MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Response to Comments
on the Proposed Action to Adopt New Regulations .01—.12
under COMAR 26.04.14 Producer Responsibility - Packaging and Paper Products

Introduction: On February 6, 2026, the Maryland Department of the Environment ("MDE" or "the Department") proposed to adopt new regulations in order to implement **Chapter 431 2025**, entitled *Packaging and Paper Products - Producer Responsibility Plans*[1]*,* also referred to as Senate Bill 901 (SB901). This law requires certain producers of covered materials, individually or as part of a producer responsibility organization to register with the Department by July 1, 2026. There are other requirements under the law including submitting approved plans, payment of fees, and the facilitation of an Advisory Council. Pursuant to Chapter 212, Acts of 2019, a small business public comment period was held December 12-27, 2025 as an opportunity for small businesses, nonprofit organizations, and other interested parties to review and comment on a draft proposal to adopt new regulations prior to submission to the Administrative, Executive, and Legislative Review. Proposed regulations were published in Volume 53, Issue 3 of the Maryland Register[2] on February 6, 2026. The formal 30-day public comment period on the proposed action ended on March 6, 2026. There was a previous public comment period provided under the Small Business Review requirements of Responses to written comments received and are also provided in this document. On **May 6, 2026**, after reviewing the public comments, the Secretary of the Environment adopted the regulations as proposed with nonsubstantive changes. The Notice of Final Action was published in the **May 15, 2026** issue of the *Maryland Register* and the regulations become effective on **June 30, 2026**.

.02 Definitions.

1. **Comment Topic: Definitions - "Alternative Collection Program"**
   Commenter(s) Name and Affiliation: Frazier Willman, American Forest & Paper Association (AF&PA); Danielle F. Waterfield, American Institute for Packaging and the Environment (AMERIPEN)

   Comment: AF&PA provided the following comment regarding the definition of "Alternative Collection Program": "This definition contains one of the two references to 'curbside' in the proposed regulations. We are utilizing this reference to express concern on scope creep during Advisory Council meetings. It appears MDE has interest in expanding curbside through the rulemaking process, specifically to include drop-off collection as curbside. Curbside is a well-defined term and risks de-harmonization with other EPR states as well as a nationwide understanding of what curbside means. This is not to say drop-off does not have a place in the program. However, it does not serve program success to conflate separate means of collection under one definition. MDE has vast agency through the approval mechanism of the PRO's plan and should avoid creating an inflexible system via over regulation".
   Response: This phase of regulations did not provide a dedicated definition of "curbside". Therefore, concerns about scope creep and how "curbside" is considered within regulations is outside of the scope of these regulations.

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[1] https://mgaleg.maryland.gov/2025RS/chapters_noln/Ch_431_sb0901E.pdf
[2] https://dsd.maryland.gov/MDRIssues/5303/Assembled.aspx#_Toc221011333

Comment: AMERIPEN provided the following comment: "The definition of 'Alternative Collection Program' in subsection Regulation .02(B)(2) is unnecessarily restrictive. First, it appears limited to collection of a single covered material category per program, despite programs being able to collect multiple types of materials through the same infrastructure. Second, it does not fully acknowledge that a given covered material category may be collected by both curbside and non-curbside means, which may become increasingly prevalent as materials transition towards recyclability, reuse, and compostability. To address these issues while maintaining the original intent of the definition, AMERIPEN recommends amending subsection (B)(2) as follows: '"Alternative Collection Program" means the collection of a specific covered material category that is, or specific covered material categories that are: (i) Not generally collected through curbside services; or (ii) Collected via means in addition to curbside services.'"
Response: As provided in the statute, "an alternative collection program may collect or manage a type or types of covered material…" (Environment Article §9–2505(a)(3)). The Department considers this to clearly state that an alternative collection program may collect or manage multiple covered material types. The Department also identifies that the statute also discusses alternative collection program responsibilities for *the* covered material (singular): "An alternative collection program shall improve and provide a dedicated collection program for *the* applicable covered material" (Environment Article §9–2505(a)(3)(iii)). The Department considers the referencing covered material in the singular does not limit an alternative collection program from "[collecting] and [managing]".."types of covered material" (plural). Regulation .08 clarifies that alternative collection programs may "collect and manage a specific type or types of covered material".
Regarding the second concern, the second part of the definition of "Alternative Collection Program" is: "..that is not *generally* collected through curbside services" (26.04.14.02(B)(2)). Use of the word "generally" provides flexibility for materials that are transitioning toward being collected through curbside services and acknowledges that the covered material collected may in some cases be collected by both curbside and non-curbside means. Alternative collection programs are a means to "improving waste and recycling systems in the State" rather than competing against existing recycling systems for materials that are typically collected curbside. Continued discussion on the curbside list established in Environment Article 9-2508, Annotated Code of Maryland may offer additional clarity on this topic.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

2. Comment Topic: Definitions - "Beverage Container"
Commenter(s) Name and Affiliation: Andi Crooms, Circular Action Alliance (CAA)

CAA submitted several suggestions regarding the proposed definition of "Beverage Container".
Comment: CAA's first comment was that "[t]his definition differs from the statutory definition of 'beverage container' by adding the phrase 'that is legislatively mandated,' which narrows the scope of the deposit program exemption".
Response: Language "that is legislatively mandated" was included to ensure alignment with Section 2 of SB901 (2025 legislative session)[3]: "..if a beverage container deposit return program is enacted in the State, the Department of the Environment shall: (1) coordinate the implementation of the beverage container deposit return program in a manner that ensures compatibility with producer responsibility plans and related provisions of law as enacted by Section 1 of this Act; and (2) ensure that: (i)

[3] https://mgaleg.maryland.gov/2025RS/chapters_noln/Ch_431_sb0901E.pdf

materials covered in the beverage container deposit program are exempt from producer responsibility plans; or (ii) related financial obligations are reduced". When referring to "beverage container deposit return program", Section 2 uses the word "enact" indicating that the program would be achieved through legislation. This distinction is important. An open interpretation of what is meant by a "bottle deposit return program" that is not grounded in this statutory intent, could allow for free ridership from producers who are not obligated to meet specific standards (which would presumably be included in an enacted beverage container deposit return program).

