (a) are located in a manner that provides residents of the population center with convenient and reasonably equitable access to the collection locations;

(2) Handling and recycling equipment and practices in compliance with the universal waste rules adopted pursuant to section 1319-O, subsection 1, paragraph F, with subsection 6 if a crushing device is used and with all other applicable requirements;

(3) Provision of education and outreach efforts by a manufacturer to promote the program, which must include, but are not limited to, strategies for education of and outreach to covered entities in all areas of the State and ensuring understanding of collection options by covered entities. The education and outreach must, at a minimum, include posters, window clings and point-of-purchase signs that are made available to collection locations without cost, that can be prominently displayed and that will be easily visible to covered entities; and outreach to the general public, including annual Internet-based media campaigns and print and radio media campaigns conducted in rural and urban areas in the State;

(5) A goal of annually increasing the percentage of the residents of the State that are aware of the requirement to recycle mercury-added lamps and the availability of mercury-added lamp recycling at collection locations implemented under the program;

(6) Provisions for routinely evaluating the effectiveness of the education and outreach under subparagraph (3);

(7) Procedures for improving the education and outreach under subparagraph (3) if the goal under subparagraph (5) is not achieved; and

(8) An annual report to the department, which must include, at a minimum:

(a) The number of mercury-added lamps recycled under the program;

(b) The estimated percentage of mercury-added lamps available for recycling that were recycled under the program and, if the percentage of lamps recycled in the prior calendar year did not represent an increase from the percentage of lamps recycled in the calendar year prior to the prior calendar year, recommendations for program modifications to increase the percentage of lamps recycled under the program;

(c) The methodology for estimating the number of mercury-added lamps available for recycling, which must include an assumption of the average lifespan of a lamp by type of lamp and number of lamps sold by type in the years on which the percentage under division (b) is calculated. Proprietary information submitted to the department pursuant to this division that is identified by the manufacturer 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;

(d) A description of the education and outreach under subparagraph (3) and an evaluation of the effectiveness of that education and outreach, including a description of the methods used to measure consumer awareness of the requirement to recycle mercury-added lamps and, beginning with the annual report for 2020, the results of an assessment of consumer awareness of the program as completed by an independent 3rd-party assessor;

(e) The location of and contact information for each collection location established under the program and an assessment of the convenience of the collection system established under the program;

(f) An accounting of the costs associated with implementing and administering the program; and

(g) Any recommendations for changes to the program to improve the convenience of the collection system, consumer education or program evaluation. [PL 2019, c. 286, §4 (AMD).]

B. A manufacturer required to implement a recycling program under this subsection shall submit its proposed recycling program for department review and approval. The department shall solicit public comment on the proposed program before approving or denying the program. [PL 2009, c. 272, §1 (NEW).]

C. Beginning April 1, 2011, a manufacturer not in compliance with this section is prohibited from offering any mercury-added lamp for final sale in the State or distributing any mercury-added lamp in the State. A manufacturer not in compliance with this section shall provide support to retailers to ensure the manufacturer's mercury-added lamps are not offered for sale, sold at final sale or distributed in the State. [PL 2009, c. 272, §1 (NEW).]

D. Beginning April 1, 2011, a retailer may not offer for final sale a mercury-added lamp produced by a manufacturer not in compliance with this section. The department shall notify retailers of the manufacturers of mercury-added lamps not in compliance with this section. [PL 2009, c. 272, §1 (NEW).]

E. Beginning in 2013, and biennially thereafter, the department shall calculate the percentage of mercury-added lamps recycled from covered entities and report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any modifications to the manufacturer recycling programs it intends to make to improve mercury-added lamp recycling rates and any recommendations for statutory changes needed to facilitate mercury-added lamp collection and recycling. The report may be included in the report required pursuant to section 1772, subsection 1. [PL 2019, c. 286, §4 (AMD).]

F. [PL 2019, c. 286, §4 (RP).]

G. A department-approved recycling program under this subsection that is collectively implemented by manufacturers of mercury-added lamps must require the payment of a flat program participation fee, in lieu of payment of any other fees or costs associated with the program's operation, by a manufacturer participating in the program that previously offered for sale or distributed in the State any type of mercury-added lamps but that no longer offers for final sale or distributes in the State any type of mercury-added lamps; except that a manufacturer that previously

offered for sale or distributed in the State only compact fluorescent mercury-added lamps but that no longer offers for final sale or distributes in the State compact fluorescent mercury-added lamps may be required to pay the flat program participation fee only for a period beginning on the date the manufacturer stops offering for final sale or distributing in the State compact fluorescent mercury-added lamps and ending 5 years after that date, after which time the manufacturer must be allowed to continue to participate in the program without being required to pay any fees or other costs associated with the program's operation. [PL 2019, c. 286, §4 (NEW).]

H. If, based on the information annually reported to the department under paragraph A, subparagraph (8), the department determines that fewer than 25,000 total mercury-added lamps were collected in the prior calendar year in the State under all recycling programs implemented under this subsection and that the combined mercury-added lamp recycling rate in the prior calendar year under all recycling programs implemented under this subsection was 10% or greater, the department shall develop a process for reducing the scope of the manufacturer recycling program required under this subsection and for terminating all program requirements within the 3-year period subsequent to that determination.

(1) In developing the program reduction and termination process under this paragraph, the department shall invite the participation of manufacturers that have implemented a recycling program under this section.

(2) The program reduction and termination process developed under this paragraph must be based on the best available data regarding the collection of mercury-added lamps in the State, including, but not limited to:

(a) The collection activity at each collection location;

(b) The estimated number of mercury-added lamps in the State still available for collection; and

(c) The total number of mercury-added lamps collected in the prior program years.

(3) Following completion of the development of the program reduction and termination process under this paragraph, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding its findings and recommendations for implementing that process, including any proposed legislation. The report under this subparagraph may be included in the report required under section 1772, subsection 1. After reviewing the report the committee may report out a bill to implement the recommendations contained in the report or to otherwise facilitate a reduction and termination of the manufacturer recycling program required under this subsection. [PL 2019, c. 286, §4 (NEW).]

[PL 2019, c. 286, §4 (AMD).]

4-A. Sales prohibition and exceptions. Beginning January 1, 2026, a person may not offer for sale, sell or distribute as a new manufactured product a compact fluorescent mercury-added lamp or a linear fluorescent mercury-added lamp. The prohibition in this subsection does not apply to the following:

A. A mercury-added lamp that is designed and marketed exclusively for image capture and projection, including:

(1) Photocopying;

(2) Printing, directly or in preprocessing;

(3) Lithography;

(4) Film or video projection; or

(5) Holography; [PL 2023, c. 384, §4 (NEW).]

B. A mercury-added lamp that has a high proportion of ultraviolet light emission and that:

(1) Has ultraviolet power greater than 2 milliwatts per kilolumen;

(2) Is designed for germicidal use, including the destruction of deoxyribonucleic acid, or DNA, that emits a peak radiation of approximately 253.7 nanometers;

(3) Is designed and marketed exclusively for disinfection or fly trapping and from which:

(a) The radiation power emitted between 250 and 315 nanometers represents at least 5% of the total radiation power emitted between 250 and 800 nanometers; or

(b) The radiation power emitted between 315 and 400 nanometers represents at least 20% of the total radiation power emitted between 250 and 800 nanometers;

(4) Is designed and marketed exclusively for the generation of ozone and that has the primary purpose of emitting radiation at approximately 185.1 nanometers;

(5) Is designed and marketed exclusively for coral zooxanthellae symbiosis and from which the radiation power emitted between 400 and 480 nanometers represents at least 40% of the total radiation power emitted between 250 and 800 nanometers; or

(6) Is designed and marketed exclusively for use in a sunlamp product, as defined in 21 Code of Federal Regulations, Section 1040.20(b)(9) as in effect on January 1, 2024; [PL 2023, c. 384, §4 (NEW).]

C. A mercury-added lamp designed and marketed exclusively for use in medical or veterinary diagnosis or treatment or in a medical device; [PL 2023, c. 384, §4 (NEW).]

D. A mercury-added lamp designed and marketed exclusively for use in the manufacturing or quality control of pharmaceutical products; [PL 2023, c. 384, §4 (NEW).]

E. A mercury-added lamp designed and marketed exclusively for spectroscopy and photometric applications, including, but not limited to, ultraviolet-visible spectroscopy, molecular spectroscopy, atomic absorption spectroscopy, nondispersive infrared spectroscopy, Fourier transform infrared spectroscopy, medical analysis, ellipsometry, layer thickness measurement, process monitoring or environmental monitoring; [PL 2023, c. 384, §4 (NEW).]

F. A mercury-added lamp designed and marketed exclusively for use by academic and research institutions for conducting research projects and experiments; or [PL 2023, c. 384, §4 (NEW).]

G. A compact fluorescent mercury-added lamp that is used to replace a lamp in a motor vehicle that was manufactured on or before January 1, 2020. [PL 2023, c. 384, §4 (NEW).]

The department may investigate complaints received regarding potential violations of this subsection and, as a result of those investigations, may enforce this subsection in accordance with sections 347-A and 349, but the department is not required to conduct compliance inspections of locations where mercury-added lamps or other light sources are sold or distributed, conduct outreach or education activities related to the prohibition in this subsection or engage in any other regulatory or enforcement activities related to the prohibition in this subsection.
[PL 2023, c. 384, §4 (NEW).]

5. Applicability. The requirements of this section do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts.
[PL 2009, c. 272, §1 (NEW).]

6. Lamp crushing. A recycling program required under subsection 4 may include the use of crushing devices in accordance with the provisions of this subsection.

A. The owner of the crushing device shall:

(1) Register the device with the department. The registration must include:

(a) The owner's name and contact information;

(b) The brand of device used;

(c) Anticipated usage of the device; and

(d) A statement that the operating manual required pursuant to subparagraph (2) is in place;

(2) Develop an operating manual specifying how to safely crush mercury-added lamps. The operating manual must be available to all operators of the device and must include:

(a) Procedures for operation and maintenance of the device in accordance with written procedures developed by the manufacturer of the device;

(b) Testing and monitoring procedures;

(c) Information concerning mercury hazards, crushing procedures, waste handling and emergency procedures;

(d) An assessment of whether surrounding areas will be negatively affected, either by physical proximity or air exchange with a heating, ventilation and air conditioning system;

(e) Proper waste management practices;

(f) Procedures for operator training to ensure operators have been trained in the operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate mercury releases and personal protective equipment use; and

(g) Procedures to address emergency situations, including, but not limited to, procedures to address mercury hazards, waste handling and equipment failure;

(3) Document maintenance activities, retain maintenance logs, test data from the manufacturer and any additional test data acquired and make available a copy of these records to the department at its request;

(4) Meet all federal Occupational Safety and Health Administration requirements;

(5) Dispose of all material crushed in the device;

(6) Maintain on file an annual report for review by the department, at the discretion of the department, indicating the:

(a) Total volume of mercury-added lamps crushed;

(b) Volume and disposition of any carbon or other filter from the device; and

(c) Names of the destination facilities to which all crushed material was shipped; and

(7) Maintain testing and monitoring data. [PL 2011, c. 275, §2 (NEW).]

B. The crushing device may be operated only in a closed system and in such a manner that any emission of mercury from the crushing device does not exceed 0.3 micrograms per cubic meter when measured on the basis of a time-weighted average over an 8-hour period. [PL 2011, c. 275, §2 (NEW).]

C. The crushing device may be operated only in a secure, ventilated area and may not be operated in an area accessible to the general public. [PL 2011, c. 275, §2 (NEW).]

[PL 2011, c. 275, §2 (NEW).]

SECTION HISTORY

RR 2009, c. 2, §117 (COR). PL 2009, c. 272, §1 (NEW). PL 2011, c. 275, §§1, 2 (AMD). PL 2013, c. 315, §2 (AMD). PL 2019, c. 286, §§1-4 (AMD). PL 2023, c. 384, §§1-4 (AMD).

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§1776. Product stewardship program; program requirements

A product stewardship program established for a product or product category designated by the Legislature for inclusion in a product stewardship program must be established and implemented in accordance with the provisions of this section. [PL 2013, c. 315, §7 (NEW).]

1. Program. A producer selling a product in the State that is a designated product or that is in a designated product category is responsible individually, collectively or through a stewardship organization for the implementation and financing of a product stewardship program to manage the product at the end of the product's life in accordance with the priorities in section 2101.

A. The program must include a collection system that is convenient and adequate to serve the needs of covered entities in both rural and urban areas. No later than one year following commencement of product collections by the program's collection system, the collection system must include permanent collection locations located within 15 miles of 90% of the residents of the State unless the commissioner determines that the requirements of this paragraph are not practicable due to geographical constraints or that an alternative collection system that does not meet the requirements of this paragraph will result in equivalent and more efficient collection. [PL 2019, c. 227, §3 (AMD).]

B. The program must provide for effective education and outreach to promote the use of the program and to ensure that collection options are understood by covered entities. [PL 2013, c. 315, §7 (NEW).]

C. A producer or stewardship organization, including a producer's or stewardship organization's officers, members, employees and agents that organize a product stewardship program under this chapter, 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 chosen organized collection or recycling system. [PL 2013, c. 315, §7 (NEW).]

D. The program must include at a minimum a half-time employee or contracted agent whose job duties are dedicated to implementing the program in the State unless the commissioner determines that a lesser staffing requirement is adequate to provide the administrative oversight, training and ongoing technical support to collection locations, education and outreach efforts, program performance assessment and reporting necessary for program implementation. [PL 2019, c. 227, §4 (NEW).]

[PL 2019, c. 227, §§3, 4 (AMD).]

2. Requirement for sale. One hundred eighty days after a product stewardship plan under subsection 5 is approved in accordance with subsection 8, a producer may not sell or offer for sale in the State the relevant product, unless the producer of the product participates individually, collectively or through a product stewardship program in accordance with an approved product stewardship plan.
[PL 2013, c. 315, §7 (NEW).]

3. No fee. A product stewardship program may not charge a fee at the time an unwanted product is delivered or collected for recycling or disposal.
[PL 2013, c. 315, §7 (NEW).]

4. Costs. Producers in a product stewardship program shall finance the collection, transportation and reuse, recycling or disposition of the relevant product; effective education and outreach related to the program; program assessment; program reporting; any incentives necessary to achieve program goals; payment of reasonable fees to the department for review of the program plan and any proposed amendments; and payment of annual fees to the department to cover the department's actual costs for the program for annual report review, oversight, administration and enforcement, which may not exceed

$100,000 per year per program and which must be properly documented and provided by the department to the program prior to or at the time that such payment is required.
[PL 2019, c. 227, §5 (AMD).]

5. Requirement to submit a plan. Within one year of a product's or product category's being designated for inclusion in a product stewardship program, the relevant producer or stewardship organization shall submit a product stewardship plan to the department for approval. The plan must include:

A. Identification and contact information for:

(1) The individual or entity submitting the plan;

(2) All producers participating in the product stewardship program;

(3) The owners of the brands covered by the program; and

(4) If using a stewardship organization, the stewardship organization, including a description of the organization and the tasks to be performed by the organization. The description must include information on how the organization is organized, including administration of the organization and management of the organization; [PL 2013, c. 315, §7 (NEW).]

B. A description of the collection system, including:

(1) The types of locations or other collection services to be used;

(2) How all products covered under the product stewardship program will be collected in all counties of the State; and

(3) How the collection system will be convenient and adequate to serve the needs of all entities; [PL 2019, c. 227, §6 (AMD).]

C. The names and locations of recyclers, processors and disposal facilities that may be used by the product stewardship program; [PL 2013, c. 315, §7 (NEW).]

D. Information on how the product and product components will be safely and securely transported, tracked and handled from collection through final disposition; [PL 2013, c. 315, §7 (NEW).]

E. A description of the methods to be used to reuse, deconstruct and recycle the unwanted product to ensure that the product components are transformed or remanufactured to the extent feasible; [PL 2019, c. 227, §6 (AMD).]

F. A description of how the convenience and adequacy of the collection system will be monitored and maintained; [PL 2013, c. 315, §7 (NEW).]

G. A description of how the amount of product and product components collected, recycled, processed, reused and disposed of will be measured; [PL 2013, c. 315, §7 (NEW).]

H. A description of the education and outreach methods that will be used to recruit, train and monitor collection locations and to encourage participation in the program on an ongoing basis by collection locations and by consumers throughout the State; [PL 2019, c. 227, §6 (AMD).]

I. A description of how education and outreach methods will be evaluated, including, at a minimum, completion of an annual consumer awareness survey to assess consumer knowledge regarding product management options and collection locations. The survey questions and methodology must be approved by the department, and the survey must be administered by a 3rd party; [PL 2019, c. 227, §6 (AMD).]

J. A description of how program performance will be assessed, including performance goals to show success of the program. When a performance goal is expressed as a recycling rate or a diversion from disposal rate, the plan must include a description of the methodology and the

relevant historic sales data used to develop the rate. Sales information submitted to the department pursuant to this paragraph that is identified by the producer or stewardship organization as proprietary information is confidential and must be handled by the department in accordance with subsection 10. The performance goals under this paragraph must include, at a minimum, one of the following goals:

(1) That at least 50% of the residents of the State will be aware of the program by no later than the end of the 3rd year of program implementation and at least 70% of the residents of the State will be aware of the program by no later than the end of the 6th year of program implementation;

(2) That a diversion from disposal rate of at least 50% will be achieved by the program by no later than the end of the 4th year of program implementation; or

(3) An alternative performance goal that does not meet the criteria in subparagraph (1) or (2) as long as sufficient evidence is provided to the department to justify that alternative performance goal; [PL 2019, c. 227, §6 (AMD).]

K. A description of how the program will be financed. If the program is financed by a per unit assessment paid by the consumer at the point of sale, a plan for an annual 3rd-party audit to ensure revenue from the assessment does not exceed the cost of implementing the product stewardship program must be included; and [PL 2019, c. 227, §6 (AMD).]

L. An anticipated annual budget for the program that includes identification of specific anticipated administrative, collection, transportation, disposition and communication costs for the program. The anticipated annual budget must be sufficient to fund the program staffing required under subsection 1, paragraph D and the reimbursement by the producer or stewardship organization of the department's actual costs incurred in annual report review and in overseeing, administering and enforcing the program. The anticipated annual budget may not include costs for legal fees or costs related to legislative efforts that have been or will be incurred by the producer or stewardship organization. [PL 2019, c. 227, §7 (NEW).]

[PL 2019, c. 227, §§6, 7 (AMD).]

6. Plan amendments.

[PL 2019, c. 227, §8 (RP).]

6-A. Plan amendments. In accordance with the provisions of this subsection, a producer or stewardship organization or the department may initiate changes to an approved product stewardship plan.

A. A change to an approved product stewardship plan by a producer or stewardship organization operating the program implemented under the plan must be submitted to the department for review and approval prior to the implementation of that change, except that if the producer or stewardship organization determines that the change is not substantive, such as the addition of or a change to collection locations, or if an additional producer joins the program, the producer or stewardship organization must inform the department of the change within 14 days of implementing the change but need not receive department approval unless the department determines that the change is substantive. The department shall review and approve plan amendments in accordance with subsection 8. [PL 2019, c. 227, §9 (NEW).]

B. If the department determines that a program has failed to make adequate progress toward achieving the program's performance goals described in the approved product stewardship plan pursuant to subsection 5, paragraph J, the department shall notify the producer or stewardship organization operating the program in writing regarding its determination and may direct the producer or stewardship organization to implement specific changes to the plan within 6 months of the written notification, which may include, but are not limited to, improvements to the convenience

of the collection system or to the education and outreach efforts under the program to improve program performance. The department may also recommend in its annual report under section 1772, subsection 1 that the program be amended to require financial incentives or, if appropriate for the product, implementation of a deposit and refund system. [PL 2019, c. 227, §9 (NEW).]

[PL 2019, c. 227, §9 (NEW).]

7. Annual reporting. By March 1st of the calendar year after the calendar year in which an approved product stewardship program is implemented, and annually thereafter, the producer or stewardship organization operating the program shall submit to the department a report on the program for the previous calendar year. The report must include, at a minimum:

A. The amount of product collected at each collection location; [PL 2019, c. 227, §10 (AMD).]

B. A description of the methods used to collect, transport and process the product; [PL 2013, c. 315, §7 (NEW).]

C. An evaluation of program performance, including, if possible, diversion and recycling rates together with certificates of recycling or similar confirmations and an evaluation of the convenience of the collection system implemented under the program; [PL 2019, c. 227, §10 (AMD).]

D. A description of the methods used for education and outreach efforts and an evaluation of the effectiveness of those efforts. The report must include the results of an assessment of the methods used for and effectiveness of education and outreach efforts. The assessment must be completed by a 3rd party; [PL 2019, c. 227, §10 (AMD).]

E. If applicable, the report of the 3rd-party audit conducted to ensure that revenue collected from the assessment does not exceed implementation costs pursuant to subsection 5, paragraph K; [PL 2019, c. 227, §10 (AMD).]

F. Any recommendations for changes to the product stewardship program and to the approved goals for the program to improve convenience of collection, consumer education and program evaluation; and [PL 2019, c. 227, §10 (AMD).]

G. A financial report on the program, including the total cost of implementing the program as determined by an independent financial audit that includes identification of specific administrative, collection, transportation, disposition and communication costs for the program, and an anticipated budget for the program for the next program year. [PL 2019, c. 227, §10 (NEW).]

[PL 2019, c. 227, §10 (AMD).]

8. Department review and approval. Within 120 days after receipt of a proposed product stewardship plan, the department shall determine whether the plan complies with this section. If the plan is approved, the department shall notify the submitter in writing. If the department rejects the plan, the department shall notify the submitter in writing stating the reason for rejecting the plan.

[PL 2019, c. 227, §10 (AMD).]

9. Plan availability. Within 30 days of approval by the department of a product stewardship plan under subsection 8, the department shall place the approved product stewardship plan on the department's publicly accessible website.

[PL 2013, c. 315, §7 (NEW).]

10. Proprietary information. Proprietary information submitted to the department in a product stewardship plan, in an amendment to a product stewardship plan or pursuant to reporting requirements of this section that is identified by the submittor 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 2019, c. 227, §10 (AMD).]

11. Exceptions. This section does not apply to products subject to section 1610, 1612, 1665-A, 1665-B, 1672, 2146, 2165 or 2166.

[PL 2021, c. 94, §3 (AMD); PL 2021, c. 455, §1 (AMD).]

SECTION HISTORY

PL 2013, c. 315, §7 (NEW). PL 2019, c. 227, §§3-10 (AMD). PL 2021, c. 94, §3 (AMD). PL 2021, c. 455, §1 (AMD).