Comment: CAA then recommended "additional clarification and narrowing of the scope of the term 'beverage' to be consistent with other jurisdictions. For example, the definition may want to refer to only 'ready-to-drink' beverages, which would exclude concentrates or syrups".
Response: The Department has determined it is unnecessary to narrow the scope in this definition to "'ready-to-drink' beverages", as both beverage containers that are ready-to-drink and those that are not ready-to-drink meet the definition of a covered material and must register accordingly.

Comment: CAA also recommended "removing 'or that is multimaterial' and replacing it with 'or any combination thereof.' This removes the complexity of adding a new definition and is more aligned with the terminology in other jurisdictions".
Response: The Department notes that the language "or multimaterials" is in statute[4], and therefore cannot be removed from this definition.

Comment: Finally, CAA recommended "adding paper as a material".
Response: The definition clearly states that "Beverage Container" means a prepackaged beverage container; Made of any material including…". The Department notes the included language "made of any material", and interprets this to mean that paper, or any other material, that otherwise meets the definition of a "beverage container" is considered a beverage container. With this being said, MDE will accept the recommendation and add paper as a material, for clarity purposes.

Department determination: Upon consideration of these comments and for the reasons discussed above, MDE has decided to adopt the definition of "Beverage Container" as follows:

(3) Beverage Container.

(a) "Beverage container" means a prepackaged beverage container:

(i) Made of any material including glass, plastic, metal, ***paper,*** *or* ~~***that is***~~ *multimaterials;*

(ii) In any form, including a bottle, can, carton, or pouch; and

(iii) The volume of which is not more than 5 liters.

(b) "Beverage container" does not include a prepackaged beverage container that is covered under a beverage container deposit program in the State that is legislatively mandated.

3. Comment Topic: Definitions - "Bioplastic"

Commenter(s) Name and Affiliation: Andrea Albersheim, American Chemistry Council (ACC); Kimberly Davis, Biodegradable Products Institute (BPI); Ross Neely, Kemira; Carol Patterson, Foodservice Packaging Institute (FPI); DeNeile Cooper, The Recycling Partnership (TRP); CAA

ACC, BPI, and CAA expressed concern with adding the defined term "bioplastic".

4 https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-2501&enactments=False&archived=False

Comment: ACC provided the following comment: "ACC believes the proposed definition of 'bioplastics' is both unnecessary and flawed. The draft regulations already regulate materials based on their functional characteristics and end-of-life pathways, which appropriately determine how materials are managed within the program. A separate 'bioplastics' category is therefore redundant and risks creating confusion rather than clarity. Under the draft framework:

• If a bio-based plastic is compostable, it would fall under the program's compostable packaging provisions.

• If it is recyclable, it would be regulated within the applicable covered material category based on resin type.

• If it is not recyclable or compostable, it would be addressed through existing 'other' material categories.

Because regulatory treatment is already determined by functionality and end-of-life management, a standalone definition of 'bioplastics' does not appear necessary to implement SB 901. Instead, introducing a separate category — particularly one that blends feedstock origin with material characteristics — creates the potential for overlapping classifications, inconsistent compliance obligations, and consumer confusion."…"For the reasons above, ACC respectfully urges the Department to remove the proposed definition of 'bioplastics' from the regulations. Should MDE determine that a definition is required, it should be aligned with federal and state frameworks. For example, the state of Washington defines a biobased plastic as being 'made from renewable resources instead of fossil fuel' and adds that it does not mean the product is biodegradable or compostable. See Publication Number 14-04-017, Department of Ecology State of Washington. Federally, the definition of a 'biobased product' includes products made from renewable sources, which would include oil made from algae, animal products, and bio-attributed products. Maryland's definition significantly differs from other jurisdictions. Technically, bioplastics can be bio-based, bio-attributed, biodegradable, and/or compostable. Maryland's proposed definition differs from other jurisdictions, creating the potential to mislead consumers and making compliance more difficult for companies operating across state lines. To avoid possible violations of Maryland's consumer protection laws and reduce legal risk for regulated entities, if the State does define bioplastics, it should adopt an encompassing definition that is inclusive of a broader range of more renewable products, such as animal-based, algae-based and bio-attributed products, biogas, and alcohols produced through renewable biomass. Relying on a technical encompassing definition allows the State to regulate specific subsets (e.g., compostable bioplastics) as needed to achieve program goals. Providing a broader definition will limit consumer misunderstanding and reduce legal liability for regulated entities when labeling products to educate consumers".

Comment: BPI provided the following comment: "Regarding the definition of 'bioplastic' in Section 2, while BPI appreciates the intent of the MDE to provide additional definitions to strengthen the regulations, we are wary of new definitions being added directly into the EPR regulations. Compostable packaging and labeling requirements are already established in Maryland's Environment Articles §9-1701 and §9-1702. The MDE should reference already established laws and definitions. We recommend removing the definition".

Comment: Kemira provided the following comment: "The draft regulations define bioplastic packaging to include materials such as polyhydroxyalkanoates (PHAs), and polyhydroxybutyrate (PHB). While we support the inclusion of all packaging materials within a producer responsibility framework, future regulatory provisions should distinguish materials based on performance and end-of-life outcomes rather than material category alone. Biobased and compostable polymers such as PHAs and PHB are chemically distinct from conventional petroleum-based plastics and are increasingly being developed to replace multilayer plastics in packaging applications. When supported by appropriate composting infrastructure, these materials may offer improved environmental outcomes. Certain emerging biobased polymers are also designed to biodegrade without generating persistent microplastic residues. Kemira encourages the Department to ensure that future eco-modulation policies and recyclability or compostability determinations allow emerging materials to be evaluated based on lifecycle performance, infrastructure compatibility, and environmental impact. A science-based evaluation framework will help ensure that next-generation materials are not unintentionally disadvantaged. Additional clarity on how compostability standards and state labeling requirements will interact with material classification rules would also be beneficial. Failure to distinguish certified compostable bioplastics from conventional single-use plastics within material classifications or eco modulation frameworks could slow investment in next-generation materials designed to reduce environmental impacts. Emerging polymers such as PHAs and PHB are being developed to replace difficult-to-recycle multilayer plastics and other persistent packaging materials. Regulating these materials identically to conventional plastics without recognizing their distinct environmental performance—could discourage adoption of compostable alternatives that support waste reduction goals".

Comment: CAA recommended "removing this definition. According to the Plastics Industry Association, 'bioplastic' is commonly used to describe multiple different materials that are bio-based, biodegradable and/or compostable, or both bio-based and biodegradable/compostable.

'Bioplastic' may be used to refer to:

• Fossil-based plastics that biodegrade (e.g., polycaprolactone)

• Bio-based plastics that do not biodegrade (e.g., bio-based polyethylene terephthalate, bio-based polyethylene)

• Bio-based plastics that biodegrade (e.g., polylactic acid or starch blends).

This industry-standard definition overlaps with other material categories and could create producer confusion as to which category to report into. Bioplastic materials are already captured within the material categories proposed in this regulation".

Comment: FPI note also expressed concern with adding "bioplastic" as a defined term, noting that "The term is used broadly to describe materials that may be biobased, biodegradable, or both, and therefore does not represent a single material type. Including it as a defined term risks overlap with existing categories and may create confusion in reporting".

Comment: TRP recommended "removing this definition and aligning with California and Colorado's shared definition of plastic. This definition (below) encompasses the concepts Maryland sought to achieve by defining bioplastic, while harmonizing with other states. ''Plastic' means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. 'Plastic' includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). 'Plastic' does not include natural rubber or naturally occurring polymers such as proteins or starches.'" TRP also noted that "This would necessitate a slight change in 26.04.14.04(4)(v), from 'Bioplastics that are not labeled as compostable or home compostable, in accordance with Environment Article, §9-2102 or 9-2104, Annotated Code of Maryland;' to 'Other plastics that are not labeled as compostable or home compostable, in accordance with Environment Article, §9-2102 or 9-2104, Annotated Code of Maryland;'".

Response: Kemira recommended that "future regulatory provisions should distinguish materials based on performance and end-of-life outcomes rather than material category alone". The Department notes that future regulations, guidance, and/or program plans may address topics such as the list established in Environment Article §9-2508, Annotated Code of Maryland and incentives, including ecomodulation. Regarding FPI's concern that the term "bioplastic" "does not represent a single material type" and "therefore may risk overlap with existing categories and may create confusion in reporting" and a similar comment from CAA, the Department notes that in the proposed regulation, .04, categories of covered materials are not required to correspond to a single material type. Please see *Comment Topic: Categories of Covered Materials for Registration - Instructions* for additional information and guidance on this topic. In response to TRP's recommendation to harmonize with other states' definition of "plastic", the Department notes that the category "Bioplastics that are not labeled as compostable or home compostable, in accordance with Environment Article, §9-2102 or §9-2104, Annotated Code of Maryland" (Regulation .04(B)(4)(v)) is housed under "plastics", and is considered a subcategory of plastic. Regarding Kemira's request for clarity around how "compostability standards and state labeling requirements will interact with material classification rules" and similar comments, the Department notes that material registering in category B(1) must meet the definition of compostable and must comply with all Maryland labeling laws. Generally, materials classified into any category must comply with all appropriate laws (i.e., if packaging or paper products are labeled, they must be compliant with federal and Maryland labeling laws).

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

4. **Comment Topic: Definitions - "Bound Book"**
   Commenter(s) Name and Affiliation: AF&PA, CAA

   Comment: AF&PA recommended changing the definition of a bound book to "'a collection of pages that have been assembled and secured together along one edge to form a single volume, with binding methods that include case binding, perfect binding, saddle stitching, and mechanical binding,' as these products are not typically accepted in recycling facilities."
   Response: The Department intentionally chose to identify types of materials (adhesives and thread) used in binding that can pose challenges to the recycling process. Additionally, covered materials are covered regardless of recyclability.

   Comment: CAA commented that "[i]t is unclear whether items such as workbooks, coloring books, activity books, notebooks, instructional manuals, catalogs, or user guides, for example, would be considered 'bound books' and therefore exempt from compliance obligations".
   Response: The Department notes that whether workbooks, coloring books, activity books, notebooks, instructional manuals, catalogs, or user guides are exempt depends on whether they meet the definition of bound book. Many of these categories may be bound using different materials. For example, an instruction manual may meet the definition of a bound book if its assembly uses adhesives or thread (and meets all other criteria within the definition). However, it may not meet the definition of a bound book if it is assembled with staples. Therefore, it would not be appropriate to exempt materials broadly based on whether a material fits into one of these categories.

   Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

5. **Comment Topic: Definition Recommendation - "Component"**
   Commenter(s) Name and Affiliation: Jonathan R. Levy, PakTech; AMERIPEN

   Comment: PakTech recommended the following definition: "''Component' with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function. Manufacturers of 'component' parts are not considered producers and responsibility for such items are the responsibility of the producer of the packaging in which the component part is affixed.' Component parts are by their nature a business-to-business item and only serve their purpose once affixed to a primary package. Once a component is affixed to the primary package, the component manufacturer has no control over how the component will be used. It is this transactional nature that clearly assigns responsibility to the Brand Owner and in these cases should be considered the producer for these items. From a reporting perspective, the Brand Owner should have the ability to report on the number and types of components it purchases and MDE or the Producer Responsibility Organization ("PRO") can go to the Brand Owner for this information. This reporting information can then be used to ensure the producer of the primary packaging and the components to which it was affixed are dealt with accordingly.

Comment: AMERIPEN recommended the following definition: "'Component,' with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function".

Response: The term "component" is used in multiple contexts throughout the law. Therefore, it would be problematic for the Department to create a single definition. Regarding the interaction between components, multimaterials, and the definition of a "producer", the following language is provided in the Categories of Covered Materials for Registration section of guidance: "If the covered material is made of multiple components that are designed to be separated by the consumer, including removable lids, perforated liners, and removable protective foil over food products, each of those separable components should be reported separately under their respective categories. If the covered material is made of multiple components that are not designed to be separated by the consumer, the covered material should be reported in the section that represents the majority component of the covered material".