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§2144. Stewardship program for architectural paint

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

A. "Architectural paint" or "paint" means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment or specialty coatings, arts and crafts paints, 2-component coatings, deck cleaners, industrial maintenance coatings, original equipment manufacturer paints and finishes, paint additives, colorants, tints, resins, roof patch and repair, tar and bitumen-based products, traffic and road marking paints, wood preservatives, ignitable paint thinners or solvents used for cleaning paint-related equipment or contaminated with architectural paint or paint thinners or solvents identified as hazardous waste in 40 Code of Federal Regulations, Section 261.31 that are used for cleaning paint-related equipment or contaminated with architectural paint. [PL 2015, c. 331, §1 (AMD).]

A-1. "Collection container" means a container that is designed to store more than one individual container of architectural paint that meets federal Department of Transportation specifications for containing those items. [PL 2015, c. 331, §2 (NEW).]

A-2. "Collection site" means an entity that collects post-consumer paint directly from consumers for end-of-life management and may include, but is not limited to, retailers, hardware and home improvement stores, transfer stations and operations that otherwise collect household hazardous waste. A collection site may also accept universal wastes under the rules of the department. [PL 2015, c. 331, §2 (NEW).]

A-3. "Conditionally exempt small quantity generator" means a conditionally exempt small quantity generator as defined in 40 Code of Federal Regulations, Section 261.5. [PL 2015, c. 331, §2 (NEW).]

B. "Consumer" means a purchaser or user of architectural paint. "Consumer" includes a purchaser or user of architectural paint who also generates post-consumer paint. [PL 2015, c. 331, §3 (AMD).]

C. "Distributor" means a business that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. [PL 2013, c. 395, §1 (NEW).]

D. "Energy recovery" means recovery in which all or a part of solid waste materials is processed in order to use the heat content or other forms of energy of or from the materials. [PL 2013, c. 395, §1 (NEW).]

E. "Environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of post-consumer paint to be implemented by a producer or a representative organization to ensure compliance with all applicable federal, state and local laws, regulations, rules and ordinances and protection of human health and the environment. Such procedures must address adequate record keeping, tracking and documenting the fate of materials within the State and beyond and adequate environmental liability coverage for professional services and for the operations of the contractors working on behalf of the producer or the representative organization. [PL 2013, c. 395, §1 (NEW).]

F. "Final disposition" means the point beyond which no further processing takes place and paint has been transformed for direct use as a feedstock in producing new products or is disposed of, including for energy recovery, in permitted facilities. [PL 2013, c. 395, §1 (NEW).]

G. "Paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in the State necessary to cover the cost of collecting, transporting and processing post-consumer paint statewide under a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

H. "Paint stewardship program" or "program" means a program for management of post-consumer paint to be operated by a producer or a representative organization. [PL 2013, c. 395, §1 (NEW).]

I. "Plan" means a plan to establish a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

J. "Population center" means an urbanized area or urban cluster as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater. [PL 2013, c. 395, §1 (NEW).]

K. "Post-consumer paint" means architectural paint not used and no longer wanted by a consumer. [PL 2013, c. 395, §1 (NEW).]

K-1. "Post-consumer paint that is a hazardous waste" means post-consumer paint that is a hazardous waste as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D. [PL 2015, c. 331, §4 (NEW).]

L. "Producer" means a manufacturer of architectural paint that sells, offers for sale, or distributes that paint in the State under the producer's own name or brand. [PL 2013, c. 395, §1 (NEW).]

M. "Recycling" means any process by which discarded products, components and by-products are transformed into new, usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products. [PL 2013, c. 395, §1 (NEW).]

N. "Representative organization" means a nonprofit organization created by producers to operate a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

O. "Retailer" means a person that offers architectural paint for sale at retail in the State. [PL 2013, c. 395, §1 (NEW).]

P. "Reuse" means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's identity. [PL 2013, c. 395, §1 (NEW).]

Q. "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues or the Internet or any other similar electronic means. [PL 2013, c. 395, §1 (NEW).]

[PL 2015, c. 331, §§1-4 (AMD).]

2. Establishment of a paint stewardship program. By April 1, 2015, a producer, a group of producers or a representative organization shall submit a plan for the establishment of a paint stewardship program to the commissioner for approval. The plan must include:

A. A description of how the program will collect, transport, recycle and process post-consumer paint from entities covered by the program for end-of-life management to meet the following goals:

(1) A reduction in the generation of unwanted paint and the promotion of its reuse and recycling;

(2) Provision of convenient and available statewide collection of post-consumer paint from entities covered by the program in all areas of the State;

(3) Management of post-consumer paint using environmentally sound management practices in an economically sound manner, including following the paint waste management hierarchy of source reduction, reuse, recycling, energy recovery and disposal;

(4) Establishment of a process for managing paint containers collected under the program, including recycling all recyclable containers;

(5) Negotiation and execution by the operator of agreements to collect, transport, reuse, recycle, burn for energy recovery and dispose of post-consumer paint using environmentally sound management practices; and

(6) Provision of education and outreach efforts by the operator to promote the program. The education and outreach efforts must include strategies for reaching consumers in all areas of the State and the method the program will use to evaluate the effectiveness of its education and outreach efforts; [PL 2013, c. 395, §1 (NEW).]

B. Contact information for all persons that will be responsible for the operation of the paint stewardship program and a list of paint brands and producers covered under the program; [PL 2013, c. 395, §1 (NEW).]

C. Goals as may be practical to reduce the generation of post-consumer paint, to promote the reuse and recycling of post-consumer paint, for the overall collection of post-consumer paint and for the proper end-of-life management of post-consumer paint. The goals may be revised by a representative organization based on information collected annually; [PL 2013, c. 395, §1 (NEW).]

D. A list of all potential processors that will be used to manage post-consumer paint collected by the paint stewardship program, a list of each collection site name and location that will accept post-consumer paint under the program and a list of all processors that will be used for final disposition; [PL 2013, c. 395, §1 (NEW).]

E. A method to determine the number and geographic distribution of paint collection sites based on the use of geographic information modeling. The plan must provide that at least 90% of state residents have a permanent paint collection site within a 15-mile radius of their residences, unless the commissioner determines that the 90% requirement is not practicable due to geographical constraints. If the commissioner determines the 90% requirement is not practicable, the commissioner may approve a plan that includes a geographic distribution of paint collection sites that is practicable. The distribution of paint collection sites must include at least one additional paint collection site for each 30,000 residents in a population center that is located to provide convenient and reasonably equitable access for residents within the population center unless otherwise approved by the commissioner; [PL 2013, c. 395, §1 (NEW).]

F. Identification of the ways in which the program will coordinate with existing solid waste collection programs and events, including strategies to reach the State's residents that do not have a permanent paint collection site within a 15-mile radius of their residences and to ensure adequate coverage of service center communities as defined in Title 30-A, section 4301, subsection 14-A; [PL 2013, c. 395, §1 (NEW).]

G. A time frame for accomplishing the geographical coverage required under paragraphs E and F; [PL 2013, c. 395, §1 (NEW).]

H. An anticipated budget for operation of the paint stewardship program, including the suggested method of funding the program, which must include the method of calculating a paint stewardship assessment that meets the requirements of subsection 4; and [PL 2015, c. 331, §5 (AMD).]

I. A description of how post-consumer paint collected under this section will be managed at each collection site, including how post-consumer paint will be labeled, provisions for secondary containment and protecting post-consumer paint from weather and a description of how subsection 5-A, paragraph G will be satisfied. [PL 2015, c. 331, §5 (AMD).]

J. [PL 2015, c. 331, §6 (RP).]

K. [PL 2015, c. 331, §6 (RP).]

[PL 2015, c. 331, §§5, 6 (AMD).]

3. Approval of plan. The commissioner shall review a plan submitted under subsection 2 and make a determination of whether to approve the plan within 120 days of receipt. The commissioner shall make the plan available for public review for at least 30 days prior to making a determination of whether to approve the plan. The commissioner shall approve a plan if the commissioner determines that the plan demonstrates the ability of the paint stewardship program to meet the goals specified in subsection 2, paragraph A and meets the other requirements for submission of a plan under subsection 2. The commissioner's approval of a plan must include approval of the method by which the program will be funded. The commissioner shall require the person submitting the plan to provide an independent audit indicating the appropriateness of the proposed paint stewardship assessment.

If a plan is rejected, the commissioner shall provide the reasons for rejecting the plan to the person submitting the plan. The person submitting the plan may submit an amended plan within 60 days of a rejection.
[PL 2013, c. 395, §1 (NEW).]

4. Funding of paint stewardship program. An operator of a paint stewardship program shall administer a paint stewardship assessment for all architectural paint sold in the State. The amount of the paint stewardship assessment must be approved by the commissioner under subsection 3 and must be sufficient to recover, but may not exceed, the cost of the paint stewardship program. If the funds generated by the program exceed the amount necessary to operate the program, excess funds must be used to reduce future paint stewardship assessments or improve services under the program.

A. A paint stewardship assessment must be added to the cost of all architectural paint sold to retailers and distributors in the State. A retailer or distributor shall add the paint stewardship assessment to the consumer's purchase price of the architectural paint sold by that retailer or distributor. A producer or a representative organization may not charge a paint stewardship assessment at the time of post-consumer paint collection. The collection of the paint stewardship assessment must commence no later than the implementation date established in subsection 5, paragraph A. [PL 2013, c. 395, §1 (NEW).]

B. An architectural paint producer participating in a representative organization shall remit to the representative organization payment of the paint stewardship assessment for each container of architectural paint it sells in the State. [PL 2013, c. 395, §1 (NEW).]
[PL 2013, c. 395, §1 (NEW).]

5. Operation of paint stewardship program. A paint stewardship program must be operated as follows.

A. Unless an earlier implementation date is proposed in a plan and approved by the commissioner, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a producer or a representative organization shall implement the plan. If an earlier implementation date is proposed in a plan and approved by the commissioner, a producer or representative organization shall implement the plan beginning on that date. [PL 2013, c. 483, §1 (AMD).]

B. Upon implementation of the plan, a producer may not sell or offer for sale architectural paint in the State unless the producer or a representative organization of which the producer is a member participates in a paint stewardship program. A representative organization shall notify the department of all producers participating in a paint stewardship program operated by the representative organization. [PL 2013, c. 395, §1 (NEW).]

C. A producer or a representative organization shall provide consumers and retailers with educational materials regarding the paint stewardship assessment and paint stewardship program. Such materials must include, but are not limited to, information regarding available end-of-life management options for architectural paint offered through the paint stewardship program, promoting waste prevention, reuse and recycling and notifying consumers that a charge for the

operation of the paint stewardship program is included in the purchase price of all architectural paint sold in the State. These materials may include, but are not limited to, the following:

(1) Signage that is prominently displayed and easily visible to the consumer;

(2) Printed materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery;

(3) Advertising or other promotional materials that include references to the paint stewardship program; and

(4) A manual for paint retailers providing collection site procedures to ensure the use of environmentally sound management practices when handling architectural paints. [PL 2013, c. 395, §1 (NEW).]

D. A producer or a representative organization that organizes the collection, transportation and processing of post-consumer paint, in accordance with a paint stewardship program, is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title 10, chapter 201, arising from conduct undertaken in accordance with the paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

E. By October 15, 2016, and annually thereafter, the operator of a paint stewardship program shall submit a report to the commissioner regarding the paint stewardship program. If implementation of a plan begins before December 31, 2014, the commissioner may establish an earlier date for submission of the initial report. The report must include, but is not limited to:

(1) A description of the methods used to collect, transport, reduce, reuse and process post-consumer paint in the State;

(2) The volume of post-consumer paint collected in the State;

(3) The volume and type of post-consumer paint collected in the State by method of disposition, including reuse, recycling and other methods of processing;

(4) The total cost of implementing the paint stewardship program, as determined by an independent financial audit funded from the paint stewardship assessment. The report of total cost must include a breakdown of administrative, collection, transportation, disposition and communication costs;

(5) A summary of outreach and educational activities undertaken and samples of educational materials provided to consumers of architectural paint;

(6) The total volume of post-consumer paint collected by the paint stewardship program and a breakdown of the volume collected at each collection site;

(7) Based on the paint stewardship assessment collected by the paint stewardship program, the total volume of architectural paint sold in the State during the preceding year;

(8) A list of all processors, including recyclers and disposers, used to manage post-consumer paint collected by the paint stewardship program in the preceding year up to the paint's final disposition, the volume each processor accepted and the disposition method used by each processor; and

(9) An evaluation of the effectiveness of the paint stewardship program compared to prior years and anticipated steps, if any are needed, to improve performance throughout the State. [PL 2015, c. 331, §7 (AMD).]

F. Reports submitted to the department under this section must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this section

that is identified by the submittor 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.

As used in this paragraph, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. [PL 2013, c. 395, §1 (NEW).]

G. A producer or representative organization shall submit to the department for approval a request to amend an approved plan if the producer or representative organization proposes to:

(1) Change the paint stewardship assessment;

(2) Cover an additional product under the plan; or

(3) Modify the goals of the plan. [PL 2013, c. 395, §1 (NEW).]

[PL 2015, c. 331, §7 (AMD).]

5-A. Requirements for collection sites. This subsection applies to collection sites.

A. Within 30 days of commencement of an approved paint stewardship program, a producer or representative organization shall notify the department of the name and location of each collection site added to or deleted from the list of collection sites provided under subsection 2, paragraph D. [PL 2015, c. 331, §8 (NEW).]

B. A collection site shall track all outgoing shipments of post-consumer paint on a manifest or a bill of lading. The collection site shall maintain these records for at least 3 years. [PL 2015, c. 331, §8 (NEW).]

C. A collection site shall maintain a record for each drop-off of post-consumer paint that is a hazardous waste from an entity other than a household, including the name and address of the entity, the date of the drop-off and a description and quantity of the post-consumer paint that is a hazardous waste. The collection site shall maintain these records for at least 3 years. [PL 2015, c. 331, §8 (NEW).]

D. A collection site shall store post-consumer paint in structurally sound collection containers that show no visible evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions, in a secure area, away from ignition sources, storm drains and floor drains. A collection container must be kept closed except when adding containers of post-consumer paint that have been collected from consumers. A collection container must be labeled with the words "Waste Paint." A collection site may not store more than 5,000 kilograms of post-consumer paint that is a hazardous waste at any one time. A collection site may store collected post-consumer paint that is a hazardous waste for up to one year. [PL 2015, c. 331, §8 (NEW).]

E. A collection site may accept post-consumer paint that is a hazardous waste only from households and from conditionally exempt small quantity generators. [PL 2015, c. 331, §8 (NEW).]

F. A collection site shall immediately contain and clean up any discharge or release of post-consumer paint that is a hazardous waste. [PL 2015, c. 331, §8 (NEW).]

G. A collection site shall limit its activities to the collection and storage of post-consumer paint, except that transfer stations and operations that otherwise collect household hazardous waste may remove post-consumer paint that is a hazardous waste from the paint's original container and mix or consolidate that paint, as long as all transfer and mixing or consolidation activities are conducted over secondary containment and as long as any discharges or releases of hazardous waste, as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D, are contained and cleaned up to the department's satisfaction. [PL 2015, c. 331, §8 (NEW).]

H. A collection site shall ensure that it receives training from the producer or representative organization that implements the paint stewardship program on how to properly inspect and store post-consumer paint and shall maintain training manuals issued by the producer or representative organization. [PL 2015, c. 331, §8 (NEW).]

I. A collection site shall ship post-consumer paint that is a hazardous waste to a universal waste consolidation facility or to a recycling, treatment, storage or disposal facility that is authorized to receive universal waste. [PL 2015, c. 331, §8 (NEW).]

J. A collection site that accepts only post-consumer paint and post-consumer paint that is a hazardous waste under an approved plan from households and from conditionally exempt small quantity generators is not a central accumulation facility and does not require a hazardous waste identification number from the federal Environmental Protection Agency. Nothing in this section is intended to exempt a collection site from being considered a central accumulation facility or from being required to obtain a hazardous waste identification number based on activities unrelated to a paint stewardship program. [PL 2015, c. 331, §8 (NEW).]

[PL 2015, c. 331, §8 (NEW).]

6. Administration and enforcement of program. The department shall enforce this section and may adopt rules as necessary for the purposes of implementing, administering and enforcing this section.

A. Except as may otherwise be required under federal law or by the producer or representative organization under an approved plan, the department may not impose a requirement by rule or otherwise on a collection site regarding the collection, handling, record-keeping, storage or shipping of post-consumer paint that is more stringent than the requirements of this section for collection sites. [PL 2015, c. 331, §9 (NEW).]

B. A collection site that complies with the requirements of this section and that uses environmentally sound management practices is not subject to penalties for violation of the department's rules related to post-consumer paint. [PL 2015, c. 331, §9 (NEW).]

C. The department shall charge a reasonable fee to be paid by an applicant for approval of a paint stewardship program for review of the plan. The department may establish a reasonable annual fee to cover the actual costs for annual report review, oversight, administration and enforcement. Fees established under this paragraph may not exceed the greater of $82,000 per year and 1% of total program costs as set forth in the independent financial auditing report required under subsection 5. [PL 2015, c. 331, §9 (NEW).]

[PL 2015, c. 331, §9 (AMD).]

7. Retailers. Unless an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a retailer may not sell architectural paint unless, on the date the retailer orders the architectural paint from the producer or its agent, the producer or the paint brand is listed on the department's publicly accessible website as implementing or participating in an approved paint stewardship program. A retailer may participate as a paint collection point pursuant to the paint stewardship program on a voluntary basis and pursuant to all applicable laws and rules. A retailer that collects post-consumer paint must follow a collection site procedure manual developed by a producer or representative organization to ensure the use of environmentally sound management practices when handling architectural paints at collection locations. If an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, the provisions of this subsection apply with respect to the plan as of that date.

[PL 2013, c. 483, §3 (AMD).]

8. List of producers and brands. The department shall post on its publicly accessible website a list of the producers participating and the brands included in a paint stewardship program.

[PL 2013, c. 395, §1 (NEW).]

9. Relationship to other product stewardship program laws. A paint stewardship program established pursuant to this section is governed by the provisions of this section and is exempt from any requirements related to product stewardship programs established under chapter 18 unless otherwise specifically provided.
[PL 2013, c. 395, §1 (NEW).]

10. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2013, c. 395, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 395, §1 (NEW). PL 2013, c. 483, §§1-3 (AMD). PL 2015, c. 331, §§1-9 (AMD).

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§2145. Recycling reporting

1. Reporting requirement. Beginning March 1, 2020 and annually thereafter, a recycling establishment shall report to the department regarding its recycling of reportable recyclable materials generated in the State. The report must be on a form provided by or a format approved by the department and must include:

A. The business name, mailing address, physical address, e-mail address, contact person and telephone number of the recycling establishment; [PL 2019, c. 291, Pt. B, §5 (NEW).]

B. The amount in tons of each category of reportable recyclable materials, by generator, received by the recycling establishment; and [PL 2019, c. 291, Pt. B, §5 (NEW).]

C. The amount in tons of each category of reportable recyclable materials, by destination, shipped by the recycling establishment. [PL 2019, c. 291, Pt. B, §5 (NEW).]

The report must specify the quantity of reportable recyclable materials required to be reported under paragraphs B and C delineated into distinct material types to the extent possible. If the report specifies the quantity of reportable recyclable materials as determined using a volume-to-weight conversion formula, the report must include that conversion formula for review and approval by the department. The report may provide an aggregate quantity for multiple locations operated by a recycling establishment as long as the report specifically identifies each location used in determining the aggregate quantity.

The department shall establish reporting guidelines to ensure that reportable recyclable materials to be included in a report under this subsection are not counted more than once.
[PL 2019, c. 291, Pt. B, §5 (NEW).]

2. Data aggregation. The department shall aggregate data contained within the reports submitted under this section for the purpose of determining statewide quantities of reportable recyclable materials recycled.
[PL 2019, c. 291, Pt. B, §5 (NEW).]

3. Confidentiality. Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions of section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.
[PL 2019, c. 291, Pt. B, §5 (NEW).]

SECTION HISTORY

PL 2019, c. 291, Pt. B, §5 (NEW).

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§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).]

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. [PL 2025, c. 383, §1 (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 intended to be sold for consumption. [PL 2025, c. 383, §2 (AMD).]

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. [PL 2025, c. 383, §3 (RPR).]

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 intentional addition to packaging material or the intentional use in the manufacturing, recycling or disposal of packaging material of 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. [PL 2025, c. 383, §4 (AMD).]

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 2025, c. 383, §§1-4 (AMD).]

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; or [PL 2025, c. 383, §5 (AMD).]

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. [PL 2025, c. 383, §5 (AMD).]

D. [PL 2025, c. 383, §5 (RP).]

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. [PL 2025, c. 383, §5 (AMD).]

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;

(d) Consumer education needs in the State with respect to recycling and reducing contamination in collected recyclable material; and

(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

(8) Any additional information required by the department. [PL 2025, c. 383, §§6, 7 (AMD).]

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 2025, c. 383, §§6, 7 (AMD).]

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 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. [PL 2025, c. 383, §8 (AMD).]

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 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 brands of those products for which the department has determined the producer has not complied with all applicable requirements of this section. [PL 2025, c. 383, §9 (AMD).]

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 2025, c. 383, §§8, 9 (AMD).]

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.

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. [PL 2025, c. 383, §10 (NEW).]

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. [PL 2025, c. 383, §11 (NEW).]

[PL 2025, c. 383, §§10, 11 (AMD).]

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.

[PL 2025, c. 383, §12 (AMD).]

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 any packaging material that is generated in the municipality and is readily recyclable; and [PL 2025, c. 383, §13 (AMD).]

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 2025, c. 383, §13 (AMD).]

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 submittor 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). PL 2025, c. 383, §§1-13 (AMD).

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§2324. Reporting use of priority toxic chemicals

Beginning July 1, 2013, a commercial and industrial facility that uses in excess of 1,000 pounds of a priority toxic chemical during any calendar year shall file a report with the department pursuant to this section. The department may establish a different reporting threshold for a particular priority toxic chemical. [PL 2009, c. 579, Pt. A, §3 (NEW).]

1. Calculation of threshold. In making the calculation of the threshold under this section, the facility is not required to include quantities of the priority toxic chemical in a mixture or trade name product at less than 1.0%, unless the chemical is a carcinogen as determined under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009). If the chemical is a carcinogen under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009), the facility is not required to include quantities of the chemical at less than 0.1%.

A. The identity of a priority toxic chemical in a mixture or trade name product must be determined using the specific name of the chemical with a corresponding chemical abstracts service registry number that appears on the material safety data sheet required under 29 Code of Federal Regulations, Part 1910, Section 1200 (2009) referred to in this subsection as "the material safety data sheet." [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. To quantify the amount of a priority toxic chemical, a commercial and industrial facility may rely on the material safety data sheet or other information that is in the possession of the facility, unless the facility knows or it is generally known in the industry based on widely disseminated industry information that the material safety data sheet or other information is inaccurate or incomplete, based on existing reliable test data or other reliable published scientific evidence. A facility is not required to test or perform file searches to identify or quantify the amount of a priority toxic chemical in a mixture or trade name product. A facility is not required to evaluate a chemical unless the facility does not rely on the evaluation performed by the preparer of the material safety data sheet. [PL 2009, c. 579, Pt. A, §3 (NEW).]