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

6. **Comment Topic: Definitions - "Compostable" or "compostable products"**
Commenter(s) Name and Affiliation: CAA; AF&PA; Kristie Blumer, Compost Crew Inc (Compost Crew); Justen Garrity, Veteran Compost

Comment: CAA provided the following comment: "While CAA acknowledges this definition references an existing Maryland regulatory definition, we recommend that the term 'compostable' be further specified in these regulations to mean products that are certified compostable under a recognized standard, such as ASTM D6400, D6868, and D8410, and marketed to consumers as compostable. This would clarify what should be reported as compostable. This also aligns with EPR program language in other jurisdictions, and ensures clarity, verifiability, and compatibility with commercial composting infrastructure".

Comment: AF&PA provided: "The current reference to COMAR 26.04.11.02 ('means the controlled aerobic biological decomposition of organic waste material.') is vague and not based on any certifiable standard. We recommend replacing this definition with a reference to ASTM D6400, ASTM D6868, and ASTM D8410".

Comment: Compost Crew provided: "This regulation should explicitly require that compostable packaging be labeled on each individual product with the applicable compostability certification standard and/or certifying body. Use of the generic term 'compostable' or a manufacturer name alone is insufficient for verification, enforcement, and acceptance by composting facilities. For our collections and composting, we require products to display an approved compostability certification in order to be accepted. Without clear certification labeling on the individual product, it is not possible to verify compliance once materials enter the collection stream or arrive at a composting program. While ASTM compostability standards establish laboratory performance criteria, they do not address chemical safety concerns such as PFAS, nor do they require field testing, independent audits, ongoing surveillance, or enforcement mechanisms to prevent misleading compostable claims.

To ensure environmental protection and program integrity, the regulation should require additional certification or verification beyond ASTM compliance alone (for example: BPI certified, TUV, CMA, Din-Certco, Din-Gepruft, ISO 17088, etc.)".

Comment: Veteran Compost commented that "the underlying regulation defining compostables is very vague and outdated. I would suggest that we improve the definition of compostable products".

Response: The Department has provided compostable reporting categories that specifically address the identified ASTM standards (Regulation .04(B)(1)). Specific certification entities would be identified in guidance rather than in regulation. Additionally, this definition would need to be updated in statute and in other chapters in COMAR to avoid inconsistency between multiple laws which use this term.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

7. Comment Topic: Definitions - "Composting" and "Composting facility"
Commenter(s) Name and Affiliation: CAA

Comment: CAA recommended "adding a separate, parallel definition (also defined in Environment Article 9-1701) for covered materials managed via anaerobic digestion".

Response: The Department has determined that this topic is addressed within the definition of recycling. For anaerobic digestion facilities that utilize a depackager, the covered materials that are depackaged that meet the definition of recycling in Environmental Article Environment Article, §9-2501(s)(1), Annotated Code would be reimbursable under this provision. Depackaged covered materials that are subsequently screened out and disposed of would not be considered recycled, and thus not a covered service.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

8. Comment Topic: Definition Recommendation - "Consumer Market"
Commenter(s) Name and Affiliation: Emily Jones, Alliance for Automotive Innovation (AAI)

Comment: AAI requested "that MDE more explicitly exempt tertiary packaging that does not enter the hands of a consumer, even if the consumer is technically purchasing the product", specifically citing cases such as "a replacement part that is only handled by a technician, never crossing hands with the consumer".

Response: Packaging for products that are not sold or supplied with the product to the consumer for personal, noncommercial use is not considered a covered material.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

9. Comment Topic: Definitions - "Covered entity"
Commenter(s) Name and Affiliation: Hannah Allen, Maryland Chamber of Commerce; FPI; AF&PA; CAA; Greg Costa, Consumer Brands Association (CBA); Molly R. Blessing, Household & Commercial Products Association (HCPA); Lisa R. Kardell, WM; AMERIPEN; Leah Markowitz,

McCormick & Company, Inc. (McCormick); Tiffany Harvey, MD-DE-DC Beverage Association; Lew Dubuque, Maryland Chapter of the National Waste and Recycling Association (NWRA-MD)

Comment: Maryland Chamber of Commerce commented that "additions go beyond the entities specifically included in the enabling legislation. Expanding covered entities through regulation will significantly increase program costs and obligations for producers without clear legislative direction", and recommended "[limiting] covered entities to those explicitly identified in statute to ensure regulatory implementation remains consistent with legislative intent. Strike .02B(10)(b)(vi)-(vii)".

Comment: FPI similarly commented that "The newly proposed definition of 'covered entity' appears to expand the scope of covered entities beyond what is specified in statute and contemplated by legislative intent. For example, the inclusion of public spaces as detailed in (vi) of covered entities appears to add a new area not contemplated or included in statute. Overall, we have heard concerns that the proposed expanded definition for covered entities introduces uncertainty, may represent significantly more entities and could increase the cost of implementation dramatically.".

Comment: AF&PA provided the following comments:

• "the enacting legislation specifically identifies "a public building owned or operated by the state or a local government." The proposed regulations expand this to include parcels of land, parks, state and local highways, and open spaces for the public as identified in local zoning laws. This is a significant expansion of scope that goes well beyond the enacting legislation. If the enacting legislation had contemplated such an expansion, stakeholder positions might have differed. This proposal appears to be an effort to legislate via regulation.

• The proposed addition, "an industrial, commercial, or institutional building that source separates paper products for recycling and those paper products do not meet the definition of packaging," is unnecessary and inconsistent with the findings in the Maryland Statewide Needs Assessment (2025), which states: "To estimate commercial costs, the Project Team used a similar approach; however, hauler survey responses provided a broad range for commercial recycling routes between $100,000 and $400,000 per route. Survey responses from municipalities provided an average cost of $35 per cubic yard, which the project team ultimately used to estimate the total cost of curbside recycling for commercial material collected through single stream collection. The operational costs of collecting high quality cardboard and clean office paper on a source separated basis is assumed to have a net cost of $0, as revenues from this commodity stream can be sufficient to offset operations costs." (Page 100)

• Including this stream adds administrative burden and program fees that could undermine efficiencies and penalize what should be a model for other materials. MDE should strike this language given its absence in the enacting legislation and the ambiguous definition of "paper products."

• The provision allowing exclusion of portions of buildings not owned, leased or rented by the state and local governments is reasonable. However, MDE should not use its approval authority to expand scope beyond what is included in the enacting legislation.