[PL 2009, c. 579, Pt. A, §3 (NEW).]

2. Reports. Reports required under this section must be filed annually by July 1st and must include information for the prior calendar year. The department may not require reports under this section less than 18 months after a priority toxic chemical has been identified pursuant to section 2323. The department shall prepare a reporting form that requires submission of the following information:

A. The amount of a priority toxic chemical used by the facility in its manufacture or production process during the reporting period; [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. The increase or decrease in use of a priority toxic chemical by the facility since 2010, unless the facility has set another baseline year subsequent to the year 2005, which baseline year must be specified; [PL 2009, c. 579, Pt. A, §3 (NEW).]

C. Beginning with reporting year 2014, the increase or decrease in use of a priority toxic chemical by the facility since the prior reporting period and an explanation for any increase in use of any priority toxic chemical that exceeds 15%; [PL 2009, c. 579, Pt. A, §3 (NEW).]

D. A written certification signed by a senior official with management responsibility that the owner or operator of the facility has prepared a pollution prevention plan under section 2325 or has implemented an environmental management system and that the plan or environmental management system is available on site for the department's inspection in accordance with section 2325; and [PL 2009, c. 579, Pt. A, §3 (NEW).]

E. A statement that employees have been notified of and involved in the pollution prevention plan or environmental management system under section 2325. [PL 2009, c. 579, Pt. A, §3 (NEW).]

[PL 2009, c. 579, Pt. A, §3 (NEW).]

3. Confidentiality. Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.
[PL 2009, c. 579, Pt. A, §3 (NEW).]

SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

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§3107. Commingling of beverage containers

Notwithstanding any provision of this chapter to the contrary, 2 or more initiators of deposit may enter into a commingling agreement through which some or all of the beverage containers for which the initiators have initiated deposits may be commingled by dealers and operators of redemption centers as provided in this section. No later than October 15, 2024, each initiator of deposit shall enter into a commingling agreement pursuant to subsection 1-A or 1-B. If, by October 15, 2024, an initiator of deposit has not entered into a commingling agreement pursuant to subsection 1-A or 1-B, the initiator commits a violation of this chapter, is subject to penalties under section 3111 and, as long as the violation exists, is prohibited from selling or distributing in the State any beverage container subject to the requirements of this chapter, and a distributor or dealer may not sell or distribute in the State any such containers of the initiator and the department may remove from sale any such containers of the initiator. [PL 2023, c. 482, §19 (AMD).]

An initiator of deposit that enters into a commingling agreement pursuant to this section shall permit any other initiator of deposit to become a party to that agreement on the same terms and conditions as the original agreement. [PL 2023, c. 482, §20 (AMD).]

For the purposes of this chapter and notwithstanding any provision of this chapter to the contrary, the State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, is deemed to be managing returned containers for which the State has initiated deposits in a commingling program pursuant to a qualified commingling agreement as described in subsection 1-A as long as the State allows a dealer or redemption center to commingle returned containers of like material, including, but not limited to, through use of an account-based bulk processing program. [PL 2023, c. 482, §21 (AMD).]

1. Commingling requirement. If initiators of deposit enter into a commingling agreement pursuant to this section, commingling of beverage containers must be by all containers of like deposit value, product group, material and size. Initiators of deposit may not require dealers or redemption centers to further sort containers that belong to the commingling group. This subsection does not prevent further commingling of containers if requested by the responsible commingling group or the cooperative. An initiator of deposit required pursuant to section 3106, subsection 8-A to pick up beverage containers subject to a commingling agreement also shall pick up all other beverage containers subject to the same agreement. A dealer or redemption center that processes beverage containers using a reverse vending machine or account-based bulk processing program is not required to sort material by color, in accordance with subsection 2, paragraphs E to H, deposit value or size but must comply with the requirements of section 3106, subsection 6.
[PL 2025, c. 655, Pt. A, §52 (AMD).]

1-A. Qualified commingling agreements. The department shall determine that a commingling agreement is qualified for the purposes of this chapter if:

A. Fifty percent or more of beverage containers of like product group, material and size for which the deposits are being initiated in the State are included in the commingling agreement; or [PL 2023, c. 482, §23 (AMD).]

B. The initiators of deposit included in the commingling agreement are initiators of deposit for beverage containers containing wine and each initiator of deposit sells no more than 100,000 gallons of wine or 500,000 beverage containers containing wine in a calendar year. [PL 2023, c. 482, §23 (AMD).]

C. [PL 2023, c. 482, §23 (RP).]
[PL 2023, c. 482, §23 (AMD).]

1-B. Special commingling agreements. A designated pick-up agent for initiators of deposit that are not members of a commingling group and that cannot in the aggregate satisfy the requirements for a

qualified commingling agreement under subsection 1-A, paragraph A shall execute and submit a special commingling agreement to the department for approval. Notwithstanding any provision of this section to the contrary, the department may approve a special commingling agreement that, in accordance with applicable requirements of this section, provides for the commingling by dealers and redemption centers of the beverage containers for which those initiators have initiated deposits.

A. Once approved, the designated pick-up agent shall permit any initiator of deposit that is not a member of a commingling group to become a party to the special commingling agreement. [PL 2023, c. 482, §24 (NEW).]

B. The department may approve up to 2 special commingling agreements pursuant to this subsection and shall adopt rules governing approval and administration of special commingling agreements, which must include, but are not limited to, rules regarding the administration of the agreement, data and reporting requirements for initiators that are parties to the agreement, beverage container sorting and auditing requirements, statewide assessment requirements for the pick-up agent to ensure geographical coverage and the process for addressing container count discrepancies and return of containers not covered by the agreement. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 482, §24 (NEW).]

[PL 2023, c. 482, §24 (NEW).]

2. Commingling of like materials. For purposes of this section, containers are considered to be of like materials if made up of one of the following:

A. [PL 2025, c. 241, §6 (RP).]

B. Aluminum; [PL 2015, c. 166, §14 (NEW).]

C. Metal other than aluminum; [PL 2025, c. 241, §6 (AMD).]

D. Glass; [PL 2025, c. 241, §6 (AMD).]

E. Clear, transparent green or transparent light blue polyethylene terephthalate; [PL 2025, c. 241, §6 (NEW).]

F. Other polyethylene terephthalate that is not clear, transparent green or transparent light blue; [PL 2025, c. 241, §6 (NEW).]

G. Clear high-density polyethylene; [PL 2025, c. 241, §6 (NEW).]

H. Colored high-density polyethylene; or [PL 2025, c. 241, §6 (NEW).]

I. Other materials, including refillable beverage containers, that in the department's discretion are necessary to carry out the purposes of this chapter. [PL 2025, c. 241, §6 (NEW).]

[PL 2025, c. 241, §6 (AMD).]

3. Commingling of like products. For purposes of this section, like products are those that are made up of one of the following:

A. Beer, ale or other beverage produced by fermenting malt, wine and wine coolers; [PL 2015, c. 166, §14 (NEW).]

B. Spirits; [PL 2015, c. 166, §14 (NEW).]

C. Soda; [PL 2015, c. 166, §14 (NEW).]

D. Noncarbonated water; and [PL 2015, c. 166, §14 (NEW).]

E. All other beverages. [PL 2015, c. 166, §14 (NEW).]

[PL 2015, c. 166, §14 (NEW).]

3-A. Commingling by 3rd party or stewardship organization.

[PL 2023, c. 482, §25 (RP).]

3-B. Commingling program operated by commingling cooperative. Subject to the requirements of this subsection and notwithstanding any provision of this chapter to the contrary, by October 15, 2024, all commingling groups established pursuant to subsections 1-A and 1-B, including the State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall collectively establish a commingling cooperative to provide for the management of all beverage containers subject to the requirements of this chapter under a single commingling program, referred to in this subsection as "the program."

A. The cooperative must be established as a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3). The cooperative must be governed by a board of not less than 9 and not more than 15 members that represents the range of beverages and beverage container material types subject to the requirements of this chapter and that includes a board member representing each commingling group. The board shall convene an advisory group that includes as members representatives of the range of beverages and beverage container material types subject to the requirements of this chapter as well as representatives of dealers, pick-up agents, recycling facilities, redemption centers that primarily sort containers manually, redemption centers that primarily sort containers using reverse vending machines, entities operating account-based bulk processing programs and environmental advocacy organizations. The board shall invite representatives of the department to participate in and provide input regarding the activities of the advisory group. [PL 2023, c. 482, §26 (NEW).]

B. By January 15, 2025, the cooperative shall submit a plan for the operation of the program to the department for review and approval. The plan must include, but is not limited to:

(1) The method by which the program will facilitate and, no later than October 1, 2026, complete the transition from beverage container sorting at redemption centers by brand to sorting by material type and, for redemption centers that manually sort containers, by size and deposit value within each material type. The program may facilitate the negotiation of agreements with redemption centers to gather brand data through use of reverse vending machines, account-based bulk processing programs or similar technology as long as the cost of such data collection is paid by the program;

(2) Standards to provide for fair apportionment of costs among the commingling groups and initiators of deposit included in the program, which may be based on:

(a) The combined beverage container sales by the initiators of deposit that are members of each commingling group;

(b) The unit or brand counts generated by reverse vending machines or account-based bulk processing programs as long as the reverse vending machines or account-based bulk processing programs are subject to periodic 3rd-party audits on a schedule approved by the department and with the costs of those audits paid by the program; and

(c) The rates of redemption, as determined pursuant to the method set forth in subparagraph (3) and in accordance with the requirements of subparagraph (5);

(3) A method for determining the rate of redemption for beverage containers, which must be verified through a 3rd-party audit paid for by the cooperative, expressed as a percentage of the beverage containers redeemed that are available for redemption; the rate of redemption by beverage type and by beverage container material type; and, to the maximum extent practicable, regional redemption rates in the State. The method for determining the redemption rate may not include in its calculation any unredeemed beverage containers collected or processed by municipal or other recycling programs. The program must ensure that a single

redemption rate, determined by the method specified in the plan, is used by all commingling groups and initiators of deposit to determine cost apportionment pursuant to subparagraph (2);

(4) A budget for the program that includes, but is not limited to, identification of any start-up costs for the program that will not be ongoing, including, but not limited to, the costs of the study described in paragraph F, and a description of the method by which the cooperative will determine and collect payments from commingling groups to cover the program's start-up costs;

(5) The method by which the cooperative will collect deposits from initiators of deposit for nonrefillable beverage containers and handling fees for redeemed containers, whether directly from the initiator of deposit or through the commingling group of which the initiator of deposit is a member. The program must ensure that an initiator of deposit is not required to pay any handling fees for its beverage containers that exceeds the applicable redemption rate for those containers as calculated pursuant to subparagraph (3);

(6) A description of how the cooperative intends to segregate, maintain, calculate and expend unclaimed beverage container deposits in accordance with section 3108-A;

(7) A description of how the cooperative will provide a consistent beverage container pick-up schedule for each redemption center in accordance with the pick-up requirements of section 3106, subsection 8-A and the rules adopted pursuant to that subsection. The program must ensure that pick-up schedules are designed to reduce transportation distances and minimize costs but must allow each commingling group to provide for beverage container pickup of the commingling group's equivalent container material;

(8) Information on how the cooperative will be responsible for and ensure payment to a dealer or redemption center within 10 calendar days of any beverage container pickup of all applicable deposits and handling fees for the beverage containers picked up from the dealer or redemption center, except as otherwise provided under a written agreement entered into by the cooperative or a member commingling group and the dealer or redemption center, and the applicable costs of plastic bags provided to the dealer or redemption center in accordance with section 3106, subsection 9;

(9) Information on how the cooperative will ensure that each commingling group and each initiator of deposit that is a member of the commingling group maintains ownership over the commingling group's and initiator of deposit's share of the beverage containers redeemed, collected and processed for recycling under the program;

(10) Information on how the cooperative will calculate the base rates offered for the processing of beverage containers using an account-based bulk processing program or pick-up agents;

(11) A certification that the cooperative will not share, except with the department as necessary, information provided by a commingling group or initiator of deposit that is proprietary information and that is identified by the commingling group or initiator of deposit as proprietary information. The certification must include a description of the methods by which the cooperative intends to ensure the confidentiality of that information;

(12) Information on how the cooperative will maintain a publicly accessible website regarding the program that includes, at a minimum, the following:

(a) A searchable list of all initiators of deposit and beverage container label registrations, including for beverages sold directly to consumers in the State, in a manner that allows redemption centers, dealers and consumers to obtain up-to-date information regarding whether a particular beverage is authorized for sale and redemption in the State;

(b) A search function through which consumers can identify nearby dealers or redemption centers offering redemption services based on information made available to the cooperative by the department; and

(c) The base rates for the processing of beverage containers by container type as determined in accordance with subparagraph (10);

(13) A proposed timeline for implementation of the program plan, if approved, designed to ensure implementation of the plan on or before January 15, 2026 and a description of how the cooperative will notify commingling groups, initiators of deposit, dealers, distributors, pick-up agents and other affected entities regarding program implementation, which must include, but is not limited to, posting of information relating to program implementation on the website described in subparagraph (12);

(14) A description of how the cooperative will support the development of infrastructure throughout the State for the collection and sanitization of refillable beverage containers and for the return of those refillable beverage containers to initiators of deposit of refillable beverage containers for refilling and sale. That infrastructure development may involve redemption centers, centralized washing and sanitization facilities and other methods;

(15) Information regarding the advisory group formed by the board in accordance with paragraph A, including, but not limited to, its membership and the length of the terms of its members, a proposed meeting schedule and a description of the role and responsibilities of the advisory group, which may include, but are not limited to, advising the board regarding the development of the plan submitted under this paragraph;

(16) A description of how the cooperative will operate the program in a manner designed to achieve an overall statewide redemption rate for all beverage containers subject to the requirements of this chapter, as determined in accordance with subparagraph (3), of 75% by January 1, 2027; of 80% by January 1, 2032; and of 85% by January 1, 2037; and

(17) Any other information required by the department. [PL 2025, c. 241, §§7, 8 (AMD).]

C. Within 120 days of receipt of a plan submitted by the cooperative under paragraph B, the department shall review the plan and approve the plan, approve the plan with conditions or reject the plan. Prior to determining whether to approve or reject a plan, the department shall hold a public meeting on the plan. The department shall notify the cooperative in writing of its determination and, if the plan is approved with conditions or rejected, shall include in the notification a description of the basis for the conditions or rejection.

(1) If the cooperative's plan is rejected, it may submit a revised plan to the department within 60 days of receiving the notice of rejection. The department may approve the revised plan as submitted or approve the revised plan subject to the implementation of specific changes required by the department.

(2) If the cooperative's plan is approved in accordance with this paragraph, the cooperative shall implement the plan on or before January 15, 2026 in accordance with the timeline for implementation described in paragraph B, subparagraph (13), subject to any changes or conditions imposed by the department. If the cooperative fails to implement an approved plan on or before January 15, 2026, the initiators of deposit that are members of each of the commingling groups included in the cooperative are deemed to be in violation of this chapter and are subject to penalties pursuant to section 3111. [PL 2025, c. 241, §9 (AMD); PL 2025, c. 241, §21 (AFF).]

D. If the department determines that the program implemented by the cooperative pursuant to a plan approved under paragraph C has failed to make adequate progress toward fulfilling the requirements of the plan, excluding the redemption rate goals described in paragraph B,

subparagraph (16), the department shall notify the cooperative in writing of its determination and may direct the cooperative to implement specific changes to the program within 30 days of the date of the notification. [PL 2023, c. 482, §26 (NEW).]

E. On or before April 1, 2026, and annually thereafter, the cooperative shall submit to the department and make available on its publicly accessible website a report that includes, but is not limited to:

(1) Contact information for the cooperative and a list of all initiators of deposit and beverage container label registrations, including for beverages sold directly to consumers in the State;

(2) Information on the rates of redemption for beverage containers calculated in accordance with plan requirements under paragraph B, subparagraph (3). The report must include information regarding the total number of beverage containers subject to the requirements of this chapter sold or distributed in the State during the previous calendar year by the members of each commingling group, aggregated within each commingling group to provide only a total, aggregated number for each commingling group. If the calculated overall statewide redemption rate for beverage containers is less than the applicable redemption rate goal described in paragraph B, subparagraph (16), the report must include recommendations for changes to the operation of the program that are designed to achieve the required rate, which may include, but are not limited to, recommended increases in the deposit and refund value for beverage containers;

(3) Detailed information on the calculation and expenditure of unclaimed deposit funds in the previous calendar year in accordance with section 3108-A;

(4) A description of the education and outreach efforts implemented under the program in the previous calendar year to encourage participation in the beverage container redemption program, reduce instances of fraud in redemption and educate businesses and consumers on the value and safety of refillable beverage containers. The report must include the results of an assessment, completed by an independent 3rd party, of the effectiveness of the efforts;

(5) Any recommendations for changes to the program to improve the convenience of the collection system under the program, consumer education or program evaluation and any goals for supporting the use of refillable and reusable containers;

(6) A financial report on the program, as determined through a 3rd-party financial audit, that identifies the total cost of implementing the program and the specific administration, collection, transportation, disposition and communication costs for the program, including all costs associated with payment of handling fees, and an anticipated budget for the subsequent program year; and

(7) Any other information required by the department.

For the report due April 1, 2026 only, the department may modify or waive any of the reporting requirements set forth in this paragraph upon a finding that the information required cannot feasibly be determined or provided by the cooperative due to a partial-year operation of the program. [PL 2023, c. 482, §26 (NEW).]

F. Within 90 days of receiving approval of a program plan from the department under paragraph C, the cooperative, in consultation with the department, shall contract with an independent 3rd party to conduct a study: examining operating costs for redemption centers of a variety of sizes, in a variety of geographical locations and using a variety of redemption technologies; analyzing the effects that eliminating brand sorting of beverage containers may have on transportation costs and redemption center operating costs, including, but not limited to, labor and utilities costs; recommending a handling fee schedule and payment schedule designed to facilitate a stable and sustainable redemption system; and recommending other recycling-related services that may be provided at

redemption centers to support statewide recycling efforts and diversify the redemption center business model.

(1) In consultation with the department, the cooperative shall ensure that the study contract specifies the scope of the study and provides for publication of an interim progress report or reports and a final report. All costs associated with the study must be paid by the cooperative.

(2) The cooperative shall provide any interim progress reports and the final report under subparagraph (1) to the department and, after receipt of the final report, the department shall provide a copy of the final report, along with any additional comments or recommendations of the department, to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters. The final report and any additional comments or recommendations of the department may be included in the report required pursuant to section 3115, subsection 3. After reviewing the final report and the department's additional comments or recommendations, if any, the committee may report out legislation relating to the final report or to the department's comments or recommendations. [PL 2023, c. 482, §26 (NEW).]

F-1. After consultation with the department and interested persons, the cooperative shall contract with a 3rd-party entity to complete a study by July 15, 2026 to determine the feasibility of achieving goals of 5% refillable and reusable beverage containers sold in the State by 2030, by 2040 and by 2050 and 10% refillable and reusable beverage containers sold in the State by 2030, by 2040 and by 2050 and to determine the infrastructure and investments that would be necessary to support those goals and shall provide the results of the study, along with any related recommendations, to the department. After reviewing the results of the study and any recommendations of the cooperative, the department shall include the results of the study, along with any additional comments or recommendations from the department, in the report required by section 3115, subsection 3 that is due by February 15, 2027. [PL 2023, c. 529, §1 (NEW).]

G. The cooperative shall pay to the department a reasonable annual fee established by the department, not to exceed $600,000, as provided in this paragraph.

(1) On or before October 31, 2025, the cooperative shall pay to the department the annual fee under this paragraph to cover the department's costs for review of the program plan submitted by the cooperative pursuant to paragraph B and the department's costs prior to program plan implementation in its oversight of the development and implementation of the commingling program under this subsection. The department may require the cooperative to pay a portion of the fee required under this subparagraph at the time the cooperative submits a program plan for review and approval pursuant to paragraph B to cover the department's cost for review of the program plan.

(2) On or before April 1, 2026, and annually thereafter, the cooperative shall pay to the department the annual fee under this paragraph to cover the department's costs for review of the cooperative's annual report under paragraph E and the department's costs in the previous calendar year for its oversight, administration and enforcement of the commingling program implemented under this subsection. The cooperative shall pay the fee required pursuant to this subparagraph at the time it submits the annual report required pursuant to paragraph E. [PL 2025, c. 241, §10 (AMD).]

H. Reports submitted to the department under this subsection must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this subsection 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 2023, c. 482, §26 (NEW).]

I. An initiator of deposit that is not in compliance with all applicable requirements of a department-approved program plan implemented pursuant to this subsection:

(1) Commits a violation of this chapter and is subject to penalties pursuant to section 3111; and

(2) Is prohibited from selling or distributing in the State any beverage container subject to the requirements of this chapter as long as the violation exists. A distributor or dealer may not sell or distribute in the State any such containers of the initiator of deposit, and the department may remove from sale any such containers of the initiator of deposit. [PL 2025, c. 241, §11 (AMD).]

The department may adopt rules as necessary for the implementation of this subsection and the oversight of the cooperative and the single commingling program implemented pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2025, c. 241, §§7-11 (AMD); PL 2025, c. 241, §21 (AFF).]

4. Registration of commingling agreements. Not later than 48 hours following the execution or amendment of a commingling agreement, including an amendment that adds an additional party to an existing agreement, the parties shall file a copy of the commingling agreement or amendment with the department.
[PL 2015, c. 166, §14 (NEW).]

5. Reapproval of qualified commingling agreements. This subsection provides for the reapproval of qualified commingling agreements that have been approved or reapproved by the department pursuant to this section.

A. The initiators of deposit participating in a qualified commingling agreement under this section that was approved as a qualified commingling agreement prior to November 9, 2016 shall, no later than July 1, 2021, submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department. [PL 2019, c. 526, §8 (NEW).]

B. The initiators of deposit participating in a qualified commingling agreement under this section that was approved or reapproved on or after November 9, 2016 must submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department at least 6 months prior to the date of expiration of the department's prior approval or reapproval. [PL 2019, c. 526, §8 (NEW).]

C. After review of an application submitted under this subsection, the department may reapprove the commingling agreement for an additional period not to exceed 10 years. [PL 2019, c. 526, §8 (NEW).]
[PL 2019, c. 526, §8 (NEW).]

SECTION HISTORY

PL 2015, c. 166, §14 (NEW). PL 2019, c. 526, §8 (AMD). PL 2023, c. 482, §§19-26 (AMD). PL 2023, c. 529, §1 (AMD). PL 2023, c. 646, Pt. A, §48 (AMD). PL 2025, c. 241, §§5-11 (AMD). PL 2025, c. 241, §21 (AFF). PL 2025, c. 655, Pt. A, §52 (AMD).

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§3119. Reporting requirements

This section establishes annual reporting requirements for initiators of deposit and for pick-up agents that are not initiators of deposit. [PL 2019, c. 526, §14 (NEW).]

1. Initiator of deposit annual report. Each initiator of deposit shall report annually by March 1st to the department concerning its deposit transactions in the preceding calendar year. The report must be in a form prescribed by the department and must include the number of nonrefillable beverage containers sold by the initiator of deposit in the State by container size, by beverage type and by redemption value, delineated at a minimum into wine, spirits and all other beverage types, and must include the number of nonrefillable beverage containers returned to the initiator of deposit by beverage type and by redemption value.

An initiator of deposit that fails to report annually to the department in accordance with the requirements of this subsection commits a violation of this chapter, is subject to penalties under section 3111 and, as long as the violation exists, is prohibited from selling or distributing in the State any beverage container subject to the requirements of this chapter. A distributor or dealer may not sell or distribute in the State any such containers of the initiator, and the department may remove from sale any such containers of the initiator.
[PL 2025, c. 731, §1 (AMD).]

2. Pick-up agent annual report. Each pick-up agent that is not an initiator of deposit shall report annually by March 1st to the department concerning the redemptions for each initiator of deposit it served in the preceding calendar year. The report must be in a form prescribed by the department and must include the number of nonrefillable containers returned by the pick-up agent to each initiator of deposit it served by redemption value, except that the pick-up agent may report by average weight and total weight of beverage containers returned by material type for containers managed pursuant to a qualified commingling agreement under section 3107.

[PL 2025, c. 241, §19 (AMD).]

3. Proprietary information. Proprietary information submitted to the department in a report required under this section that is identified by the submittor 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 2025, c. 241, §20 (AMD).]

SECTION HISTORY

PL 2019, c. 526, §14 (NEW). PL 2023, c. 482, §40 (AMD). PL 2025, c. 241, §§18-20 (AMD). PL 2025, c. 731, §1 (AMD).

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§153. Board actions

In addition to other actions required of or permitted the board under this Act, the board shall perform the actions required by this section to ensure just and efficient administration of claims. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Monitor payments. The board shall monitor cases to ensure that:

A. Payments are initiated within the time limits established in section 205; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Payments to the employee provide the full amount of compensation to which the employee is entitled and are properly indicated on the memorandum of payment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Troubleshooter program. The board shall establish a troubleshooter program to provide information and assistance to participants in the workers' compensation system. The troubleshooter may meet or otherwise communicate with employees, employers, insurance carriers and health care providers in order to prevent or informally resolve disputes.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Construction. In interpreting this Act, the board shall construe it so as to ensure the efficient delivery of compensation to injured employees at a reasonable cost to employers. All workers' compensation cases must be decided on their merits and the rule of liberal construction does not apply. Accordingly, this Act is not to be given a construction in favor of the employee, nor are the rights and interests of the employer to be favored over those of the employee.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Information. The board shall require the employee, employer or insurer to provide it with any information it reasonably determines necessary to monitor cases, including, but not limited to, preinjury and postinjury wage statements.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Abuse investigation unit. The board shall provide adequate funding for an abuse investigation unit.

A. The board shall, subject to the Civil Service Law, appoint at least 2 abuse investigators who must be qualified by experience and training to perform their duties. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The unit shall, at the direction of the board, investigate all complaints or allegations of fraud, illegal or improper conduct or violation of this Act or rules of the board relating to workers' compensation insurance, benefits or programs, including those acts by employers, employees or insurers. All records, correspondence and reports of investigation in connection with actual or alleged fraud, illegal or improper conduct or violation of this Act or rules of the board and all records, correspondence and reports of criminal prosecution or civil action are confidential. The confidential nature of any such record, correspondence or report does not limit or affect the use of those materials in any prosecution or action or prevent the board, upon request, from providing information to another state agency for use by the agency in enforcing laws and rules. [PL 2009, c. 520, §1 (AMD).]

C. Each employer or employee and each state, county, municipal or quasi-governmental agency shall cooperate fully with the unit and provide any information requested by it. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. The unit shall report all its findings to the board. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Whenever the board determines that a fraud, attempted fraud or violation of this Act or rules of the board may have occurred, the board shall report in writing all information concerning it to the Attorney General or the Attorney General's delegate for appropriate action, including a civil action for recovery of funds and criminal prosecution by the Attorney General. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2009, c. 520, §1 (AMD).]

6. Mediation. The board shall establish a mediation program to provide mediation services to parties to workers' compensation cases.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Investigation. The board may, when the interests of any of the parties or when the administration of this Act demands, appoint a person to make a full investigation of the circumstances surrounding any industrial injury or any matter connected to an industrial injury, or conduct an audit pursuant to section 359 and report the same without delay to the board.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Impairment guidelines. The following provisions apply regarding impairment guidelines.

A. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the board shall establish by rule a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule must be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for that purpose, such as the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Pending the adoption of a permanent schedule, "Guides to the Evaluation of Permanent Impairment," 3rd edition, copyright 1990, by the American Medical Association, is the temporary schedule and must be used for the purposes of this subsection. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall collect and analyze data from Maine cases, studies from other states and generally accepted medical guidelines for occupational impairment to examine the feasibility and desirability of establishing an objectively ascertainable functional capacity standard to be used for determining eligibility for benefits under this Act consistent with section 213, subsection 2. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Audit and enforcement. The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators; determining whether insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. When auditing the Maine Insurance Guaranty Association, the program shall consider when the Maine Insurance Guaranty Association obtained the records of an insolvent insurer. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. Audit working papers are confidential and may not be disclosed to any person outside of the board except the audited entity. For purposes of this subsection "audit working papers" means all documentary and other information acquired, prepared or maintained by the board during the conduct of an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report. The final audit report, including the underlying reconciled information, is not confidential. At the end of each calendar quarter, the

executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

Within 180 days of notice of insolvency to the board or its designee and the Maine Insurance Guaranty Association, the executive director of the board or the executive director's designee shall meet with the Maine Insurance Guaranty Association, pursuant to rules established by the board, to review the insolvency.

[PL 2015, c. 297, §4 (AMD).]

10. Annual report to Legislature.

[PL 2023, c. 205, §2 (RP).]

11. Reports on use of rebuttable presumption.

[PL 2021, c. 629, §1 (NEW); MRSA T. 39-A §153, sub-§11 (RP).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1997, c. 486, §3 (AMD). PL 1999, c. 354, §2 (AMD). PL 2005, c. 603, §3 (AMD). PL 2009, c. 520, §1 (AMD). PL 2011, c. 647, §1 (AMD). PL 2015, c. 297, §4 (AMD). PL 2021, c. 629, §1 (AMD). PL 2023, c. 205, §2 (AMD).

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ENTITY: Workers' Compensation Board
CONTACT PERSON: Richard Hewes
RETURN BY: October 16, 2026

STATUTE: 39-A MRSA §153 subsections (5)

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Pursuant to the mandate of 39-A MRSA §153 (5), the Maine Workers' Compensation Board's Abuse Investigation Unit was created to investigate complaints and allegations of fraud, illegal or improper conduct or violations of the Workers' Compensation Act and administrative rules that pertain to workers' compensation insurance, benefits and programs. All records, correspondence and reports of investigation and all records, correspondence and reports of criminal prosecution or civil action are confidential.

Complaints about misconduct that prompt investigations are unpredictable and investigations are not scheduled.

When investigations occur, the confidentiality provision is applied to establish confidentiality.

The exception is rarely cited in denying a request for production.

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

The Workers' Compensation Board supports the continuation of this exception.

Records of investigation might serve to identify innocent people who provide information about misconduct. Further, the records might incorrectly contain allegations of criminal or other misconduct about people who did nothing wrong. The records might also be used to identify injured workers.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred in the application of this exception.

It is clear that these records are confidential under Maine's Freedom of Access Act.

The language of the exception clearly describes the records that are covered.

4. Does your agency recommend changes to this exception?

The Workers' Compensation Board does not recommend changes to this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Relevant stakeholders include workers' compensation insurers, self-insured employers, third party administrators, members of the Maine Bar who represent workers' compensation litigants.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review

ENTITY: Workers' Compensation Board
CONTACT PERSON: Richard Hewes
RETURN BY: October 16, 2026

STATUTE: 39-A MRSA §153 subsections (9)

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Pursuant to the mandate of 39-A MRSA §153 (9), the Maine Workers' Compensation Board's Audit Division was created to conduct audits of insurers, self-insured employers, and third-party administrators. The purpose of audits is to evaluate the way in which insurers adjust workers' compensation claims and the quality of that work. When conducting these audits, Board employees conduct related investigations as needed and routinely access insurers' computer systems to review insurers' information about claims handling. Auditors generate audit working papers (i. e. "documentary and other information acquired, prepared or maintained by the board during the conduct of an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report") are the subject of the confidentiality exception in §153 (9).

The audits are conducted all year long.

Audit working papers are accumulated throughout the year.

The exception is rarely cited in denying a request for production.

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

The Workers' Compensation Board supports the continuation of this exception.

Audit working papers contain internal working papers of insurance companies, impressions of auditors, and information that can be used to identify injured workers. Information that identifies injured workers is confidential under §152(2). Further, social security numbers, tax identification numbers and proprietary information might also be improperly disclosed without the confidentiality provision.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred in the application of this exception.

It is clear that these records are confidential under Maine's Freedom of Access Act.

The language of the exception clearly describes the records that are covered.

4. Does your agency recommend changes to this exception?

The Workers' Compensation Board does not recommend changes to this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Relevant stakeholders include workers' compensation insurers, self-insured employers, third party administrators.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

§355-B. Supplemental Benefits Oversight Committee

The Supplemental Benefits Oversight Committee, referred to in this section and sections 355-C and 356 as the "committee," is created and charged with the duty to monitor, facilitate and provide general oversight in the administration of reimbursement of workers' compensation benefit obligations of the fund pursuant to section 213, subsections 3 and 4. [PL 2001, c. 448, §5 (NEW).]

1. Members. The committee consists of 5 members, appointed by the Governor as follows:

A. Two members must represent employers. One must be appointed from the list provided by the Maine State Chamber of Commerce or its successor organization. One must be an approved self-insured employer, appointed from the list provided by the Maine Council of Self-insurers or its successor organization; [PL 2001, c. 448, §5 (NEW).]

B. One member must represent insurers and must be appointed from the list provided by the Superintendent of Insurance; [PL 2001, c. 448, §5 (NEW).]

C. One member must represent labor interests and must be appointed from the list provided by the Maine AFL-CIO or its successor organization; and [PL 2001, c. 448, §5 (NEW).]

D. One member must be an at-large member who possesses skills and experience suited to the functions of the committee. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

2. Terms. Except for members of the initial committee, members are appointed for terms of 3 years. Committee members may serve multiple terms. Of the initial committee member appointments, one member must be appointed for a term of one year, 2 must be appointed for terms of 2 years and 2 must be appointed for terms of 3 years, at the discretion of the Governor. The committee is not authorized to begin transacting business until the Governor has made all 5 initial committee appointments.

A. The Governor may remove a member for cause. [PL 2001, c. 448, §5 (NEW).]

B. If a vacancy occurs on the committee after initial appointments are made, the committee may select an alternate member representing the same entity represented by the vacant position to serve until the Governor makes a new appointment. The Governor shall make appointments to fill vacancies in the same manner in which the member whose leaving caused the vacancy was appointed. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

3. Alternate members. The Governor shall appoint 3 alternate members for each member appointed under subsection 1. An alternate for a member appointed under subsection 1, paragraphs A to C must be named from the alternate member list provided by the same entity that provided the list for appointment of the member. An alternate member may serve on the committee in the event of a vacancy pursuant to subsection 2, paragraph B or when a member has a conflict of interest pursuant to subsection 5. An alternate member is entitled to the same compensation and protections from liability as a member when serving on the committee.

[PL 2001, c. 448, §5 (NEW).]

4. Voting; quorum. A quorum consists of 4 members of the committee. Each member has one vote that must be exercised. A decision may not be made by the committee without at least 3 affirmative votes. A member who does not vote is considered to have voted in the negative.

[PL 2001, c. 448, §5 (NEW).]

5. Conflict of interest. A member may not participate in any matter in which that member has an actual or potential conflict of interest. A member may not participate in deliberations on such a matter and may not vote on that matter. A conflict of interest exists if the member, the person that employs that member or the person that the member represents is financially interested in the matter. If a member is

unable to participate in a matter pursuant to this subsection, the committee shall select an alternate member representing the same interest from the alternate members appointed pursuant to subsection 3. The alternate member serves under this subsection for the limited purpose of deciding the financial responsibility, if any, of the fund to an insurer or self-insurer regarding a reimbursement request concerning which a member of the committee is precluded from participating pursuant to this subsection.
[PL 2001, c. 448, §5 (NEW).]

6. Compensation. A member of the committee receives a per diem of $100 per day and reimbursement of actual and necessary expenses while attending to the business of the fund. Per diem and expenses are paid from the fund.
[PL 2001, c. 448, §5 (NEW).]

7. Liability. A member of the committee is not liable in a civil action for any act performed in good faith in the execution of duties as a member of the committee. The fund must indemnify a member against judgments, fines, amounts paid in settlement, reasonable costs and expenses, including attorney's fees, and any other liabilities that may be incurred as a result of legal actions or threatened legal actions, except in relation to matters in which the member is adjudged to be liable by reason of willful misconduct in the performance of duties or obligations to the committee.
[PL 2001, c. 448, §5 (NEW).]

8. Legal representation. The committee, directly or through a service agent, may seek the advice and counsel of the Attorney General or retain private counsel through service contracts. The Attorney General may not prosecute an assessment against the State or defend the fund against any claims brought by the State. Reasonable costs of legal representation by the Attorney General or attorneys contractually retained by the committee or its service agent are chargeable to the fund.
[PL 2001, c. 448, §5 (NEW).]

9. Board proceedings. Neither the fund nor the committee has standing or authority to participate directly or indirectly in any proceeding before the board regarding the level or duration of benefits payable to an employee.
[PL 2001, c. 448, §5 (NEW).]

10. Fund management; fiduciary duty. Each member of the committee is held to account as a fiduciary in the administration of the fund's assets. Management and investment of the assets of the account by the committee or a service agent must conform to prudent investor standards. The committee shall maintain complete and accurate records of investments, money and other assets comprising the corpus of the fund. The committee shall provide to the board on the first business day of January, April, July and October each year an accounting respecting the fund's assets and transactions relating to activities of the committee. The board shall promptly notify the joint standing committee of the Legislature having jurisdiction over labor matters of any concerns raised by those reports.
[PL 2001, c. 448, §5 (NEW).]

11. Records and proceedings of committee. For the purposes of Title 1, chapter 13, subchapter I:

A. Records in the possession of the committee that relate to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under section 213, subsection 3 or 4 or claims settlement activities are not public records; and [PL 2001, c. 448, §5 (NEW).]

B. Proceedings of the committee relating to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under section 213, subsection 3 or 4 or claims settlement activities are not public proceedings. [PL 2001, c. 448, §5 (NEW).]
[PL 2001, c. 448, §5 (NEW).]

12. Rulemaking. The committee may adopt procedural rules in accordance with Title 5, chapter 375 as necessary to facilitate timely and proper administration of the affairs of the fund. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.
[PL 2001, c. 448, §5 (NEW).]

SECTION HISTORY

PL 2001, c. 448, §5 (NEW).

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§403. Insurance by assenting employer; requirements as to self-insurers

An employer subject to this Act shall secure compensation and other benefits to the employer's employees in one or more of the ways described in this section. The failure of any employer subject to this Act to procure insurance coverage for the payment of compensation and other benefits to the employer's employees in one of the ways described in this section constitutes failure to secure payment of compensation provided for by this Act within the meaning of section 324, subsection 3 and subjects the employer to the penalties prescribed by that section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Insuring under workers' compensation insurance policy. The employer may comply with this section by insuring and keeping insured the payment of such compensation and other benefits under a workers' compensation insurance policy. The insurance company shall file with the board notice, in the form required by the board, of the issuance of any workers' compensation policy to an employer. The insurance may not be cancelled within the time limited in such policy for its expiration until at least 30 days after the insurance company mails to the board and to the employer a notice of the cancellation of the insurance. In the event that the employer has obtained a workers' compensation policy from another insurance company, or has otherwise secured compensation as provided in this section, and such insurance or other security becomes effective prior to the expiration of the 30-day notice period, cancellation takes effect on the effective date of the other insurance or on receipt of security.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Pilot projects.
[PL 2001, c. 48, §1 (AMD); PL 2001, c. 48, §2 (AFF); MRSA T. 39-A §403, sub-§2, ¶ D (RP).]

3. Proof of solvency and financial ability to pay; trust. The employer may comply with this section by furnishing satisfactory proof to the Superintendent of Insurance of solvency and financial ability to pay the compensation and benefits, and depositing cash, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond with the superintendent, in such sum as the superintendent may determine pursuant to subsection 8, the Treasurer of State to be listed as beneficiary of the bond or the irrevocable standby letter of credit and the bond or the irrevocable standby letter of credit to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash or securities being deposited, or drawn on a surety bond or letter of credit, the cash or securities must be placed in an account at interest by the Treasurer of State, and the accumulation of interest on the cash or securities so deposited must be credited to the account and may not be paid to the employer to the extent that the interest is required to secure the employer's self-insurance obligations, including the amount needed to support any present value discounting in the determination of the amount of the deposit. Any security deposit must be held by the Treasurer of State in trust for the benefit of the self-insurer's employees for the purposes of making payments under this Act. If the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay obligations under this Act, the security amount may be in excess of the minimum amount required by this Title.

Except as provided in subsection 5, paragraph A-1, a self-insurer may, with the approval of the Superintendent of Insurance, use the following types of security to satisfy the self-insurer's responsibility to post security required by the superintendent: a surety bond; an irrevocable standby letter of credit; cash deposits and acceptable securities; and an actuarially determined fully funded trust. For purposes of this section, "tangible net worth" means equity less assets that have no physical existence and depend on expected future benefits for their ascribed value.

A. A self-insurer providing an irrevocable standby letter of credit as security shall file with the Superintendent of Insurance a letter of credit, on a form approved by the superintendent, copies of any agreements or other documents establishing the terms and conditions of the employer's or

group's reimbursement obligations to the financial institution issuing the letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the employer's or group's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the employer or group, the superintendent or the Treasurer of State. The form of letter of credit approved by the superintendent must include, but is not limited to, all terms specifically required by this subsection and all terms reasonably required to secure the payment of compensation and benefits to claimants as required under this Act.

In order to issue an irrevocable standby letter of credit as security under this paragraph, a financial institution or its parent company must either:

(1) Maintain a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation;

(2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or

(3) Be certified in writing by the Superintendent of Financial Institutions to be well capitalized and well managed in accordance with the criteria set forth in Title 9-B, section 446-A, subsections 1 and 2. The Superintendent of Insurance shall keep the certification confidential, except from the subject financial institution, in accordance with Title 9-B, section 226.

The Superintendent of Insurance may adopt rules to establish additional qualifications for financial institutions issuing irrevocable standby letters of credit. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer or group and may not in any way be contingent on reimbursement by the employer or group. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer or group shall obtain a new irrevocable standby letter of credit from a qualified financial institution or shall provide other eligible security of equal value approved by the Superintendent of Insurance. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, at least 90 days prior to any expiration date, the issuing financial institution notifies the Superintendent of Insurance that the financial institution elects not to renew the irrevocable standby letter of credit.

An irrevocable standby letter of credit that has been issued by a qualified financial institution and accepted by the Superintendent of Insurance binds the issuing financial institution to pay one or more drafts drawn by the Treasurer of State, as directed by the superintendent, as long as the draft does not exceed the total amount of the irrevocable standby letter of credit. [PL 2025, c. 53, §§2-6 (AMD).]

A-1. The Superintendent of Insurance may instruct the Treasurer of State to draw on an irrevocable standby letter of credit if:

(1) Any obligation under this chapter has not been paid by the employer or group when due;

(2) A proceeding in bankruptcy has been initiated by or with respect to the employer or group in a court of competent jurisdiction; or

(3) The following conditions have been met:

(a) The superintendent has received notice that that the financial institution elects not to renew the irrevocable standby letter of credit;

(b) The self-insurer has had at least 15 days' notice to replace the security with other eligible security of equal value approved by the superintendent; and

(c) The self-insurer has not replaced the irrevocable standby letter of credit with a new letter of credit or other approved security.

The issuing financial institution shall promptly honor a draft on an irrevocable standby letter presented by the Treasurer of State. Any proceeds from a draw on such an irrevocable standby letter of credit by the treasurer must be held by the treasurer on behalf of workers' compensation claimants to secure payment of claims until either the superintendent authorizes the treasurer to release those proceeds to the employer or group upon provision by the employer or group of replacement security adequate to meet the requirements for security set by the superintendent, or the superintendent directs distribution of the proceeds in accordance with this Title.

To the extent not inconsistent with state law, the letter of credit is subject to and governed by the International Standby Practices 1998 or successor practices governing standby letters of credit duly adopted by the International Chamber of Commerce. If any legal proceedings are initiated with respect to payment of the letter of credit, those proceedings are subject to the State's courts and law. [PL 2025, c. 53, §7 (NEW).]

B. The Superintendent of Insurance shall prescribe the form of the surety bond that may be used to satisfy, in whole or in part, the self-insurer's responsibility under this section to post security. The bond must be continuous, be subject to nonrenewal only upon not less than 60 days' notice to the superintendent, cover payment of all present and future liabilities incurred under this Act while the bond is in force and cover payments that become due while the bond is in force that are attributable to injuries incurred in prior periods and otherwise unsecured by cash, irrevocable standby letters of credit or acceptable securities. A bond must be held until all payments secured by the bond have been made or until the bond has been replaced by other eligible security approved by the superintendent that covers all outstanding liabilities. Payments under the bond are due within 30 days after notice has been given to the surety by the board that the principal has failed to make a payment required under the terms of an award, agreement or governing law. A trust established to satisfy the requirements of this section may not be funded by a surety bond. [PL 2007, c. 75, §1 (AMD).]