Comment: CBA provided the following comment: "The definition of 'covered entity,' outlined in paragraph (10) of subsection B of section .01, is significantly more expansive than any other state's EPR law, and is of substantial concern in its relation to the overly onerous definition of 'covered services' in the draft regulations. Currently, none of the other six packaging EPR laws include public or non-public school campuses, leased or rented properties operated by a state or local government, or state and local highways on their list of covered entities. As written, producers would be required to provide reimbursement for covered services at all of the listed covered entities, which would entail litter cleanup activities, currently considered a covered service in the draft regulations, on state and local highways and on school campuses. This requirement far exceeds the intent of the law; there is no indication of including any of the aforementioned entities in the list of covered entities in the statewide needs assessment, which was meant to inform the development and implementation of Maryland's program. In addition, the statewide needs assessment did not scope litter on highways as a reimbursable service" and recommended "refining the definition of covered entities, removing the language identifying school campuses, state and local government-leased or rented properties and state and local highways from the definition".

Comment: "HCPA notes that the definition of 'covered entity' is broader than consumer (including, for example, government offices and schools), but that the definition of packaging that is 'covered material' is limited to packaging that is sold or supplied with the product to a consumer for personal, noncommercial use. This would seem to indicate that producers should report only consumer packaging even though the cost of the program will include service to some non consumer entities. HCPA requests that the Department clarify that producers must only report consumer packaging as defined in the statute, as there has been some confusion about the difference between 'covered entity' and 'covered materials.' Further, HCPA recommends that the Department clarify as specifically as possible which non-consumer entities are in scope of service and limit this to what is required by law to prevent producers of consumer products being required to cover significant costs for facilities which do not use their products. For example, the Department should clearly state that portions of a building which are not owned, leased, or rented by the state or local government are excluded from the definition of 'covered entity.'"

Comment: WM requested "further clarity regarding the definition for "'Covered entity' under COMAR 26.04.14.02(10)(b)(vii)", specifically, "what buildings [The Department] has in mind" and "an illustrative list of examples".

Comment: NWRA-MD provided the following comment: The definition of "Covered entity" under (10)(b)(vii) "is confusing to our members. We encourage MDE to revise this definition to provide more clarity on the types of buildings being referred to under this section and/or provide some examples".

Comment: AMERIPEN provided the following comment: "The definition of "covered entity" in subsection (B)(10) remains open-ended due to the use of the word "includes" in paragraph (B)(1)(b), similar to the statute. It would be helpful to define it further and set limits in addition to those locations listed in the law to the extent possible, particularly for entities that may already contract privately for covered services and operate outside the commingled system. AMERIPEN asks that such sites (e.g., sports stadiums and other for-profit venues) should clearly and explicitly be excluded from the definition of a "covered entity." Additionally, paragraph (B)(10)(g) is a new provision when compared to the corresponding statutory language and it allows the Department portions of buildings not affiliated with a government entity. This is a positive addition in concept, but requiring Department approval creates an unnecessary burden for entities that would have otherwise have to pay for services out of scope of the Program". AMERIPEN recommended revising Regulation .02(B)(10)(c) as follows:

"Covered entity" may exclude the portions of a building that are not owned, leased or rented by either the State or a local government, as approved by the Department.

Comment: McCormick & MD-DE-DC Beverage Association provided the following comment: "The statute defines five covered entities, however, the regulations expand that definition to include two additional ones: parks, highways, and public spaces and buildings that source-separate paper products for recycling and those paper products do not meet the definition of packaging. We believe there is no real justification for expanding the covered entities".

Comment: CAA identified that addition of "campus", "parcels of land owned, operated, or leased by the state or local government including parks, state and local highways, and areas associated with open space for the public as identified in local zoning", and "areas associated with open space for the public as identified in local zoning", as additions that "appear to expand the scope of responsibility beyond the authority granted in the statute, rather than provide additional clarity. This creates potential risk and uncertainty in plan development"

Response: Regarding claims that the Department has exceeded the scope of its authority, the Department notes that the list provided in statute is not an exclusive list. It is preceded by the word "including" and is interpreted by the Department as a general list that comprises as part of a group and with regulatory authority the Department may define additional list items for inclusion and support the intent of the law unless otherwise statutorily excluded. Clarifying language was provided such as "and its campus". This language does not change the scope of "covered entity"; it is intended to ensure that covered entities for which materials are collected at various locations across a campus are accounted for and covered at all points of collection and management across the entirety of the covered entity. (10)(c) was added to ensure that producers who are paying into the program for paper products that are for industrial, commercial, or institutional (ICI) use are eligible for activities that support the circularity of those products, and thus potentially subject to reimbursement for those activities. This language was added to support the intent of the law that paper products for industrial, commercial, or institutional use are considered covered materials. For additional clarity about specific types of buildings and examples from HCPA, NWRA-MD and WM, the Department recommends reviewing the supplied guidance on this topic.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

10. **Comment Topic: Definitions - "Covered material type"**
Commenter(s) Name and Affiliation: AF&PA

Comment: AF&PA requested the definition of "Covered Material Type" "should specify that discreet commodity categories align with established commodity markets".
Response: The Department has determined that there does not need to be a more expansive definition of "covered material type" at this time for the purposes of informing producer registration and alternative collection programs. Covered materials are covered, regardless of recyclability. It is clear that the legislative intent includes "redesigning packaging to be more recyclable, compostable, or reusable." If covered materials are limited to materials with established commodity markets, materials that are not recyclable, compostable, or reusable would not have to pay into the program, reducing the incentive to redesign packaging.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

11. **Comment Topic: Definitions - "Covered materials"**
Commenter(s) Name and Affiliation: CAA; AMERIPEN; Ally Peck, Consumer Technology Association (CTA); TRP

CAA and AMERIPEN commented that the definition of "Covered materials" introduces confusion.
Comment: CAA commented that "this definition adds new bullet points under (b), which create confusion by adding unnecessary specificity to the statutory definition of covered materials. The statutory definitions of packaging and paper products already indicate they may include a combination of materials. We recommend the definition align precisely with the statute by removing the newly introduced bullets or removing the definition in its entirety from the rules".
Comment: AMERIPEN commented that "Paragraph (B)(11)(b) introduces unnecessary specification to the 'covered materials' definition that states that the definition includes '[p]ackaging materials' and '[p]ackaging or paper products that are multimaterial.' This addition does not add clarity and may actually introduce confusion. AMERIPEN recommends deleting that language and making

conforming changes so that the definition only encompasses the substantive contents of paragraph (B)(11)(a)".

Comment: TRP commented that "the addition of the sub point (11)(b)(i), MDE is including a new term which is not defined elsewhere, packaging materials. We believe this term is duplicative because packaging is already defined within the statute and included in the 'covered materials' definition under (11)(a). We believe the intent of these additions is to clarify that packaging or paper products that are multimaterial are considered covered materials and we believe that be accomplished without the (11)(b)(i) clarifying language. In our opinion, the addition of those sub points could lead some to the conclusion that only packaging or paper products that are multimaterial are covered materials".

Comment: CTA provided the following comment: "Where Maryland's draft regulations diverge from the approaches taken in these peer states — particularly on core definitions such as .. "covered materials," .. — the Department should have a clear and articulable statutory basis for the divergence".

Response: Removing "..includes: (i) Packaging materials; and (ii) Packaging or paper products that are multimaterial" does not change the scope of the definition of covered materials. Both (i) and (ii) meet the criteria to be considered a "covered material"; removing them from the definition language does not change this. The following clarifying language is present in Regulation .03: "A. Covered materials includes all packaging and paper products that meet the definition of covered materials in this chapter"…"B. Covered packaging includes".."(8) Multimaterial packaging;".."C. Covered paper products include:".."(3) Multimaterial products that are at least majority paper by volume."

Department determination: Upon consideration of this comment and for the reasons discussed above, MDE has decided to adopt the following definition of "Covered materials":

(11) Covered Materials.

(a) "Covered materials" means packaging and paper products sold, offered for sale, imported, or distributed in the State.

~~***(b) "Covered materials" includes:***~~

~~***(i) Packaging materials; and***~~

~~***(ii) Packaging or paper products that are multimaterial.***~~

~~***(c)***~~***(b)*** *"Covered materials" does not include exempt or excluded materials as defined in this chapter.*

12. **Comment Topic: Definitions - "Covered services"**

Commenter(s) Name and Affiliation: Maryland Chamber of Commerce; CBA; Kyla Fisher, Flexible Packaging Association (FPA); HCPA; AMERIPEN; FPI; McCormick; MD-DE-DC Beverage Association; CAA

Comment: Maryland Chamber of Commerce, CBA, FPA, HCPA, AMERIPEN, FPI, McCormick , the MD-DE-DC Beverage Association, and CAA expressed concern about including litter cleanups within the scope of a covered service.

Response: The Department notes that explicitly including "litter cleanups where covered materials are collected, sorted, transported and processed for recycling" is not an expansion of the scope of the statutory definition, as this activity meets the statutory definition of a covered service (Environment Article §9-2501(I)(1)(i), Annotated Code of Maryland[5]). It is specifically stated in the proposed definition only to increase clarity. Litter cleanups where covered materials are not collected, sorted, transported, and processed for recycling, are not covered services. The Department does not intend for the portion of litter clean up that is not a covered service to be reimbursable..

[5] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-2501&enactments=false

Comment: Maryland Chamber of Commerce states that "While producers support efforts to reduce litter, litter cleanup is typically addressed through public education and outreach efforts, not direct producer funding obligations for all litter within public spaces".
Response: The Department notes that the statutory definition of "covered services" also includes "public education and outreach activities related to the activities described in subparagraph (i) of this paragraph." (Environment Article §9-2501(I)(1)(ii), Annotated Code of Maryland).

Comment: CAA also commented that "the inclusion of 'as approved by the Department' for reuse and refill services is redundant from what the statute requires and can be removed. The PRO's approach to reimbursement of reuse and refill activities will be outlined in the producer responsibility plan, which is explicitly subject to Department approval in the statute".
Response: Definition of covered services does not contain the term 'producer responsibility plan'. However, a refill and reuse are covered services and service providers must register with the Department, to reduce the burden on the Department for all approvals and that these would require approval in a producer responsibility plan, the Department has removed this additional language as it is inclusive in other aspects of the program already.

Department determination: Upon consideration of these comments and for the reasons discussed above, MDE has decided to clarify the definition of "Covered services" as proposed.

(ii) Reuse and refill services ~~***as approved by the Department***~~*.*

13. **Comment Topic: Definitions and Covered Materials - "De minimis producers"**
Commenter(s) Name and Affiliation: Maryland Chamber of Commerce; Annebelle Klein, American Coatings Association (ACA); CTA; Scott DeFife, Glass Packaging Institute (GPI); Sriram Gopal, Association of Home Appliance Manufacturers (AHAM); AMERIPEN; FPI

Comment: Maryland Chamber of Commerce, CTA, FPI and AHAM recommended including a threshold for "de minimis producers". "With respect to multimaterial covered materials", FPI recommended "establishing a clear process or threshold to address de minimis levels of minor coatings, inks, or adhesives used for printing, labeling, or surface protection. To ensure consistent and predictable application of such a threshold, consideration should be given to developing clear criteria through Department guidance or standardized guidance developed by the producer responsibility organization (PRO)". Maryland Chamber of Commerce commented that "Without a de minimis threshold, companies could be required to report items such as small fasteners used to attach hang tags to apparel, adhesives used to affix labels to shipping containers, and other minor components that have negligible environmental impact", and CTA commented that "The draft regulations lack a de minimis threshold, and as a result, provisions such as Section 03B.(2) would sweep inconsequential packaging elements — such as adhesives and fasteners used to affix packaging components to one another — into the full scope of reporting and compliance obligations. This outcome is disproportionate, administratively burdensome, and inconsistent with the approach taken by peer state EPR programs". In Regulation .03, AMERIPEN commented that "paragraph (B)(2)(b) states that covered packaging "includes materials used to affix packaging components to one another." This scope is overly broad and brings exceedingly small materials under regulation. That in turn necessitates very detailed recordkeeping, reporting, and oversight, the cost of which may not be justified in comparison to the added benefit to the Program. Therefore, AMERIPEN recommends excluding de minimis packaging elements or components by adding the following paragraph to the end of the paragraph: "However, an element of packaging with a de minimis weight or volume, as determined by the Producer Responsibility Organization, shall not be considered 'covered packaging.'". CTA commented that "California, Colorado, Oregon, and Maine have each

incorporated threshold-based approaches that exclude inconsequential packaging elements from the full scope of reporting requirements. Maryland's regulations should do the same."
Response: Small format materials are considered covered materials, therefore a "de minimis" exemption associated with size, including weight or volume of the individual material, may have unintended consequences to the intent of the law. Small format materials often end up as contamination and pose challenges to recycling systems. More clarification may also be found in the Department's response to *Comment Topic: Definition Recommendation - "Component"*.