C. A self-insurer may establish an actuarially determined fully funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, as long as the Superintendent of Insurance requires that the value of unencumbered trust assets be at least equal to the present value of ultimate expected incurred claims and claims settlement costs, plus required safety margins and, if determined necessary by the superintendent, administrative costs for the operation of the plan of self-insurance. For the purpose of determining whether a group self-insurer's trust is fully funded as required by this subsection, the superintendent shall consider, based upon the group's audit for all completed plan years, only the following assets held outside the trust account: cash up to $10,000; accounts receivable, limited to amounts collected and deposited in the trust account by the date of the surplus distribution; accrued interest on trust account assets that will be collected and deposited in the trust account within 6 months from the date of the surplus determination; tangible assets that will be converted to cash and deposited in the trust account prior to the distribution date of any surplus; and a letter of credit to be used to partially fund the trust to the extent allowed under this section and rules adopted by the superintendent, as supported in the actuarial review. The superintendent shall consider cash held outside the trust account in excess of $10,000 if the self-insurer provides, to the superintendent's satisfaction, documentation regarding why the money is being held outside the trust account. An actuarially determined fully funded trust must be funded as follows, as determined by the superintendent.

(1) For individual and group self-insurers, the amount of security must be determined based upon an actuarial review. The actuarial review must take into consideration the use by a group self-insurer of any irrevocable standby letter of credit. Except as provided in subparagraph (3), initial funding for each plan year must be maintained at the 90% or higher confidence level. Funding after the completion of the initial plan year may be established no lower than the 75% confidence level if the following has occurred:

(a) A year considered for reduction is completed;

(b) The supporting actuarial review includes an evaluation of the completed year experience with claims evaluated not less than 6 months from the end of the plan year, or in the case of a group self-insurer in existence for at least 36 months, not less than 4 months from the end of the plan year; and

(c) For individual self-insurers, prior approval from the superintendent is obtained.

For the purposes of determining the confidence level, all completed years at the same confidence level may be aggregated. For individual self-insurers, funds may not be released from the trust or transferred between years except as approved by the superintendent. The governing body of a group self-insurer may at any time declare a surplus of funds above the required confidence level, but may only release funds after the completion of any plan year. The superintendent may request information regarding any such declaration. Any distribution of surplus must be based upon an actuarial review of all outstanding obligations for all completed plan years, an audited financial statement of the group for all completed plan years and a surplus distribution worksheet for all completed plan years on a form approved by the superintendent. The group self-insurer must provide the required information within 10 days after the distribution. Any surplus declared or distributed pursuant to this paragraph is subject to adjustment after review by the superintendent within 60 days of the receipt of the required information. Any deficit below the required confidence level, as determined by the superintendent, that results from a distribution under this paragraph must be funded within 45 days from the date of the notice by the superintendent.

(1-A) A group self-insurer may secure its obligations to the confidence level required by the superintendent in the following manner:

(a) The obligations must be secured by an actuarially determined fully funded trust with unencumbered assets at least equal to the present value of ultimate expected incurred claims and claims settlement costs, or such higher amount as the superintendent may require in accordance with subparagraphs (5) and (6); and

(b) The balance may be secured by a letter of credit complying with paragraph A.

(2) A group self-insurer may elect to fund at a higher confidence level through the use of cash, marketable securities or reinsurance. If a member of a group self-insurer terminates membership in the group for any reason, that member shall fund the member's proportionate share of the liabilities and obligations of the trust to the 95% confidence level. If for any reason the departing member fails to fund the member's proportionate share of the trust's exposure to the 95% level of confidence, the trust is responsible for that member's liabilities and obligations to the trust. If the superintendent finds that a material risk to the trust's ability to satisfy its liabilities and obligations in full exists due to the failure of one or more departing members to fund the departing members' proportionate share of those liabilities and obligations to the 95% confidence level or due to the failure of the group trust to enforce the funding requirement, the superintendent shall consider the unfunded share of the trust's exposure when approving a determination of a surplus or deficit in the trust.

(3) Subject to prior approval by the superintendent in accordance with subparagraph (5), a self-insurer that has successfully maintained an actuarially determined fully funded trust for a period of 5 or more consecutive years may fund all years, including the prospective fund year, at the 75% or higher confidence level in the aggregate and a group self-insurer that has successfully maintained an actuarially determined fully funded trust for a period of 10 or more consecutive years may fund all years, including the prospective fund year, at the 65% or higher confidence level in the aggregate.

(4) Trust assets must consist of cash or marketable securities of a type and risk character as specified in subsection 9. The trustee shall submit a report to the superintendent not less frequently than quarterly that lists the assets comprising the corpus of the trust, including a statement of their market value and the investment activity during the period covered by the report. The trust must be established and maintained subject to the condition that trust assets may not be transferred or revert in any manner to the employer except to the extent that the superintendent finds that the value of the trust assets exceeds the present value of incurred claims and claims settlement costs with an actuarially indicated margin for future loss development. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and payout, must be as approved by the superintendent, except that the value of the trust account must be actuarially calculated at least annually by a casualty actuary who is a member of the American Academy of Actuaries and adjusted to the required level of funding.

(5) In determining whether a self-insurer that maintains an actuarially determined fully funded trust qualifies for a reduction in the required confidence level pursuant to subparagraph (1) or (3) or is subject to an enhanced confidence level pursuant to subparagraph (6), the superintendent shall consider the financial condition of the self-insurer in relation to the potential workers' compensation liabilities. The factors the superintendent may consider include the self-insurer's liquidity, leverage, tangible net worth, size and net income. For group self-insurers, the superintendent's review must be based on the aggregate financial condition of the group members. At the request of the superintendent, a group self-insurer shall report relevant financial information, on a form prescribed by the superintendent, at such intervals as the superintendent directs. The superintendent may establish additional review criteria or procedures by rule. Rules adopted pursuant to this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(6) If the superintendent determines, based on an evaluation of a self-insurer's financial condition pursuant to subparagraph (5), that the confidence level at which the self-insurer has been authorized to fund its trust is not sufficient to provide adequate security for the self-insurer's reasonably anticipated potential workers' compensation liabilities, the superintendent shall make a determination of the appropriate confidence level and order the self-insurer to take prompt action to increase funding to that level within 60 days. [PL 2025, c. 53, §8 (AMD).]

D. Notwithstanding any provision of this chapter, authorization to self-insure may not be conditioned on a bond or security deposit that is in excess of $50,000 for the State, the University of Maine System or any county, city or town with a state-assessed valuation equal to or in excess of $300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating agency or a net worth equal to or in excess of $35,000,000. If a county, city or town that is a self-insurer relies upon a bond rating to qualify under this paragraph, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value must be incorporated in the annual audit of the county, city or town, together with disclosure of funds appropriated to discharge incurred claims expenses. [PL 1997, c. 126, §7 (AMD).]

E. In consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the Superintendent of Insurance may require or permit an applicant to employ valid risk transfer by the utilization of primary reinsurance, subject to the provisions of subsection 8. Standards respecting the application of reinsurance must be contained in a rule adopted by the superintendent pursuant to the Maine Administrative Procedure Act. Reinsurance must be defined as insurance covering workers' compensation exposures in excess of risk retained by a self-insurer. [PL 1995, c. 398, §2 (NEW).]

F. An employer may be eligible for approved self-insurance status pursuant to this Act if the employer submits a written guarantee of the obligations incurred pursuant to this Act, the guarantee to be issued by a United States or Canadian corporation that is a member of an affiliated group of which the employer is a member, and which corporation is solvent and demonstrates an ability to pay the compensation and benefits, and the guarantee is in a form acceptable to the Superintendent of Insurance. The guarantor shall provide audited annual financial statements and such other information as the superintendent may require, including quarterly financial statements, and the employer shall provide a cash deposit, satisfactory securities, irrevocable standby letters of credit issued by a qualified financial institution or a surety bond as otherwise required by this Act in an amount not less than $100,000. The guarantor is deemed to have submitted to the jurisdiction of the board and the courts of this State for purposes of enforcing the guarantee. The guarantor, in all respects, is bound by and subject to the orders, findings, decisions or awards rendered against the employer for payment of compensation and any penalties or forfeitures provided under this Act. The superintendent, following hearing, may revoke the self-insured status of the employer if at any time the assets of the guarantor become impaired or encumbered or are otherwise found to be inadequate to support the guarantee. [PL 1995, c. 398, §2 (NEW).]

G. A subsidiary employer may be eligible for approved self-insurance status pursuant to this Act if: the subsidiary employer files an application jointly with a qualified parent corporation that has direct ownership of a majority voting interest of the subsidiary employer; the parent corporation and subsidiary employer submit an irrevocable contract of assignment, on a form approved by the Superintendent of Insurance, of the subsidiary employer's obligations incurred pursuant to this Act; the parent corporation is solvent and demonstrates an ability to pay the compensation and benefits of the subsidiary employer; and the subsidiary employer meets all other requirements for application and qualification as a self-insurer under this chapter and under any applicable rules adopted by the superintendent. If the parent corporation is not a United States corporation, the superintendent may, in the superintendent's sole discretion, establish the conditions of any approval of the foreign parent corporation or deny the application of the foreign parent corporation. As part of its application for approval, a foreign parent corporation must provide the following information to the superintendent: evidence that its country of domicile has substantially similar laws with respect to submission to the jurisdiction of the board and the courts of this State for the purposes of payment of workers' compensation claims of the subsidiary employer; audited financial statements, as otherwise required by this Act, prepared in the English language by a certified public accountant licensed in a state in the United States in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants; and security, as otherwise required by the Act, in United States currency. The irrevocable contract of assignment and application must be signed by a duly authorized officer of each corporation and the application must include a board of directors' resolution from each entity as evidence of each officer's authority to enter into the contract. The superintendent may determine the subsidiary employer's eligibility for self-insurance authority and the amount of required security based upon the parent corporation's consolidated financial statement, as long as the employer complies with paragraph H. A subsidiary employer currently authorized to self-insure need not pay the application fee required of a new applicant in order to file an application to qualify under this subsection, but the subsidiary employer and parent corporation must provide all information required under this subsection as if they were a

new applicant. Once the subsidiary employer becomes authorized to self-insure under this section, the parent corporation assumes liability for all prior workers' compensation liabilities incurred by the subsidiary employer during the period of self-insurance prior to the date of authorization under this subsection, unless the subsidiary employer files an alternative plan approved by the superintendent. The parent corporation and the subsidiary employer must both be named on the certificate of authorization for self-insurance authority. Upon issuance of a certificate of authorization pursuant to this subsection, the following applies.

(1) The parent corporation is deemed to have submitted to the jurisdiction of the board and the courts of the State for the purposes of payment of workers' compensation claims of the subsidiary employer and is deemed to have submitted to the jurisdiction of the superintendent for purposes of implementation of this Act. The parent corporation, in all respects, is bound by and subject to all orders, findings, decisions or awards rendered against the subsidiary employer for payment of compensation and any penalties or forfeitures provided under this Act.

(2) A subsidiary employer authorized under this subsection and the parent corporation are considered one employer for the purposes of membership in the Maine Self-Insurance Guarantee Association. In the event of termination, transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection, the parent corporation assumes all assessment obligations of the subsidiary employer for its period of self-insurance and is not considered a new member of the association.

(3) If the subsidiary employer fails for any reason to pay compensation and benefits as required under this Act, the parent corporation stands in the place of the subsidiary employer and is deemed to be the employer, subject to all requirements and provisions of this Act. For the purposes of payment of benefits and compensation under this Act, an employee of the subsidiary employer is deemed to be concurrently employed by both corporations. Concerning notification of injury to an employee of the subsidiary employer, notice to or knowledge of the occurrence of the injury on the part of the subsidiary employer is deemed notice or knowledge on the part of the parent corporation. The transfer, insolvency, dissolution or bankruptcy of a subsidiary employer qualifying under this subsection does not relieve the parent corporation from payment of compensation for injuries or death sustained by an employee during the time the subsidiary employer was approved for self-insurance authority under this subsection and the parent corporation continues to be deemed an employer until such time as all outstanding workers' compensation claims have been discharged.

(4) The transfer, insolvency, dissolution or bankruptcy of a parent corporation causes the termination of the subsidiary employer's authorization to self-insure and a termination plan must be filed pursuant to subsection 14. [PL 1995, c. 398, §2 (NEW).]

H. Each individual self-insurer shall submit with its application, and not less frequently than annually thereafter, a financial statement of current origin that has been audited by a certified public accountant. When a self-insurer qualifies on the basis of a financial guarantee or on the basis of an irrevocable contract of assignment, the Superintendent of Insurance may accept an audited financial statement of the guarantor or parent corporation in satisfaction of this requirement and may also require combining statements provided in an array that is reconciled to the consolidated report. [PL 1995, c. 398, §2 (NEW).]

[PL 2025, c. 53, §§1-8 (AMD).]

4. Group self-insurers; application. Except for the provision relating to individual public employer self-insurers, subsection 3 is equally applicable in all respects to group self-insurers. Any employer or group of employers desiring to become a self-insurer shall submit to the Superintendent of Insurance with an application for self-insurance, in a form prescribed by the superintendent, the following:

A. A payroll report for each participating employer of the group for the 3 preceding annual fiscal periods; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. A report of compensation losses incurred, payments plus reserves, by each participating employer of the group for the periods described in paragraph A; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. A sworn itemized statement of the group's assets and liabilities; satisfactory proof of financial ability to pay compensation for the employers participating in the group plan; and the group's reserves, their source and assurance of continuance; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. A description of the safety organization maintained by the employer or group for the prevention of injuries; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. A statement showing the kind of operations performed or to be performed; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. An indemnity agreement in a form prescribed by the superintendent that jointly and severally binds the group and each member to comply with the provisions of this Act; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

G. Any other agreements, contracts or other pertinent documents relating to the organization of the employers in the group. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If, upon examination of the sworn financial statement and other data submitted, the superintendent is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under this Act, the application must be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, as required by the superintendent. Except to the extent provided in subsection 4-A, security against shock or catastrophe loss must be provided either by depositing securities with the board in such amount as the superintendent may determine or by filing with the superintendent and the board an insurance carrier's certificate of a standard self-insurer's reinsurance contract issued to the self-insurer or group in a form approved by the superintendent, providing coverage against losses arising out of one occurrence in such amounts as the superintendent may determine, or a combination of the foregoing, satisfactory to the superintendent. Notwithstanding any provision of this chapter, no specific or aggregate reinsurance may be required of any individual public employer that is self-insured and qualifies for the alternative security requirements of subsection 3, paragraph D.

Yearly reports in a form prescribed by the superintendent must be filed by each self-insurer or group. The superintendent may, in addition, require the filing of quarterly financial status reports whenever the superintendent has reason to believe that there has been a deterioration in the financial condition of either an individual or group self-insurer that adversely affects the individual's or group's ability to pay expected losses. The reports must be filed within 30 days after the superintendent's request or at such time as the superintendent shall otherwise set.

After approving any application for self-insurance, the superintendent shall promptly notify the board and forward to it copies of the application and all supporting materials.
[PL 2003, c. 315, §1 (AMD).]

4-A. Group self-insurance reinsurance account. As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, an individual or group self-insurer authorized under this section may, with the approval of the Superintendent of Insurance, participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. A group self-insurer authorized under the laws of another state may

participate in an account through a protected cell arrangement as provided in paragraph L. More than one account may be established pursuant to this subsection. An account established pursuant to this subsection may be established as either an independent private entity or an instrumentality of the State, but the debts and liabilities of an account established as an instrumentality of the State are not debts and liabilities of the State. An account established as an instrumentality of the State within 24 months of its formation, with the approval of the Superintendent of Insurance, may transfer all of its assets and liabilities into an account established as an independent private entity.

A. A group self-insurer that is subject to joint and several liability pursuant to subsection 4, paragraph F, a group self-insurer authorized under the laws of another state and that executes an agreement that its members will be jointly and severally liable in accordance with the provisions of paragraph L or an individual self-insurer authorized under this section that executes an agreement to be responsible for contingent assessment liability in accordance with the provisions of paragraph F may apply to reinsure through an account.

(1) Upon the petition of 4 or more authorized group self-insurers, the Superintendent of Insurance may approve an account for the deposit of funds in lieu of reinsurance.

(2) The account must indemnify its participating self-insurer members for claims incurred during the account's operation. The purpose of the account is to accumulate funds to provide coverage against losses arising out of one occurrence in excess of established retention levels consistent with the plan of operation established pursuant to paragraph B.

(3) A self-insurer is deemed to be a member of the account for reinsurance coverage for purposes of a claim if the self-insurer is a member of the account when an injury occurs or a covered occupational disease loss is incurred.

(4) A self-insurer that reinsures through an account shall continue to make payments into that account in accordance with the plan of operation established pursuant to paragraph B.

(5) A self-insurer's participation in an account is considered as a component of the self-insurer's renewal application. A self-insurer's membership in an account is considered adequate protection against losses arising out of a single occurrence unless the Superintendent of Insurance determines, after considering the financial condition and catastrophic loss exposure of both the self-insurer and the account, that it is necessary to maintain additional reinsurance protection, maintain a lower self-insured retention level or provide some other form of additional security, singly or in combination. [PL 2013, c. 172, §1 (AMD).]

B. An account must operate in accordance with a plan of operation established by the group self-insurer members and approved by the Superintendent of Insurance.

(1) Those group self-insurers creating an account shall submit to the Superintendent of Insurance a plan of operation and any amendments to it that are necessary to ensure the fair, reasonable and equitable administration of the account. The plan of operation is effective upon approval by the superintendent. Any amendments subsequent to the plan's initial approval must be submitted to the superintendent by the plan's board of directors and are effective upon approval by the superintendent.

(2) The plan of operation must:

(a) Create a board of directors and initial bylaws, including the terms and conditions of board membership and the manner by which board members are initially appointed and are replaced when vacancies occur;

(b) Establish the procedures by which all the powers and duties of the account are performed, including, but not limited to, defining the date and conditions pursuant to which

the account will commence coverage for claims by participating group self-insurer members and establishing provisions for determining limits of exposure for the account;

(c) Establish procedures for handling assets of a fund created pursuant to paragraph C;

(d) Establish underwriting rules and criteria by which rates are to be established;

(e) Establish procedures by which claims may be filed with the account;

(f) Establish an investment policy for a fund created pursuant to paragraph C;

(g) Establish procedures for records to be kept of all financial transactions of the account, its agents and the board of directors;

(h) Establish procedures for withdrawal from the account by a self-insurer member, which must, at a minimum, require 90 days' notice from the withdrawing self-insurer member to the board of directors and the Superintendent of Insurance;

(i) Establish, subject to approval by the Superintendent of Insurance, a minimum level of funding to be achieved by the account;

(j) Contain additional provisions necessary or proper for the execution of the powers and duties of the board of directors and the ability of the account to meet its obligations; and

(k) Establish a standard per occurrence retention level for claims covered by the account. [PL 2013, c. 172, §1 (AMD).]

C. The bylaws of an account established pursuant to this subsection must establish the powers and duties of the board of directors of an account and must include the authority:

(1) To administer a self-insurance specific reinsurance account fund, to be known in this subsection as "a fund," which must receive payments from participating self-insurer members of the account as required by paragraph A. The costs of administration by the board of directors and expenses of the account must be borne by the fund;

(2) In its discretion, to secure reinsurance for the fund's exposure and to otherwise invest the assets of the fund to effectuate the purpose of the account, subject to the approval of the Superintendent of Insurance;

(3) To accept or reject applications of self-insurers to be underwritten by the account, subject to the approval of the Superintendent of Insurance;

(4) To accept or reject applications of a self-insurer member to self-insure any exposure for one occurrence at a level other than the standard retention level provided in the plan of operation established pursuant to paragraph B, subject to:

(a) Compliance with applicable provisions of the plan of operation established pursuant to paragraph B;

(b) Notice to and prior approval by the Superintendent of Insurance; and

(c) For other retention levels, a statement from that member's actuary that the member has adequately funded its additional exposure;

(5) To create a mechanism for assessing participating self-insurer members if funds are insufficient to pay the claims of the account;

(6) To retain actuarial assistance to be used in the establishment of loss reserves, reinsurance and risk management for the account, and in the development of underwriting criteria and premium rates for self-insurer members. Rates are subject to approval by the Superintendent of Insurance;

(7) To associate with a participating self-insurer member in the defense, investigation or settlement of any claim, suit or proceeding that appears to involve indemnity by the account. This authority does not create a duty to investigate, handle, settle or defend any claims, suits or proceedings against a self-insurer member;

(8) To borrow funds;

(9) To amend the bylaws and plan of operation established pursuant to paragraph B, subject to the approval of the Superintendent of Insurance; and

(10) To exercise such other powers as are established in the plan of operation established pursuant to paragraph B. [PL 2013, c. 172, §1 (AMD).]

D. An account is subject to examination and regulation by the Superintendent of Insurance. The board of directors of an account shall submit, within 120 days after the close of each fiscal year, an audited financial report and an actuarial report for the preceding fiscal year in a form approved by the superintendent. When the superintendent considers it necessary, the superintendent may require an account to maintain specific or aggregate reinsurance at such retention levels as the superintendent determines to be appropriate. [PL 2003, c. 315, §2 (NEW).]

E. The Superintendent of Insurance may address any deficiency in reserves, assets or reinsurance of an account in accordance with this paragraph.

(1) The Superintendent of Insurance may conduct, upon reasonable notice, an examination to determine the financial condition of an account. An examiner duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of an account. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that an account does not have working capital in an amount establishing the financial strength and liquidity of an account to pay claims promptly and showing evidence of the financial ability of an account to meet its obligations to self-insurer members, the superintendent shall notify an account of the inadequacy. Upon notification, the account within 30 days, or such other time as the superintendent approves, shall file with the superintendent its written plan specifying remedial action to be taken and the time frame for implementation of that plan.

(2) If the Superintendent of Insurance determines, after reviewing the information filed pursuant to paragraph D, that a hazardous financial condition exists, the superintendent shall notify an account of the condition. Upon notification, an account shall implement within 30 days, or such other time as the superintendent approves, its plan to correct any deficiencies and within 90 days shall file with the superintendent proof of remedial action taken. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of an account is sufficient, the superintendent shall notify the account. The account shall report quarterly to the superintendent until any deficiencies and their causes have been corrected.

(3) The Superior Court may appoint the Superintendent of Insurance to act as receiver, in the same manner as for a delinquent insurer pursuant to Title 24-A, section 4360, if the superintendent proves by clear and convincing evidence that a hazardous financial condition exists and that an account is unable or unwilling to take meaningful corrective action. [PL 2009, c. 232, §2 (AMD).]

F. A self-insurer's liability for participating in an account is governed by this paragraph.

(1) Each participating self-insurer in an account has a contingent assessment liability in accordance with the plan of operation established pursuant to paragraph B for payment of claims and expenses incurred while a member of the account and must execute an agreement acknowledging that it is responsible for the prompt payment of all assessments necessary to

ensure that the account is fully funded and that, if any participant in the account fails to pay an assessment when due for any reason, the remaining participants are liable for the shortfall.

(2) Each contract or other document certifying participation in the account, issued by the account, must contain a statement of the contingent liability of participating self-insurers. [PL 2009, c. 232, §2 (AMD).]

G. An account is exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real or personal property. [PL 2003, c. 315, §2 (NEW).]

H. This subsection does not create any liability on the part of, and a cause of action of any nature does not arise against, any self-insurer member, an account or its agents or employees, the board of directors of an account or its individual members or the Superintendent of Insurance or the superintendent's representatives for any acts or omissions taken by them in the performance of their powers and duties under this subsection. The immunity established by this subsection does not extend to willful neglect or malfeasance that would otherwise be actionable. [PL 2009, c. 232, §2 (AMD).]

I. Assets of an account's fund may be used exclusively for payment of expenses of the account and payment of claims against the account and for no other purpose, except that an account established as an independent private entity pursuant to this subsection may issue such dividends to its members as are approved by the superintendent. [PL 2003, c. 671, Pt. A, §12 (AMD).]

J. The Superintendent of Insurance shall adopt rules to administer and effectuate the intent of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 315, §2 (NEW).]

K. In the event of dissolution of an account established as an instrumentality of the State pursuant to this subsection, all assets remaining after the satisfaction of all outstanding claims must be distributed to the Treasurer of State to be included in the Maine Self-Insurance Guarantee Association. [PL 2003, c. 671, Pt. A, §12 (AMD).]

L. With the approval of the Superintendent of Insurance, a self-insurance reinsurance account may create one or more protected cells under its plan of operation for the purpose of reinsuring obligations of group self-insurers that are organized under the laws of another state. Any protected cell and all participating group self-insurers and their member employers are subject to the jurisdiction and oversight of the Superintendent of Insurance with respect to all matters relating to their participation on the account.

(1) Any out-of-state self-insurer that participates in the account may do so only through participation in a protected cell. An employer or group authorized by the Superintendent of Insurance to self-insure its Maine liabilities pursuant to this section is considered an out-of-state self-insurer to the extent that it is reinsuring out-of-state liabilities beyond the scope of its Maine self-insurance plan.

(2) The establishment of protected cells under this paragraph is a pilot project, limited to at most 2 protected cells, and approval of a protected cell or of a group self-insurer to participate in a protected cell is at the discretion of the Superintendent of Insurance. The Superintendent of Insurance may adopt rules pursuant to paragraph J to establish the terms and conditions of the pilot project, including criteria for the minimum and maximum size of a protected cell.

(3) A separate account must be established for each protected cell. All contributions from participants in a protected cell must be deposited into the protected cell account. Funds in a protected cell account may be used only for the payment of claims and expenses associated with that protected cell, which may include a reasonable administrative fee paid periodically into the general account. Notwithstanding any other provision of this subsection, participants in a protected cell are not liable for claims or expenses of any other protected cell or of the general

account, and the general account is not liable for the claims of any protected cell or any expenses associated with such claims or otherwise specifically attributable to the protected cell.

(4) The minimum funding level for any protected cell may not be lower than the minimum funding level, calculated in accordance with the plan of operation and subject to paragraph E, that would apply to the general account with the same loss exposure and duration of operation. If the protected cell account falls short of the minimum funding level at any time, the reinsurance account must assess all protected cell participants. If a participating group self-insurer fails to pay any assessment in full when due, the reinsurance account must assess the group's member employers. All assessments are enforceable by the Superintendent of Insurance through an adjudicatory proceeding under the Maine Administrative Procedure Act or through an action in the Superior Court.

(5) Each protected cell must have its own board of directors, at least 2/3 of whom must be chosen by the protected cell's participants. The plan of operation shall provide for a reasonable allocation of authority between the reinsurance account's board of directors and the protected cell's board of directors.

(6) No later than April 1st of each year, each reinsurance account with one or more protected cells must pay a regulatory assessment to the Bureau of Insurance from each protected cell account in the amount of 11/100 of 1% of the total standard reinsurance premium for the preceding calendar year for all participants in the protected cell for the level of coverage provided by the reinsurance account.

(7) All groups participating in a protected cell must provide the reinsurance account and the Superintendent of Insurance with financial and actuarial information sufficient to evaluate loss exposure and financial condition. All information provided to the superintendent by protected cell participants and their member employers is confidential pursuant to subsection 15. All protected cell participants and their member employers must authorize their domiciliary regulator to provide any information requested by the superintendent, which is confidential to the extent provided in Title 24-A, section 216, subsection 5.

(8) In evaluating the risk exposure of an out-of-state group self-insurer and in determining whether groups from different states may participate in the same protected cell, the reinsurance account and the Superintendent of Insurance shall consider any relevant differences in the states' regulatory frameworks for group self-insurance and in their workers' compensation benefit laws.

(9) A group self-insurer may not become a participant in a protected cell unless the group and all of its member employers have provided written acknowledgments to the Superintendent of Insurance that they are jointly and severally liable for the obligations of the protected cell and are subject to the jurisdiction of the superintendent and courts of the State for the enforcement of those obligations.

(10) Any disputes between self-insured members, the self-insurance reinsurance account and any protected cell, including but not limited to any dispute arising out of or relating to any enforcement order or mechanism imposed by the Superintendent of Insurance, must be resolved in this State and pursuant to the laws of this State. [PL 2025, c. 53, §9 (AMD).]

[PL 2025, c. 53, §9 (AMD).]

4-B. Group self-insurance reinsurance fronting arrangements.

[PL 2025, c. 1, §1 (RP).]

4-C. Continuation of authority to administer and handle claims; group self-insurer; fronting arrangement.

[PL 2025, c. 1, §2 (RP).]

5. Group self-insurance; participation. Participation in a group self-insurance plan is governed by the following provisions.

A. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this Act to their employees. A group may not be approved to operate a self-insurance plan in the form of a corporation, partnership or limited liability company. Under a group self-insurance plan the group shall assume the liability of all the employers within the group and pay all compensation for which the employers are liable under this chapter. When the plan is adopted, the group shall furnish satisfactory proof to the Superintendent of Insurance of its financial ability to pay the compensation for the employers in the group and its revenues, their source and assurance of continuance. The superintendent may also require that any agreements, contracts and other pertinent documents relating to the organization of the employers in the group be filed with the superintendent at the time the application for group self-insurance is made. The application must be on a form prescribed by the superintendent. The superintendent has the authority to deny the application of the group to pay the compensation for failure to satisfy any applicable requirement of this section. The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph is referred to as a self-insurer. [PL 2017, c. 401, §2 (AMD).]

A-1. A group self-insurer shall maintain an actuarially determined fully funded trust in compliance with subsection 3, paragraph C, except that, with the approval of the Superintendent of Insurance, an affiliated group self-insurer may secure the liabilities of each member employer in accordance with this paragraph.

(1) An affiliated group self-insurer shall designate a principal member, subject to the approval of the superintendent. The principal member must be the direct or indirect parent company of every other group member.

(2) If the principal member does not have employees in the State, the principal member must meet the same qualifications as a qualified parent corporation of an individual self-insurer under subsection 3, paragraph G, except that direct majority ownership is not required and the group's indemnity agreement is deemed to meet the requirement for an irrevocable contract of assignment.

(3) Unless otherwise ordered by the superintendent, the principal member may provide security for the affiliated group self-insurer's obligations in the same form and amount as the security required for an individual self-insurer, based on the financial condition of the principal member and the aggregate self-insurance exposure of the group. [PL 2025, c. 53, §10 (AMD).]

B. An employer participating in group self-insurance is not relieved from the liability for compensation prescribed by this chapter, except by the payment of the compensation by the group self-insurer or by the employer. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the employer is deemed notice or knowledge, as the case may be, on the part of the group self-insurer; jurisdiction of the employer is, for the purpose of this chapter, jurisdiction of the group self-insurer and the group self-insurer is in all things bound by and subject to the orders, findings, decisions or awards rendered against the participating employer for the payment of compensation under this chapter. The insolvency or bankruptcy of a participating employer does not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in group self-insurance. The group self-insurer shall promptly notify the Superintendent of Insurance and the board, on a prescribed form, of the addition of any participating employer or employers. The approval of the superintendent is not necessary in order to add participating employers to the group self-insurer. Notice of termination of a participating employer is not effective until at least 10 days after notice of that termination, on a prescribed form, has been filed in

the offices of the superintendent and the board or sent to both offices by registered mail. The group self-insurer shall give notice of the termination of any participating member to all other participating members at least quarterly each year. Written notice must be given to any new participating member at the time of admission that the specific membership of the group and its members as prescribed in this section is not affected by the group's failure to provide its members with prior or immediate notice of changes in the membership of the group if notice is given at least quarterly, as long as the termination or admission of members was effected in compliance with all group agreements and bylaws and this section and the rules adopted pursuant to it. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Each group self-insurer, in its application for self-insurance, shall set forth the names and addresses of its officers, directors, trustees and general manager. Notice of any change in the officers, directors, trustees or general manager must be given to the Superintendent of Insurance and the board within 10 days of the change. An officer, director, trustee or employee of the group self-insurer may not represent or participate directly or indirectly on behalf of an injured worker or the worker's dependents in any workers' compensation proceeding. All employees of employers participating in group self-insurance are deemed to be included under the group self-insurance plan. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. If for any reason the status of a group self-insurer under this paragraph is terminated, the security required by this section must continue to be held in accordance with this section and remains subject to the control of the board until all claims against the group self-insurer have been discharged. When all such claims have been discharged or after such period as the Superintendent of Insurance determines proper, the superintendent may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation, a policy of insurance furnished by the group self-insurer, its successor or assigns or other entity carrying on or liquidating such self-insurance group. The policy must be in a form approved by the superintendent and issued by any insurance company licensed to issue this class of insurance in the State. It may only be issued for a single complete premium payment in advance by the group self-insurer. It must be given in an amount determined by the superintendent and when issued is noncancellable for any cause during the continuance of the liability secured and so covered. [PL 2017, c. 401, §4 (AMD).]

E. The Superintendent of Insurance may provide for the administration of this section relating to self-insurance in the manner prescribed in Title 24-A, section 212. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. If an employer is a partnership or a sole proprietorship and is a member of a self-insurance group associated pursuant to this section, the employer may elect to include as an employee any member of the partnership or owner of the sole proprietorship for purposes of obtaining workers' compensation coverage under this Act. In the event of such an election, the electing employer shall serve upon the group self-insurance association written notice naming the partner or sole proprietor to be covered, and an election is deemed not to have been made within this Act until such notice has been given. By making such an election, the partnership member or sole proprietor is deemed to have stipulated that for premium payment purposes the annual salary or wage of the electing partnership member or sole proprietor is the average weekly wage in the State as computed by the Department of Labor multiplied by 52 and rounded to the nearest $100. The assumed average annual wage must be adjusted as of July 1st using the average weekly wage from the prior calendar year. [PL 1995, c. 560, Pt. G, §27 (AMD).]

G. Fee schedules applicable to group self-insurers are those set forth in Title 24-A, section 601. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

H. Each group self-insurer shall record its loss expense and experience in accordance with Title 24-A, section 2323. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

I. Annual examinations of each group self-insurer, as required by the Superintendent of Insurance, must be performed by public accountants acceptable to the superintendent and reports must be rendered to the superintendent within a reasonable period, as determined by the superintendent, subsequent to the group self-insurers elected fiscal year. The examinations must be conducted pursuant to generally accepted accounting principles, as they are consistent with precepts prescribed by the superintendent, that place sound values on assets and liabilities of group self-insurers. Other examinations of the affairs, transactions, accounts, records and assets of each group self-insurer and of any person as to any matter relevant to the financial affairs of the group self-insurer must be conducted as often as the superintendent determines advisable. The expense of examination of a group self-insurer must be borne by the group that is examined. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

J. In any fiscal year, a group self-insurer may not be required to obtain aggregate reinsurance with a policy limit that exceeds a multiple of 1.5 of its annual standard workers' compensation premium for that fiscal year. The Superintendent of Insurance may set lower policy limits for aggregate reinsurance when, in the superintendent's judgment, lower limits may be prudent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

K. Upon approval by the Superintendent of Insurance, a group self-insurer may dedicate a portion of its unimpaired surplus to increase its self-insured retention level under the aggregate reinsurance policy by an amount equal to the amount of surplus so dedicated. The superintendent before granting approval shall consider among other factors:

(1) The level of alternate revenues available to the group self-insurer to cover the further assumed costs; and

(2) The adequacy of the fund's surplus to meet obligations of the group self-insurer.

At the expiration of a period of 10 calendar days after the superintendent has received a plan for the dedication of a portion of the unimpaired surplus of a group self-insurer to increase its self-insured retention level and any additional information the superintendent has determined necessary, the plan is deemed approved unless prior to the expiration of that time period it has been affirmatively approved or disapproved by the superintendent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

L. Upon the filing of a plan that meets the approval of the Superintendent of Insurance, a group self-insurer may be authorized to issue subordinated loan certificates, the proceeds of which must be made part of the group self-insurer's surplus account and be available as other surplus funds for dedication to increase the self-insured retention level. To the extent that the proceeds of these loan certificates are utilized by a group self-insurer to increase its self-insured retention in any fiscal year, the aggregate proceeds of the loan certificates so utilized may not exceed 25% of the annual standard premium for that fiscal year. The obligation to redeem these loan certificates after the proceeds of the loan certificates have been dedicated to increase the aggregate excess self-insured retention level of the group self-insurer is subordinate to covered claims and may not be redeemed after the dedication without the approval of the superintendent. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2025, c. 53, §10 (AMD).]

6. Annual renewal; actuarial evaluation. Renewal and actuarial evaluation are governed by this subsection.

A. Any approval granted by the Superintendent of Insurance to an individual self-insurer or group self-insurer must be for a term of not more than one year. A complete application for renewal of approval to self-insure must be submitted to the superintendent not less than 21 days prior to the self-insurer's renewal date, except that evidence of reinsurance coverage may be submitted up to 3 working days prior to renewal. Notwithstanding this paragraph, when a self-insurer has made a timely and complete application for renewal, the existing authorization does not expire until the renewal has been determined by the superintendent. A renewal application must contain: all reports, statements and other data required to be filed annually under rules adopted by the superintendent; copies of any proposed reinsurance contracts, binders or cover notes; evidence of security posted; notice of any changes in servicing arrangements; and notice of any change in control of the self-insurer and its effect, if any, on guarantees provided pursuant to subsection 3. The superintendent may refuse to grant or renew self-insurance approval based upon any of the following grounds:

(1) Failure to submit any information that is required by law or rule or is reasonably requested by the superintendent;

(2) Failure of a self-insurer to establish that it has met all applicable requirements of law or rule;

(3) Fraud or misrepresentation in the application; or

(4) Any ground upon which approval may be suspended or revoked as provided in subsection 13.

The effective date of any notice of nonrenewal under this subsection is on or after the date of the notice. A notice of nonrenewal under this subsection may not include nonrenewal for any approved period of self-insurance prior to the notice. [PL 1995, c. 398, §3 (AMD).]

B. Each individual self-insured employer, except an employer utilizing an actuarially fully funded trust pursuant to subsection 3, is required to obtain an actuarial evaluation of undischarged claims and claims settlement liabilities at least once every 3 years, unless the requirement is waived by the superintendent. The superintendent may waive the triennial actuarial evaluation if the number of outstanding claims is not of sufficient volume to permit a credible actuarial analysis. This review and evaluation must be performed by a casualty actuary who is a member of the American Academy of Actuaries. Upon approval to self-insure, the Superintendent of Insurance shall indicate the deadline for that self-insurer to complete an actuarial review. In addition to this triennial review, the superintendent may require the reserves and liabilities of a self-insurer to be reviewed and evaluated as often as the superintendent determines necessary.

Any self-insurer that develops an imputed annual standard premium not exceeding $50,000 and demonstrates that it has provided security for its workers' compensation exposures in an amount that is at least 135% of its case-based claims reserves, as evaluated annually, is excused from providing an actuarial evaluation in any year in which these conditions are satisfied. For the purposes of this subsection, "case-based claims reserves" means undischarged claims that have arisen during the period of self-insurance and of which the employer has had formal notice. This exception may not be construed to limit the superintendent's authority to require an actuarial evaluation when the superintendent determines one is necessary. [PL 1995, c. 594, §3 (AMD).]

C. Each individual self-insurer except a public employer shall demonstrate in its initial or renewal application that it has working capital adequate to its operating needs. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. When a self-insurer's reinsurance contract expires on a date other than the renewal date for its self-insurance approval, the self-insurer shall file evidence of any required reinsurance coverage no

later than 3 working days before the date of expiration of its coverage. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Each renewal application filed by an individual or group self-insurer that has secured its obligations in whole or part by maintaining a trust fund must include a certification that no political contributions have been made from the trust fund in violation of subsection 18. [PL 2003, c. 424, §1 (NEW).]

[PL 2003, c. 424, §1 (AMD).]

7. Self-insurance. "Self-insurance," as used in this section, means the system of securing compensation as provided in subsections 3 to 16.

[PL 1993, c. 510, §2 (AMD).]

8. Security deposit and reinsurance requirements for individual self-insurers. The following security deposit and reinsurance requirements apply to individual self-insurers.

A. Each individual self-insurer shall post a bond, security deposit or letter of credit in an amount that, except as otherwise provided in this paragraph, is no less than the loss and loss adjustment expense portion of the annual standard premium, as defined in section 404, subsection 4, paragraph E, for the prospective fiscal coverage period plus outstanding incurred liabilities minus recoveries from all reinsurance and subrogation reduced to net collections. Outstanding incurred liabilities for an individual self-insurer must be developed to ultimate from a current actuarial evaluation of undischarged claims and claims settlement liabilities performed by a casualty actuary who is a member of the American Academy of Actuaries or its successor organization, except that if a current actuarial evaluation is not available the outstanding incurred liabilities may be developed from current case reserves by applying the ratio of ultimate loss and claim settlement reserves to current loss and claim settlement reserves from the most recent actuarial evaluation.

(1) A self-insurer's minimum required security level may not be less than $50,000.

(2) The minimum required security level for a self-insurer with consistently reported outstanding case reserves less than $500,000 is 25% of the annual standard premium for the prospective fiscal coverage period, plus outstanding incurred liabilities, minus recoveries from all reinsurance and subrogation reduced to net collections. Outstanding incurred liabilities may be estimated by applying a development ratio of 2.5 to current case reserves.

(3) An individual self-insurer may reduce its minimum required security level by an amount not to exceed the self-insurer's demonstrated working capital, as determined by the Superintendent of Insurance on the basis of a current audited statement of financial condition, as long as:

(a) The self-insurer has a tangible net worth equal to or in excess of $10,000,000;

(b) The self-insurer has had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years, and its mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, or it was eligible to make an alternative election, under Statement of Financial Accounting Standard No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, that would have otherwise satisfied these earnings requirements;

(c) The reduction does not exceed $10,000,000 and does not reduce the minimum required security level below $100,000; and

(d) The self-insurer is not organized as a sole proprietorship, partnership or limited liability company, except that the superintendent may authorize a limited liability company to

deduct demonstrated working capital from its minimum required security level by rules adopted under this section. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

(3-A) An individual self-insurer that is a transmission and distribution utility as defined in Title 35-A, section 102, subsection 20-B with an investment grade credit rating may reduce its required security level by up to $10,000,000, as long as:

(a) The self-insured transmission and distribution utility has a tangible net worth equal to or in excess of $200,000,000;

(b) The self-insured transmission and distribution utility has had positive net earnings demonstrated by certified statements of financial condition audited by a certified public accountant for at least 3 of the 5 latest fiscal years, including one of the 2 most recent years, and its mean annual earnings for the 5 latest fiscal years are at least equal to the normal annual premium for the prospective fiscal coverage period, or it was eligible to make an alternative election, under Statement of Financial Accounting Standard No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, that would have otherwise satisfied these earnings requirements;

(c) The self-insured transmission and distribution utility has credit facility equal to or in excess of twice its outstanding workers' compensation liabilities; and

(d) The reduction does not exceed $10,000,000 and does not reduce the minimum required security level below $100,000.

(4) With the superintendent's approval, affiliated individual self-insurers may post security on a consolidated basis.

Within 30 days after receiving notice from the superintendent, the self-insurer shall post the required bond, security deposit or letter of credit. This deadline may be extended by the superintendent for good cause, but may not exceed one year from the deadline for compliance as stated in the notice given to the self-insurer.

A bond, security deposit or letter of credit in excess of the amount prescribed by this subsection may be required if the superintendent determines that the self-insurer has experienced a deterioration in financial condition that adversely affects the self-insurer's ability to pay expected losses.

A judgment creditor other than a claimant for benefits under this Act does not have a right to levy upon the self-insurer's assets held in deposit pursuant to this paragraph. [PL 2003, c. 38, §1 (AMD).]

B. All individual self-insurers shall maintain specific reinsurance unless the Superintendent of Insurance, in the superintendent's discretion, waives such a requirement. Specific reinsurance must generally have a limit of at least $2,000,000. Higher limits may be required for those businesses with a high risk of multiple injury from a single occurrence. The retention underlying specific reinsurance policies must be the lowest retention generally available for businesses of similar size and exposure, but may, at the superintendent's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

All individual self-insurers shall maintain aggregate reinsurance unless the superintendent, in the superintendent's discretion, waives this requirement. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The Superintendent of Insurance may adopt rules establishing specific requirements applicable to security deposits and reinsurance, including, but not limited to, provisions governing standards for waiver of reinsurance, use of trusts in lieu of security deposits and release or application of deposit funds. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2003, c. 38, §1 (AMD).]

9. Acceptable deposit funds or investments for trust funds. The following requirements apply to assets deposited or held in trust as security for an individual or group self-insurer under this section.

A. In addition to cash, the deposit funds or permissible investments for trust funds acceptable to the Superintendent of Insurance as a security deposit are:

(1) Bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury;

(2) Bonds issued or guaranteed by United States government agencies;

(3) Commercial paper rated as "P-1" by Moody's Investors Service, Inc. or "A-1" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency;

(4) Money market funds rated "AAm" or "AAm-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency;

(5) Certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation if the bank or institution possesses assets of at least $100,000,000 and maintains a Tier 1 capital ratio equal to or greater than 6%;

(6) Bonds that are issued by corporations or municipalities and that are rated "A2" or better by Moody's Investors Service, Inc. or "A" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency; and

(7) Other investments specifically approved by the superintendent. [PL 2015, c. 59, §1 (NEW).]

B. Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable. At least 30% of the portfolio, as measured at market value, must consist of cash, direct obligations of the United States Treasury, commercial paper, money market funds or certificates of deposit. No more than 40% of the portfolio, as measured at market value, may be invested in bonds issued or generated by United States government agencies, with no more than 10% of the portfolio invested in a single issuer. No more than 50% of the portfolio, as measured at market value, may be invested in corporate or municipal bonds, with no more than 5% of the portfolio invested in a single issuer. No more than 25% of the corporate bond portion of the portfolio, as measured at market value, may be invested in a single industry, as defined by the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau. [PL 2015, c. 59, §1 (NEW).]