Comment: ACA recommended adjusting the definition of a "de minimis producer" as follows: "an individual that, in the most recent fiscal year, has generated less than a total gross revenue of $5,000,000".
Response: The total gross revenue threshold of $2,000,000 is established in statute[6] .

Comment: GPI commented that "using a weight-based tonnage for de minimis works against small businesses that use glass rather than plastic, and recommends a valuation or measure of the amount of product sold, not weight of packaging".
Response: De minimis is defined in statute as "a person that in their most recent fiscal year: (a) Introduced less than one ton of covered material into the State; or (b) Earned global gross revenues of less than $2,000,000." The definition uses the word "or", therefore the Department has determined that producers may apply either metric to make their determination.

Comment: AHAM commented that offered "the following suggestions for what MDE might address through regulation or guidance:
• Whether de minimis status requires an annual attestation or a registration-linked declaration (and how it interacts with PRO registration lists).
• The documentation required to show that a component has "no effect" on recyclability, does not make recycling or composting more difficult, or qualifies as functionally necessary.
• Minimum documentation standards sufficient to substantiate (i) the one-ton threshold and/or (ii) the $2,000,000 global revenue threshold, including acceptable estimation approaches and retention.
• Renewal cadence and audit/verification triggers.
Response: The Department notes that Regulation .09(D)(4) states the following: "(4) Exemptions. Should the producer identify they are exempt or excluded from specific covered materials, they must provide supporting documents and records to explain the exemption to the Department for approval and shall be available to a PRO if approved". Please see *Comment Topic: Record Keeping, Reporting and Production of Records - Exempt Materials* for additional guidance related to this topic. Review guidance for any additional details related to documentation associated with this exemption.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

14. Comment Topic: Definitions - "Environmental impact"
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN commented that "the definition will require further interpretation and contextualization. AMERIPEN suggests making determination of the process for measuring "environmental impacts" a component of program plans".

[6] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-2501&enactments=false

Response: The term "environmental impact" is not integrated in with context associated with regulations .03 through .12 of the proposed regulations. Future regulations may evaluate this definition with more attention.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

15. **Comment Topic: Definitions - Exempt Materials - Over the Counter (OTC)**
Commenter(s) Name and Affiliation: GPI

Comment: GPI provided the following comment: "A narrower interpretation of FDA drug categorical exemption should be considered, and not exempt OTC Drugs categorically. Much of the OTC drug packaging is normal plastic, fiber or glass packaging that is completely recyclable and often smaller in scope. Some of this market continues to display recyclability markings and will end up in the recovery stream. When smaller format material does get recycled it often ends up as contamination in the glass stream, and has a cost, and potential end-markets"
Response: Specific exemption requirements related to federal standards are identified throughout this definition. These federal standards are in statute, and should be referenced when determining whether a material is exempt.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

16. **Comment Topic: Definitions - Exempt Materials - Packaging vs products**
Commenter(s) Name and Affiliation: AF&PA

Comment: AF&PA commented that the definition of "exempt material" "excludes packaging for several items including medical devices and drugs, but it does not exclude the products" and recommended that "the language should clarify that the products and the packaging are not covered material".
Response: Any product that does not meet the definition of a covered material is not considered a covered material. Specific exemptions and exclusions for paper products are outlined in statute. Statutory language preceding each exemption and exclusion specifically identifies whether the exemption or exclusion is intended to apply to "packaging" or "paper products", the Department has determined that the exceptions that are explicitly associated with "packaging" are intended only for "packaging" and are not intended to apply to "paper products".

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

17. **Comment Topic: Definitions - Exempt Materials - Products subject to the paint stewardship program**
Commenter(s) Name and Affiliation: AF&PA

Comment: AF&PA provided the following comment: "In section (xii), the exemption should apply to both the producer that distributes the exempt material and the producer that receives the exempt

material. Failing to make this change risks double counting material that is not within the scope of the enacting language".
Response: This exemption is based on the material, not the producer. Primary packaging for products subject to the Paint Stewardship Program under Environment Article, Title 9, Subtitle 17, Part V, Annotated Code of Maryland is exempt.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

18. Comment Topic: Definitions - "Individual Producer Responsibility Plan (IPP)"
Commenter(s) Name and Affiliation: GPI

Comment: GPI recommended "clarifying that more than one producer be allowed to collaborate on an IPP if they have essentially the same or similar packaging. Later in the section on Alternative Collection programs, there is a notion that multiple producers could go in together, and aligning the IPP definition with this concept would help clarify that a small number of like-situated producers could collaborate on an IPP. Since the agency gets to review and approve IPP, it can limit these to precise situations where warranted without creating competing PROs".
Response: An IPP is defined as a plan developed by ***a*** producer who chooses to assume responsibility for submitting a Producer Responsibility Plan, ***individually***, instead of through a PRO. Whereas an Alternative Collection Program means the ***collection of a specific covered material*** category that is not generally collected through curbside services. The Department is not limiting Alternative Collection Programs to be operated by an individual producer as is for a covered material category. If an IPP were to provide an Alternative Collection Program for their covered materials, that is acceptable as defined in regulation. If a PRO were to provide an Alternative Collection Program on behalf of a group of producers for their covered materials, that is also acceptable as defined in regulation. If an IPP establishes an Alternative Collection Program and the PRO would be interested in collaborating, they would need to address this opportunity in both of their submitted plans for Department consideration.
More than one producer cannot collaborate on an IPP, as this would essentially be equivalent to setting up a PRO.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