C. If the portfolio no longer meets the requirements of this subsection as a result of a rating downgrade or a change in financial condition or market value, the value may not be considered in determining whether a deposit or trust has surplus available for distribution, and the superintendent has discretion to discount or disallow the value of the investment for purposes of determining whether additional security is required. In the case of a portfolio that no longer meets the diversification requirements of paragraph B, the self-insurer may designate the specific assets to be disallowed, as long as the remaining assets meet the requirements of paragraph B. [PL 2015, c. 59, §1 (NEW).]

[PL 2015, c. 59, §1 (RPR).]

10. Form of reinsurance contracts. All reinsurance contracts issued or renewed after the effective date of this subsection must be issued by companies that meet the requirements of subsection 11 and must name the Maine Self-Insurance Guarantee Association as an additional insured. These

reinsurance contracts must recognize the Maine Self-Insurance Guarantee Association's rights of recovery, within the terms of coverage provided by the contract, for payments made by the association to or on behalf of claimants regarding covered claims and for claims in the course of settlement, the value of which when reduced to payments will create an obligation on the part of the reinsurance carrier to reimburse the association to the extent of funds disbursed by the association to discharge covered claims. The requirements of this subsection apply to any reinsurance contract issued to any individual or group self-insurer as part of a self-insurance program approved for use within this State and are in addition to any other requirement applicable to reinsurance contracts imposed by law or rule.

Reinsurance contracts must further specify that the reinsurance carrier and the Maine Self-Insurance Guarantee Association may enter into agreements on the terms of settlement and distribution of benefits accruing to claimants within the limits of the authority of the parties to make settlements with respect to any coverage year.

To the extent that the Maine Self-Insurance Guarantee Association succeeds to a recovery of benefits from any reinsurance carrier on behalf of claimants, those benefits must be timely disbursed by the association to or on behalf of claimants as they become due and payable pursuant to this Act. Funds recovered under reinsurance contracts on behalf of claimants must be applied consistent with the terms of coverage under the contract to loss, loss adjustment expense and attorneys' fees that are payable under this Act.
[PL 2017, c. 401, §5 (AMD).]

11. Qualifications for reinsurance carriers. A workers' compensation contract or policy issued after January 1, 1993 may not be recognized by the Superintendent of Insurance in considering the ability of an individual or group self-insurer to fulfill its financial obligations under this Act, unless the contract or policy is issued by an admitted insurance company or a reinsurance company that meets on a continuous basis the requirements of Title 24-A, chapter 9, subchapter 3 and the reinsurance company has been approved by the superintendent to issue in this State contracts of primary workers' compensation reinsurance, or by Lloyd's of London, a formally organized association of incorporated underwriters and individual unincorporated underwriters, any one or more of which underwrite and assume as insurer a portion of the risk insured by them as set forth in the contract of insurance. Each contract of primary workers' compensation reinsurance that is proposed for use in this State must be filed for approval in the manner set out in Title 24-A, section 2412. To the extent practicable, a contract so approved may be modified with less than 30 days advance filing notice if the superintendent determines the modifications suggested are not contrary to provisions of Title 24-A, section 2412, this Title or Bureau of Insurance Rule Chapter 250 and are necessary to effect required reinsurance coverage to authorize the self-insurer to operate a plan of workers' compensation self-insurance.
[PL 2025, c. 53, §11 (AMD).]

12. Qualifications for claims personnel. Persons who investigate, settle or negotiate the settlement of claims on behalf of self-insurers or employees of self-insurers are required to be licensed as insurance adjusters pursuant to Title 24-A, chapter 16.
[PL 1997, c. 457, §54 (AMD).]

13. Revocation or termination of self-insurance privilege. The following may constitute grounds for denial of the right of any individual or group to continue the option of self-insurance:

A. Failure to comply with rules adopted by the Superintendent of Insurance or any provisions of this Act within 14 days of notice of such failure or such other time as may be established by order of the superintendent; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Failure to comply with any lawful order of the Superintendent of Insurance; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Repeated failure to comply with rules of the Superintendent of Insurance or any provisions of this Act; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. Committing an unfair or deceptive act or practice as defined in Title 24-A, sections 2151 to 2167; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. Failure to pay any lawful assessment of the Maine Self-Insurance Guarantee Association. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

Notwithstanding Title 5, section 10051, the superintendent is expressly granted the authority to revoke or suspend the right of an individual or group to continue the option to self-insure after a hearing held on not less than 7 days' notice in accordance with Title 5, chapter 375, subchapter IV and Title 24-A, chapter 3.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

14. Reportable events; termination of self-insurance authority; application for continuing self-insurance authority and nonrenewal or revocation order. A self-insurer must report the occurrence of events as required by this subsection. An employer may elect to voluntarily terminate its authority to self-insure at any time or may make application for continuing authority to self-insure subject to the requirements of this subsection and any rules adopted by the Superintendent of Insurance. The superintendent may make a determination that an employer's authority to self-insure has terminated in accordance with this subsection and any rules adopted by the superintendent or may grant approval of an application for continuing self-insurance authority. For the purposes of this subsection, "employer" includes a successor employer assuming all workers' compensation liabilities of an approved self-insured employer as a result of the occurrence of one of the events in paragraph A.

A. In order for the superintendent to make a determination as to whether the occurrence of an event results in a termination of an individual employer's self-insured plan or results in a need for modification of the terms and conditions of the plan, an approved self-insurer must report any of the following events to the superintendent at least 45 days in advance of the event's occurrence, if known, or no later than 10 days after the event's occurrence, if not known in advance:

(1) The sale of 20% or more of the common stock or net assets of the self-insurer;

(2) A division of the business;

(3) A spin-off of the business;

(4) A leveraged buyout of the business;

(5) A reorganization of the business;

(6) A change in business form;

(7) An acquisition by or merger of the business with another entity;

(8) A change in a partnership agreement;

(9) A change in the membership or managers of a limited liability company;

(10) Dissolution of a partnership or a limited liability company;

(11) Cessation of business in the State; or

(12) Any other event affecting the ownership of the business or the structure of the business as identified in rules adopted by the superintendent.

Notwithstanding any other provision of this paragraph, an employer that elects to apply to continue to self-insure under paragraph C must notify the superintendent 45 days in advance of the event's occurrence and must file an application for continuing authority to self-insure with the superintendent 30 days in advance of the event's occurrence. At the discretion of the superintendent

and if good cause is shown, an employer may submit an application to continue to self-insure less than 30 days in advance of the event's occurrence. [PL 1995, c. 594, §6 (NEW).]

B. If a self-insured employer elects to terminate its self-insurance program, or a portion of its program, it must submit written notice and a written termination plan to the superintendent at least 30 days in advance of the proposed termination date. In the event that a self-insurer elects to terminate its approval in this State without filing a plan acceptable to the superintendent, the superintendent shall issue an order prescribing the terms and conditions of the termination. The termination plan must specify, but is not limited to, procedures for claims handling, reservation of assets or other security acceptable to the superintendent to be maintained in the State to discharge claims liabilities and other obligations under this Act and a description of how ultimate reserves were determined. The termination plan must contain a written agreement that the self-insurer continues to be subject to informational filings respecting changes in ownership, financial condition, and actuarial evaluation of claims, claims expense reserves and loss transfers when determined necessary by the superintendent to ensure that claims are adequately secured. The plan must also comply with the terms and conditions prescribed by rule by the superintendent. To protect the interests of claimants, the superintendent may require a further deposit to be held in trust by the Treasurer of State or may require full funding of workers' compensation liabilities. [PL 1995, c. 594, §6 (NEW).]

C. If the self-insured employer and any successor employer elect to continue to self-insure after the occurrence of an event in paragraph A, the employer and any successor employer must file notice of intent to continue to self-insure with an application for continuing authority to self-insure. In order to qualify to file for continuing self-insurance authority, any successor employer must assume 100% of the liabilities of the predecessor self-insured employer and must show that the business in the State remains substantially the same.

(1) The notice of intent and application to continue to self-insure must be received by the superintendent 30 days prior to the event's occurrence. The application must be made on a form approved by the superintendent and include the application fee required in Title 24-A, section 601. Within 7 days of receipt by the superintendent of the application to continue to self-insure, the employer and any successor employer must provide all information requested by the superintendent to allow the superintendent to make a determination under this section.

(2) While the application is pending, the superintendent may request any other information from the applicant determined by the superintendent to be necessary for review of the application. The applicant must promptly provide any additional information upon request in the most expeditious manner.

(3) While the application is pending and during the 30-day period following a denial of an application for continuing self-insurance authority, the employer and any successor employer must maintain the security and reinsurance as required by the employer's certificate of authority, must continue to comply with all other provisions of the employer's certificate of authority and must provide any additional security determined by the superintendent to be necessary under the circumstances. During the application period, the self-insurance authority of the employer continues, consistent with the terms and conditions of the employer's certificate of authority.

(4) Failure to provide the information when requested or failure to comply with the terms and conditions of the employer's certificate of authority or with any additional conditions prescribed by the superintendent will result in automatic termination of the employer's authority to self-insure and the issuance of an order by the superintendent that prescribes the terms and conditions of a termination plan. [PL 1995, c. 594, §6 (NEW).]

D. The superintendent shall notify the employer in writing within 30 days of receipt of all requested information whether the employer's application for continuing self-insurance authority is approved or denied. The superintendent's notice must specify the reasons for the denial or must specify the terms and conditions for continuing self-insurance authority as prescribed by this section and any rules adopted by the superintendent.

(1) In making a determination, the superintendent must consider, among other things, whether the successor employer has assumed 100% of the workers' compensation liabilities of the employer, whether the successor employer qualifies for self-insurance authority pursuant to subsection 3 and whether the successor employer maintains substantially the same business operations as the predecessor self-insured employer. The superintendent may also consider, among other things, whether the successor employer employs a substantially greater number of employees than did the predecessor employer. For purposes of this subparagraph, the successor employer has assumed 100% of the workers' compensation liabilities of the employer if the successor employer is unconditionally liable for payment of all benefits that are the obligations of the self-insured employer, regardless of date of injury and notwithstanding agreements for reimbursement from reinsurers or other entities agreeing to reimburse the successor employer for payments associated with self-insurance obligations.

(2) If the superintendent denies the application, the effective date of the termination is 30 days from the date of the superintendent's notice. The self-insurer may request a hearing on this decision within 30 days from the date of the notice. Upon a request for hearing, there is no automatic stay of the superintendent's decision, but the effective date of termination may be stayed by order of the superintendent. Prior to the effective date of the termination, the employer must file a termination plan consistent with paragraph B. After denial of an application, a successor employer may apply for authority to self-insure its workers' compensation obligations pursuant to this section. [PL 1995, c. 594, §6 (NEW).]

E. If at any time the superintendent determines that a self-insurer has failed to notify the superintendent of the occurrence of any of the events identified in paragraph A, the self-insurer may be subject to penalties pursuant to Title 24-A, section 12-A, if it is determined that the occurrence of the event had a substantial impact on the financial condition of the self-insured employer. As soon as the superintendent notifies the self-insurer that the superintendent has determined that the self-insurer failed to notify the superintendent of the occurrence of any of these events, the self-insurer must comply with this subsection. [PL 1995, c. 594, §6 (NEW).]

F. If a self-insurer's approval is revoked or not renewed pursuant to subsection 6 or 13, the superintendent must issue an order that prescribes terms and conditions related to the termination of the plan. The terms of the order must conform to, but need not be limited to, the requirements of paragraph B. [PL 1995, c. 594, §6 (NEW).]

F-1. After terminating or suspending an authorization for self-insurance in accordance with this subsection, the Superintendent of Insurance shall promptly notify the board and forward to it a copy of the order terminating or suspending the authorization. [PL 2025, c. 53, §12 (NEW).]

G. Any order issued pursuant to this subsection, including an order directing a self-insurer to produce relevant information, may be enforced as provided by Title 24-A, section 214. [PL 1995, c. 594, §6 (NEW).]

H. A self-insurer approved by the superintendent to continue self-insurance authority under paragraph D is not subject to assessments as a new member of the Maine Self-Insurance Guarantee Association. The self-insurer is subject to applicable annual assessments or postinsolvency assessments levied by the Maine Self-Insurance Guarantee Association. [PL 1995, c. 594, §6 (NEW).]

H-1. A member of a group self-insurer and a successor employer of a member of a group self-insurer may apply for continuing membership in the group self-insurer, subject to the approval of the Superintendent of Insurance and the group self-insurer, in accordance with procedures established by the group self-insurer. The procedures established by the group self-insurer must include requirements the superintendent determines are substantially similar to the relevant provisions of paragraphs C and D. As long as the successor employer remains a member in good standing and has fully assumed the former member's obligations, the former member may not be treated as a departing member for purposes of enhanced security requirements under subsection 3, paragraph C, subparagraph (2). [PL 2017, c. 401, §6 (NEW).]

I. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1995, c. 594, §6 (NEW).]

[PL 2025, c. 53, §12 (AMD).]

15. Confidentiality of information. All written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, all information contained in the minutes of trustee meetings and all information relating to individual compensation cases, that a self-insurer is required to file with or make available to the superintendent under this section, section 404 or rules adopted pursuant to it are confidential and are not public records.

The confidential nature of this information does not limit or affect its use by the superintendent in administering this Act, including, but not limited to, communications with the service agent, the Workers' Compensation Board or the Maine Self-Insurance Guarantee Association.

[PL 1993, c. 349, §73 (AMD).]

16. Registration of self-insurers. Registration of self-insurers is governed as follows.

A. All employers claiming the status of self-insurer as defined by this Title shall apply for registration with the Bureau of Insurance on forms prescribed by the Superintendent of Insurance. The application must contain a statement identifying the employer as a self-insurer, which includes the legal organization and name of each self-insuring employer. The superintendent may require the submission of any further information the superintendent deems necessary in order to determine whether a self-insurer has been approved pursuant to this section. If an employer is unable to establish that it has been approved to act as a self-insurer, the superintendent shall deny the application for registration. Upon denial of registration, an employer may make application for approval to act as a self-insurer in accordance with all requirements of this Act and the rules adopted pursuant to this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. On January 1st of each year, the Superintendent of Insurance shall promulgate an official list of self-insurers that are approved and registered as of that date and the list of self-insurers must be forwarded to the Maine Self-Insurance Guarantee Association. The superintendent shall add to the list at any time during the year the name or names of any self-insurer or self-insurers the superintendent has approved and registered subsequent to the promulgation of the list and shall similarly delete the name or names of any self-insurer or self-insurers whose authority to self-insure has been terminated. Additions to or deletions from the official list of self-insurers must be forwarded to the Maine Self-Insurance Guarantee Association when made. Failure to become registered pursuant to this subsection terminates an employer's authority to self-insure under this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

17. Report required. In order to comply with Title 26, section 61, subsection 1-A, on or before March 1st of each year, every individual workers' compensation self-insurer and workers' compensation group self-insurer shall file a report with the superintendent showing the amount of total actual paid

workers' compensation losses and the total actual paid workers' compensation medical payments for the previous calendar year.
[PL 1997, c. 126, §9 (NEW).]

18. Prohibition against using funds for political contributions. Once deposited into a trust fund created to comply with the requirements of this section, funds and assets may not be withdrawn for the purpose of making a contribution to a political candidate or political action committee required to file a report under Title 21-A, chapter 13, subchapter 2 or 4.
[PL 2003, c. 424, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 1993, c. 1, §141 (COR). PL 1993, c. 349, §73 (AMD). PL 1993, c. 491, §1 (AMD). PL 1993, c. 510, §§1,2 (AMD). PL 1995, c. 36, §1 (AMD). PL 1995, c. 150, §1 (AMD). PL 1995, c. 277, §1 (AMD). PL 1995, c. 398, §§2-4 (AMD). PL 1995, c. 560, §G27 (AMD). PL 1995, c. 594, §§2-6 (AMD). PL 1995, c. 619, §7 (AMD). PL 1997, c. 126, §§7-9 (AMD). PL 1997, c. 457, §54 (AMD). PL 1999, c. 113, §30 (AMD). PL 1999, c. 790, §A53 (AMD). PL 2001, c. 44, §14 (AFF). PL 2001, c. 48, §§1,11 (AMD). PL 2001, c. 48, §§2,14 (AFF). PL 2001, c. 224, §1 (AMD). PL 2003, c. 38, §1 (AMD). PL 2003, c. 315, §§1,2 (AMD). PL 2003, c. 424, §§1,2 (AMD). PL 2003, c. 671, §§A11,12 (AMD). PL 2005, c. 98, §§1,2 (AMD). PL 2007, c. 75, §1 (AMD). PL 2009, c. 232, §2 (AMD). PL 2011, c. 98, §1 (AMD). PL 2011, c. 180, §§1, 2 (AMD). PL 2013, c. 172, §§1, 2 (AMD). PL 2015, c. 59, §1 (AMD). PL 2017, c. 401, §§1-6 (AMD). PL 2023, c. 393, §§1, 2 (AMD). PL 2025, c. 1, §§1, 2 (AMD). PL 2025, c. 53, §§1-12 (AMD).

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§409. Assessment for the expenses of administering the Self-insurer's Workers' Compensation Program

The Superintendent of Insurance shall annually make an assessment on self-insuring employers approved pursuant to section 403, respecting the operations of each self-insurer conducted in the State to defray the cost of administration of the Bureau of Insurance. On or before March 1st of each year, every individual workers' compensation self-insurer and group workers' compensation self-insurer shall report to the superintendent the self-insurer's experience modification factor for the previous calendar year. The superintendent shall calculate the amount of annual standard premium that would have been paid during the previous calendar year for every individual workers' compensation self-insurer and group workers' compensation self-insurer. The annual assessment upon approved self-insuring employers must be calculated using the imputed annual standard premium relating to business operations in the State that each self-insurer would have paid during the previous calendar year pursuant to manual rates established by the principal rating organization in the State and using the experience rating procedure approved by the Superintendent of Insurance for that self-insurer. For the purposes of this section, the definitions of annual standard premium in section 404, subsection 4 apply. The assessment must be applied to the budget of the bureau for the fiscal year commencing July 1st. The assessment must be in an amount not exceeding 11/100 of 1% of the imputed annual standard premium. When the superintendent calculates the amount of the annual assessment, the superintendent may consider, among other things, the staffing level required to administer workers' compensation self-insurance oversight responsibilities of the bureau. All information filed by self-insurers in compliance with this section is confidential in accordance with section 403, subsection 15. [PL 1997, c. 126, §13 (AMD).]

1. Annual standard premium. The superintendent shall utilize the annual standard premium for each approved self-insurer as calculated by the Bureau of Insurance pursuant to this section in determining the amount of the assessment.
[PL 1997, c. 126, §14 (AMD).]

2. Expense of examination. The expense of examination of group self-insurers subject to section 403, subsection 5, paragraph I is payable by the person examined.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Minimum assessment. In any year in which a self-insurer has no annual standard premium in the State or in which the annual standard premium is not sufficient to produce at the rate prescribed by law an amount equal to or in excess of $100, the minimum assessment payable by any self-insurer is $100.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Notification of assessment. On or before July 1st, next following receipt of the report from the Maine Self-Insurance Guarantee Association, the Superintendent of Insurance shall notify each self-insurer of the assessment due.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Time of payment. Payment must be made on or before August 10th.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Revocation or termination. If the assessment is not paid on or before the prescribed date, the right of any individual or group to continue the option of self-insurance may be revoked or terminated by the Superintendent of Insurance.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Recalculation of assessment. Immediately following the close of the fiscal year ending June 30, 1987, and at the close of each 2nd succeeding fiscal year, the Superintendent of Insurance shall recalculate the assessment on each self-insurer subject to this section. If, in any instance, any

assessment paid under this section is based in whole or in part on the annual standard premium estimated in the calendar year utilized for assessment purposes, the recalculation must recognize the actual audited annual standard premium, as available, for each affected self-insurer. Actual expenditures of the Bureau of Insurance during the preceding fiscal year must also be recognized. On or before October 1st, the Superintendent of Insurance shall render to each self-insurer a statement showing the difference between the self-insurer's respective recalculated assessment and the amount paid during the preceding biennium. Any overpayment of annual assessment resulting from complying with the requirements of this section must be refunded or, at the option of the assessed party, applied as a credit against the assessment for the succeeding fiscal year. Any overpayment of $100 or less must be applied as a credit against the assessment for the succeeding fiscal year.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Deposit with Treasurer of State. The Superintendent of Insurance shall deposit all payments made pursuant to this section with the Treasurer of State. The money must be used for the sole purpose of paying the expenses of the Bureau of Insurance for administration of the Self-insurer's Workers' Compensation Program.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Exclusions. This section does not apply to the State or the University of Maine System.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

10. Applicability. This section applies with respect to fiscal years commencing on or after July 1, 1986.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1993, c. 313, §40 (AMD). PL 1997, c. 126, §§13,14 (AMD).

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§1214. Office of Victim Services

1. Establishment. The Office of Victim Services, referred to in this section as the "office," is established within the department to advocate for compliance by the department, any correctional facility, any detention facility, community corrections as defined in section 1210-E, subsection 1, paragraph A or any contract agency with all laws, administrative rules and institutional and other policies relating to the rights and dignity of victims.

A. [PL 2017, c. 128, §5 (RP).]

B. [PL 2017, c. 128, §5 (RP).]

[PL 2023, c. 405, Pt. A, §121 (AMD); PL 2023, c. 405, Pt. A, §123 (AFF).]

2. Victim Services Coordinator. The Victim Services Coordinator shall direct and coordinate the office.

A. The Victim Services Coordinator shall report only to the commissioner or the commissioner's designee. [PL 2017, c. 128, §6 (AMD).]

B. The Victim Services Coordinator shall, with the approval of the commissioner or the commissioner's designee, select other victim advocates needed to carry out the intent of this section and who shall report only to the Victim Services Coordinator. [PL 2017, c. 128, §6 (AMD).]

[PL 2017, c. 128, §6 (AMD).]

3. Duties. The office, through the Victim Services Coordinator and other victim advocates, shall:

A. Receive or refer complaints made by victims; [PL 2001, c. 439, Pt. G, §1 (NEW).]

B. Intercede on behalf of victims with officials of the department, any correctional facility, any detention facility, community corrections as defined in section 1210-E, subsection 1, paragraph A or any contract agency or assist these persons in the resolution of victim-related issues; [PL 2023, c. 405, Pt. A, §122 (AMD); PL 2023, c. 405, Pt. A, §123 (AFF).]

C. Act as an information source regarding the rights of victims and keep informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of victims and about relevant legal decisions and other developments related to the field of corrections, both in this State and in other parts of the country; [PL 2001, c. 439, Pt. G, §1 (NEW).]

D. Ensure that victims who request notice of release receive it; [PL 2001, c. 439, Pt. G, §1 (NEW).]

E. Assist victims who are being harassed by persons in the custody or under the supervision of the department with obtaining protection from that harassment; [PL 2001, c. 477, §2 (AMD).]

F. Assist victims with obtaining victim compensation, restitution and other benefits of restorative justice; and [PL 2001, c. 477, §2 (AMD).]

G. Ensure the safety of clients who are also victims by advising the commissioner of information that may place a client at risk if disclosed pursuant to Title 1, section 402, subsection 3-A. [PL 2001, c. 477, §3 (NEW).]

[PL 2023, c. 405, Pt. A, §122 (AMD); PL 2023, c. 405, Pt. A, §123 (AFF).]

4. Confidentiality. Requests for action by the office must be treated confidentially and may be disclosed only to a state agency if necessary to carry out the statutory functions of that agency or to a criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1 or the administration of juvenile justice. In no case may a victim's request for notice of release be disclosed outside the department and the office of the attorney for the State with which the request was filed.

[PL 2021, c. 365, §34 (AMD); PL 2021, c. 365, §37 (AFF).]

5. Report regarding domestic violence intervention programs. Beginning January 2003 and annually thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the work of domestic violence intervention programs. The report must include information regarding: meeting program benchmarks and goals, developing and implementing new programs, measuring effectiveness of existing programs and communicating and coordinating efforts with providers of substance use disorder services, literacy support and other services with whom persons ordered to complete a domestic violence intervention program may need to work in order to participate meaningfully in a domestic violence intervention program.

[PL 2021, c. 174, §14 (AMD).]

REVISOR'S NOTE: §1214. Accreditation (As enacted by PL 2001, c. 458, § 3 is REALLOCATED TO TITLE 34-A, SECTION 1215)

SECTION HISTORY

PL 2001, c. 439, §G1 (NEW). PL 2001, c. 477, §§2,3 (AMD). PL 2001, c. 686, §D1 (AMD). PL 2007, c. 377, §§14, 15 (AMD). PL 2007, c. 377, §17 (AFF). PL 2015, c. 470, §17 (AMD). PL 2017, c. 128, §§5, 6 (AMD). PL 2017, c. 407, Pt. A, §153 (AMD). PL 2021, c. 174, §14 (AMD). PL 2021, c. 365, §34 (AMD). PL 2021, c. 365, §37 (AFF). PL 2021, c. 676, Pt. B, §§4, 5 (AMD). PL 2023, c. 405, Pt. A, §§121, 122 (AMD). PL 2023, c. 405, Pt. A, §123 (AFF).

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REF 71 DOC

STATUTE: 34-A MRSA §1214, sub-§4

AGENCY: Department of Corrections

CONTACT PERSON: Jill O'Brien (jill.r.obrien@maine.gov); Jenna Heald (foaa.mdoc@maine.gov)

RETURN BY: October 2, 2026

Statutory Language:

1. **Confidentiality.** Requests for action by the office must be treated confidentially and may be disclosed only to a state agency if necessary to carry out the statutory functions of that agency or to a criminal justice agency if necessary to carry out the administration of criminal justice as defined in Title 16, section 703, subsection 1 or the administration of juvenile justice. In no case may a victim's request for notice of release be disclosed outside the department and the office of the attorney for the State with which the request was filed.

MDOC Responses to RTKAC Questions:

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

MDOC estimates that the Office of Victim Services and other sectors of MDOC use this exception multiple times per day. It is crucial for MDOC to be able to rely on the confidentiality of victim information and its exemption from FOAA for the safety of victims and their family members and for MDOC's Office of Victim Services to be able to provide effective services to victims of crime. MDOC frequently communicates confidentially with victims of crime on matters ranging from personal safety planning for those victims, especially as residents are being released, in the context of upcoming hearings in criminal cases or cases for post-conviction review, and in the context of news media requests to feature or interview residents, among other scenarios. MDOC frequently relies on this confidentiality provision to protect these communications with victims.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

MDOC vehemently urges the continuation of this exception, as it is essential to prevent retaliation against victims seeking services from the MDOC Office of Victim Services. Without

confidentiality, victims will not feel comfortable contacting MDOC, and the services to victims would cease to be effective.

Also, confidentiality is required according to the federal Office for Victims of Crime (OVC) grant offered through the Maine Department of Health and Human Services (DHHS) to MDOC to provide services to victims of crime. MDOC agrees to protect victim information under this statute and as required in the Memorandum of Understanding with DHHS as a subrecipient of these funds.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

MDOC does not see any problems with this exception and believes that it is clear that victim services communications are to remain confidential.

4. Does your agency recommend changes to this exception?

MDOC emphatically recommends continuation of this exception without change.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

MDOC Director of Office of Victim Services Tessa Mosher, tessa.mosher@maine.gov; the Maine Commission on Domestic and Sexual Abuse; the Maine Coalition to End Domestic Violence Executive Director Francine Garland Stark; Maine Coalition Against Sexual Assault Director Elizabeth Ward Saxl.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Victims of crimes already have low faith in the ability of government entities to protect their privacy and information, in the age of ubiquitous FOAA requests for police reports and videos and when many law enforcement agencies release information without complying with state laws that protect victims of crime. Protecting victims' confidential communications with the few resources that are available to victims is essential to be able to provide them any services.

§1615. Plastic beverage containers

(REALLOCATED FROM TITLE 38, SECTION 1612)

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

A. "Beverage" has the same meaning as in section 3102, subsection 1. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. "Beverage container" means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. "Beverage container" does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents and the container is filled with a nonalcoholic beverage. "Beverage container" does not include a container composed of cardboard in combination with a plastic liner. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. "Beverage manufacturing industry association" means an association that represents the interests of companies that manufacture beverages. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. "Dealer" has the same meaning as in section 3102, subsection 6. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

E. "Distributor" means a person that engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer that engages in such sales. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

F. "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person that initiates or is required to initiate under section 3103 a deposit on a plastic beverage container containing a beverage other than spirits. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

G. "Manufacturer" means a person, partnership, association, corporation or other entity that, through its own action or through contract or control of another entity, is primarily responsible for the production of a beverage contained in a plastic beverage container for sale or distribution in the State. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

H. "Nonrefillable beverage container" means a beverage container that, after being used by a consumer, is not to be reused as a beverage container by a manufacturer. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

I. "Plastic" means a synthetic material made from fossil fuel or organic-based polymers, such as polyethylene, polystyrene, polypropylene and polycarbonate, that can be molded or blown into specific shapes. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

J. "Plastic beverage container" means a nonrefillable beverage container that is composed wholly or in large part of plastic. "Plastic beverage container" does not include a beverage label or a beverage cap that may be screwed onto or otherwise affixed to a nonrefillable beverage container. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

K. "Post-consumer recycled plastic" means plastic produced from the recovery, separation, collection and reprocessing of plastic that was originally sold for consumption and that would otherwise be disposed of or processed as waste. "Post-consumer recycled plastic" does not include post-industrial plastic or pre-consumer plastic. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

L. "Proprietary information" has the same meaning as in section 1771, subsection 6-A. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

M. "Spirits" has the same meaning as in Title 28-A, section 2, subsection 31. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

N. "Spirits manufacturer" means a person that is:

(1) An in-state rectifier, distillery or small distillery licensed under Title 28-A, section 1355-A that produces spirits contained in a plastic beverage container; or

(2) An out-of-state spirits supplier that transports spirits contained in a plastic beverage container into the State or causes such spirits to be transported into the State and has been issued a certificate of approval under Title 28-A, section 1381.

As used in this paragraph, "rectifier" has the same meaning as in Title 28-A, section 2, subsection 25 and "out-of-state spirits supplier" has the same meaning as in Title 28-A, section 1381, subsection 1. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

2. Post-consumer recycled plastic requirement. Except as provided in subsection 7, beginning January 1, 2026 and ending December 31, 2030, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

Except as provided in subsection 7, beginning January 1, 2031, an initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by subsection 5.

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

3. Determination of compliance with post-consumer recycled plastic requirement; advisory committee. For the purposes of determining an initiator of deposit's or spirits manufacturer's compliance with the post-consumer recycled plastic requirement in subsection 2, an initiator or spirits manufacturer may rely on Maine-specific data regarding plastic beverage container sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory in the United States that includes the State.

A. If an initiator of deposit or spirits manufacturer elects to rely on data regarding plastic beverage container sales and material use derived from data applicable to a region or territory in the United States that includes the State, the initiator or spirits manufacturer shall:

(1) Prorate that regional or territorial data to determine Maine-specific figures based on market share or population in a manner that ensures that the percentage of post-consumer recycled plastic calculated for plastic beverage containers sold in the State is the same percentage as calculated for that larger region or territory; and

(2) Document the methodology used to determine those Maine-specific figures calculated under subparagraph (1) in the report required under subsection 4. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The department may form an advisory committee composed of stakeholders to determine the ability of initiators of deposit and spirits manufacturers to measure and report the Maine-specific information required under this subsection and to develop any recommendations for improving the

data determination and reporting process. The department may, as necessary, contract with a qualified 3rd-party entity to assist the advisory committee in developing recommendations under this paragraph. Any costs to the department associated with this paragraph may be offset through any fees collected by the department pursuant to this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

4. Initiator of deposit and spirits manufacturer reporting; payment of fees; product removal for noncompliance. On or before April 1, 2024, and annually thereafter, an initiator of deposit or spirits manufacturer that has in the prior calendar year sold, offered for sale or distributed for sale in the State a plastic beverage container shall submit a report to the department identifying, by resin type when applicable, the amount by weight in pounds of post-consumer recycled plastic, the amount by weight in pounds of plastic that is not post-consumer recycled plastic and the percentage of post-consumer recycled plastic in the total weight of all plastic beverage containers the initiator or spirits manufacturer sold, offered for sale or distributed for sale in the State in that prior calendar year.

A. If the initiator of deposit or spirits manufacturer has determined the data required to be reported under this subsection using regional or territorial data, the initiator or spirits manufacturer shall describe in the report the methodology used to determine the Maine-specific figures. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. At the time that an initiator of deposit or spirits manufacturer submits a report required under this subsection, the initiator or spirits manufacturer shall pay to the department an annual registration fee and, on or after January 1, 2026, any fee required by subsection 5. The department shall set the amount of the annual registration fee, which may not exceed $500 and which must be designed to offset the costs to the department of administering and overseeing this section. Any fees received by the department pursuant to this section must be deposited in the Maine Environmental Protection Fund established in section 351.

An initiator of deposit or spirits manufacturer that in the prior calendar year sold, offered for sale or distributed for sale in the State less than 10,000 plastic beverage containers or, in the aggregate, less than 200 pounds of plastic that is not post-consumer recycled plastic is not required to pay an annual registration fee under this paragraph but shall otherwise comply with all applicable requirements of this section, including, but not limited to, submission of the report required under this subsection and payment of any fee required by subsection 5. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. The department may conduct audits or take other necessary actions to verify the accuracy of initiator of deposit or spirits manufacturer data reported under this subsection. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. Proprietary information submitted to the department in a report required under this subsection or submitted to the department as part of an audit or other action taken by the department under paragraph C that is identified by the submittor 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. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

E. The department shall make available on its publicly accessible website all reports submitted under this subsection, except that the department shall redact or remove from such reports any proprietary information identified pursuant to paragraph D. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

F. An initiator of deposit may submit the report required under this subsection using information provided to the initiator by a manufacturer. An initiator of deposit or a spirits manufacturer may contract with a 3rd party to submit the report on the initiator's behalf. The submission of the report required under this subsection by an initiator of deposit using information provided by a

manufacturer or by a 3rd party on an initiator's or spirits manufacturer's behalf does not relieve the initiator or spirits manufacturer from complying with the other requirements of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

G. Not more than once every 5 years, the department may require initiators of deposit and spirits manufacturers to fund a 3rd-party verification of accuracy of the information submitted under this subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the initiators of deposit and spirits manufacturers.

An initiator of deposit or spirits manufacturer may elect to satisfy the requirements of this paragraph by submitting to the department a 3rd-party verification, or, in the case of an initiator of deposit, a manufacturer's verification, of the accuracy of substantially similar information to that required to be reported under this subsection that was submitted to another state with a post-consumer recycled plastic content requirement that is substantially similar to the requirements of this section as long as that other state is included in the region or territory identified by the initiator or spirits manufacturer under paragraph A. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

H. Except as provided in paragraph I, if an initiator of deposit or spirits manufacturer fails to submit the report and pay all applicable fees required under this subsection within 60 days of the reporting deadline, the department may prohibit the initiator or spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container.

(1) If, pursuant to this paragraph, the department prohibits an initiator of deposit from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to any manufacturer whose plastic beverage containers are sold, offered for sale or distributed for sale in the State by the initiator and to dealers and distributors in the State. A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of the initiator commits a violation of this section.

(2) If, pursuant to this paragraph, the department prohibits a spirits manufacturer from selling, offering for sale or distributing for sale in the State any plastic beverage container, the department shall provide written notification of that prohibition to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, which shall ensure that the plastic beverage containers of the spirits manufacturer are promptly removed from sale in the State.

(3) An initiator of deposit or spirits manufacturer prohibited by the department pursuant to this paragraph from selling, offering for sale or distributing for sale in the State any plastic beverage container that subsequently sells, offers for sale or distributes for sale in the State a plastic beverage container commits a violation of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

I. Notwithstanding any provision of this section to the contrary, if an initiator of deposit lacks the information necessary to submit the report required under this subsection by the reporting deadline and calculate the fee required under subsection 5 due to the failure of one or more manufacturers whose plastic beverage containers the initiator sold, offered for sale or distributed for sale in the State during the prior calendar year to provide such information to the initiator, the department may:

(1) Allow the initiator to submit the required report and calculate and pay the required fee based only on the manufacturer information available to the initiator and to thereby be deemed in full compliance with those requirements;

(2) Allow the initiator to sell, offer for sale or distribute for sale in the State any plastic beverage container of any manufacturer that provided the initiator with the information necessary to satisfy the reporting requirement and calculate the required fee but prohibit the initiator from selling, offering for sale or distributing for sale in the State any plastic beverage container of any manufacturer that failed to provide such information to the initiator. If the initiator of deposit sells, offers for sale or distributes for sale in the State a plastic beverage container subject to a prohibition imposed under this subparagraph, the initiator commits a violation of this section; and

(3) Provide written notification of a prohibition imposed under subparagraph (2) to manufacturers, dealers and distributors in the same manner as in paragraph H, subparagraph (1). A manufacturer, dealer or distributor that receives such written notification and, 3 calendar days or more after receipt of the notification, sells, offers for sale or distributes for sale in the State a plastic beverage container of an initiator of deposit subject to a prohibition imposed under subparagraph (2) commits a violation of this section. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

5. Post-consumer recycled plastic content fee. Pursuant to the provisions of this subsection, an initiator of deposit or spirits manufacturer shall calculate the amount of a post-consumer recycled plastic content fee and shall remit such amount to the department pursuant to subsection 4, paragraph B as follows:

A. The initiator of deposit or spirits manufacturer shall add the total amount by weight in pounds of post-consumer recycled plastic and the total amount by weight in pounds of plastic that is not post-consumer recycled plastic used by the initiator in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year. The initiator of deposit or spirits manufacturer shall calculate the figure under this paragraph based on the information reported by the initiator or spirits manufacturer pursuant to subsection 4; [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph A by the minimum post-consumer recycled plastic percentage required under subsection 2 during the prior calendar year; [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. The initiator of deposit or spirits manufacturer shall subtract from the figure calculated under paragraph B the total amount by weight in pounds of post-consumer recycled plastic used by the initiator or spirits manufacturer in all plastic beverage containers it sold, offered for sale or distributed for sale in the State during the prior calendar year; and [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. The initiator of deposit or spirits manufacturer shall multiply the figure calculated under paragraph C by 20¢. If the figure calculated under this paragraph is less than or equal to zero, the initiator of deposit or spirits manufacturer is not required to pay a post-consumer recycled plastic content fee to the department pursuant to subsection 4, paragraph B. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

6. Waiver. At the request of an initiator of deposit or spirits manufacturer or a manufacturer as provided in paragraph A, and in accordance with the provisions of this subsection, the department may grant a one-year waiver from payment of the fee that would otherwise be required pursuant to subsection 5 if the initiator, spirits manufacturer or manufacturer demonstrates to the department's satisfaction that it was unable to meet the applicable post-consumer recycled plastic requirement of

subsection 2 due to anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic.

A. A manufacturer may on its own initiative request a waiver from the department pursuant to this subsection with respect to a plastic beverage container of the manufacturer for which an initiator of deposit is required pursuant to subsection 4 to submit a report and pay to the department an annual registration fee and the fee required pursuant to subsection 5. If a manufacturer requests a waiver pursuant to this paragraph, both the initiator of deposit and the manufacturer are responsible for responding to any requests for information made by the department pursuant to paragraph C. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. A waiver request submitted under this subsection by an initiator of deposit or spirits manufacturer must be submitted with the report required under subsection 4 and must include payment to the department by the initiator of a $100 waiver processing fee. A waiver request submitted under this subsection by a manufacturer pursuant to paragraph A must be submitted on or before the reporting deadline under subsection 4 and must include payment to the department by the manufacturer of a $100 waiver processing fee. A waiver request must include sufficient information to demonstrate the anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic causing the initiator of deposit, spirits manufacturer or manufacturer to be unable to meet the applicable post-consumer recycled plastic requirement of subsection 2. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

C. An initiator of deposit, spirits manufacturer or manufacturer that submits a waiver request to the department shall promptly respond to any request from the department for additional information relating to the waiver request. The department may return a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer as incomplete for processing if the initiator, spirits manufacturer or manufacturer fails to provide sufficient information for the department to review the waiver request or fails to promptly respond to a request from the department for additional information relating to the waiver request. A determination by the department under this paragraph to return a submitted waiver request as incomplete for processing does not constitute a final agency action as defined in Title 5, section 8002, subsection 4 and may not be appealed to the board or to the Superior Court. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

D. As a condition of granting a waiver request under this subsection, the department may require an initiator of deposit, spirits manufacturer or manufacturer to submit a corrective action plan describing the actions the initiator, spirits manufacturer or manufacturer intends to implement to ensure its compliance with the requirements of subsection 2 during the current calendar year. If the initiator of deposit, spirits manufacturer or manufacturer has been granted 2 consecutive waiver requests pursuant to this subsection, the department shall require the initiator, spirits manufacturer or manufacturer to submit a corrective action plan pursuant to this paragraph as a condition of granting a 3rd waiver request.

(1) The department may approve the corrective action plan as submitted, approve the plan with required changes or reject the plan.

(2) The department may require the initiator of deposit, spirits manufacturer or manufacturer to demonstrate implementation of an approved corrective action plan before the department grants the waiver request submitted by the initiator, spirits manufacturer or manufacturer under this subsection.

(3) If the department rejects a corrective action plan required under this paragraph or if the department determines that the initiator of deposit, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan, the department shall require the initiator or spirits manufacturer to pay the fee required pursuant to subsection 5 within 45 days

of the date of the department's rejection of the corrective action plan or within 45 days of the department's determination that the initiator, spirits manufacturer or manufacturer has failed to implement an approved corrective action plan. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

E. If the department denies a waiver request submitted by an initiator of deposit, spirits manufacturer or manufacturer pursuant to this subsection, the initiator or spirits manufacturer shall pay to the department the fee required pursuant to subsection 5 within 45 days of the date of the department's denial of the waiver request. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

7. Review of post-consumer recycled plastic requirements. Beginning January 1, 2026, and not more than annually thereafter, the department, on its own initiative or at the petition of a beverage manufacturing industry association, may initiate a review of the applicable post-consumer recycled plastic requirement under subsection 2 to determine whether that requirement should be reduced due to market conditions for post-consumer recycled plastic, including the demand for such plastic for food-grade applications, and a review of recycling rates, progress made by initiators of deposit, spirits manufacturers and manufacturers in complying with the post-consumer recycled plastic requirement under subsection 2 and any other factors reviewed by the department.

A. A petition for review submitted pursuant to this subsection by a beverage manufacturing industry association must be evaluated by the department based on information provided by the association and any other information available to the department. The department may require the beverage manufacturing industry association to fund a 3rd-party verification of the accuracy of information submitted by the association under this subsection. The 3rd party selected by the department to conduct such verification must be agreed upon by the beverage manufacturing industry association.

The department may reject the petition for review if the beverage manufacturing industry association fails to provide sufficient information, as determined by the department, for the department to make a determination under this subsection regarding the need for a reduction in the post-consumer recycled plastic requirement under subsection 2 or if the association fails to reach an agreement with the department regarding the selection of a 3rd party to verify the accuracy of submitted information. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. After conducting the review authorized by this subsection, the department may adopt rules reducing the applicable post-consumer recycled plastic content requirement under subsection 2. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

8. Department reporting. 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 requirements of this section and including any recommendations for changes to those requirements. The report must describe, in the aggregate, the data submitted to the department by initiators of deposit and spirits manufacturers under subsection 4.

A. Beginning February 15, 2028, and annually thereafter, the report under this subsection must include information regarding initiator of deposit and spirits manufacturer compliance with the requirements of subsection 2, including, at a minimum, information on the number of noncompliant initiators and spirits manufacturers, the number of waiver requests received and granted or rejected by the department under subsection 6 and the total funds generated from payment of the annual registration fee under subsection 4 and the payment of the post-consumer recycled plastic content fee as calculated under subsection 5. The report must include any recommendations by the department regarding whether the requirements of this section should be amended to better ensure

initiator of deposit and spirits manufacturer compliance. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

B. The report under this subsection may be included in the report required pursuant to section 1772, subsection 1. After reviewing the report under this subsection, the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters may report out legislation relating to the report. [PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

9. Administration and enforcement; rules. The department shall administer and enforce this section and may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department may, as necessary, contract with qualified 3rd-party entities to assist in the implementation of this section and the development of any rules to be adopted pursuant to this subsection.
[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

10. Violations. A person that violates a provision of this section is subject to civil penalties under section 349.
[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

11. Preemption. Beginning April 1, 2024, the State intends to occupy the whole field of regulation of the amount of post-consumer recycled plastic contained in plastic beverage containers. A local government may not adopt an ordinance regulating the amount of post-consumer recycled plastic contained in plastic beverage containers and, beginning April 1, 2024, any ordinance or regulation that violates this subsection is void and has no force or effect.
[PL 2021, c. 742, §3 (NEW); RR 2021, c. 2, Pt. A, §134 (RAL).]

SECTION HISTORY

PL 2021, c. 742, §3 (NEW). RR 2021, c. 2, Pt. A, §134 (RAL).

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