19. Comment Topic: Definitions - "Long-term packaging"
Commenter(s) Name and Affiliation: AF&PA and AMERIPEN

Comment: AF&PA offered the following comment: "requiring resealing is irrelevant, and the concept is absent from the enacting legislation. Many long-term packaging options, such as pallets or milk crates, do not need to be resealed to serve as long-term packaging". AMERIPEN commented that "long-term packaging"..."is not used elsewhere in the proposed regulations nor in SB 901. AMERIPEN asks whether the Department intends to use this term in the second phase of rulemaking; otherwise, it should be deleted to avoid confusion. If the intent is to correspond to the exemption for 'packaging used for the long–term protection or storage of a product that has a lifespan of not less than 5 years,' paragraph (B)(19)(b)'s exclusion of 'packaging for consumables, or products that diminish in quantity or degrade with use' is not merited. The exemption intends to exempt materials that are not expected or intended to enter the waste stream, so the nature of the underlying product is

immaterial. Even if a product diminishes or degrades over time, the long-term packaging is still needed to contain it and continues to serve its role as long term packaging. Therefore, AMERIPEN requests that paragraph (B)(19)(b), as well as corresponding portions on pages 5, 6, 15, and 16 of the Guide, be deleted".
Response: The Department has determined that resealing is a critical component of packaging that meets the definition of long-term packaging. This definition was created to clarify the exemption identified in the definition of "exempt material" for "packaging used for the long–term protection or storage of a product that has a lifespan of not less than 5 years, as determined by the Department" (Regulation .02(B)(16)(a)(xiv)). The exemption is specifically for "protection or storage". This exemption does not apply to all materials that meet the definition of packaging, which may also include materials used to "…transport, serve, or facilitate the delivery of a product", among other uses identified in the definition of "packaging". The Department has determined that resealing capabilities are a key element of protection and storage. The Department has determined that pallets are primarily used for transportation rather than long term storage (5 years or more). Milk crates would also not be defined as "long term packaging" according to other elements of the definition; milk does not have a lifespan of not less than 5 years, and it is a consumable that diminishes in quantity with use. Statute uses the language "as determined by the Department" which specifically authorizes the Department to make this determination.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

20. **Comment Topic: Definitions - "Multimaterial"**
Commenter(s) Name and Affiliation: BPI; Kemira; FPI; TRP; CAA

Comment: BPI recommended "removing the word 'compostability' from the definition of 'multimaterial,' as noted below. All compostable products are certified to ASTM standard specifications per Environment Articles §9-1702. These specifications outline performance criteria that must be met regardless of composition".
Response: The Department has not identified a conflict between the definition of "multimaterial" and the definition of "compostable" or "compostable products". If a coating, ink or adhesive applied for printing, labeling, or surface protection causes a covered material to no longer meet the definition of "compostable" or "compostable products", it is then considered a materially significant component of the multimaterial. The language included in the definition of multimaterial does not impact or influence the scope of what is considered "compostable" or "compostable products". Rather, the definition of "compostable" or "compostable products" determines the scope of what is considered a multimaterial. As with any material, for a multimaterial or any of its component parts to be considered "compostable", it must meet the definition of "compostable" or "compostable products".

Comment: TRP recommended "modifying the subdefinition of Multimaterial, 26.04.14.02(20)(b) to read: '[..] unless those components materially affect the recyclability or compostability of the product, according to the Association of Plastic Recyclers design guide, other recognized industry guidelines, or as determined by the Department.'" in order to "reduce the administrative burden on the Department without diminishing the intent of this subdefinition". Kemira recommended "[ensuring] that minor coatings or barrier technologies that do not materially impair recyclability or compostability are evaluated based on functional impact rather than their presence within the packaging structure. Many innovative barrier technologies are specifically designed to preserve fiber recovery, enable compostability where appropriate, and reduce reliance on traditional plastics. Clarifying how coated fiber materials will be evaluated within the program would provide important

regulatory certainty and encourage continued innovation in recyclable and compostable packaging formats. We would also welcome additional guidance on how recyclability determinations may incorporate recognized technical standards, such as APR Design Guides or industry-validated recyclability studies".
Response: The Department does not generally specify in regulation "industry guides or guidelines" when establishing a rule; however, we may consider those materials for evaluation of a request for approval, as described in the regulation.

Comment: FPI recommended "that the concept of "multimaterial" can be incorporated into the 'covered material type' definition rather than as a standalone definition, as follows: 'Covered Material Type' means a singular and specific type of covered material, such as paper, plastic, metal, or glass, or combination thereof …". CAA similarly recommended "the 'multimaterial' definition be removed from the rules. Codifying this definition introduces unnecessary rigidity and risks and may create unintended consequences for future program elements, like fee structures and eco-modulation. Instead, guidance materials can convey information about how producers report covered materials. This approach has been successful in other states as well. While including language on components affecting recyclability is a positive step, the definition's inherent complexity is better suited to the adaptive format of guidance, which can be updated as practical questions arise".
Response: The Department has determined that a definition for "multimaterial" is important to include, as it is a term that is used in statute but is not defined in statute. Similar clarification is provided in response to a related comment made by CAA in *Comment Topic: Definitions - "Bioplastic"*. Clarification about how multimaterials should be reported for registration is provided in guidance.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

21. **Comment Topic: Definitions - Covered Packaging and Covered Paper Products**
Commenter(s) Name and Affiliation: NWRA-MD

Comment: NWRA-MD provided the following comment: "The draft also includes new definitions for "covered packaging" and "covered paper products," but those terms only appear in Section .03. Where these definitions are consistent with statutory intent, NWRA-MD recommends incorporating them directly into the core definitions of "packaging" and "paper products" to create a single, coherent definitional framework that improves clarity and supports consistent compliance."
Response: Regulation .03 is meant to provide clarity to the definition of "covered material". It does not change the scope of "covered material", "packaging", or "paper products" or redefine any of these terms, but rather provides additional specificity.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

22. **Comment Topic: Definitions - "Packaging" - Labels**
Commenter(s) Name and Affiliation: Jeffrey L. Hunter, Perkins Coie LLP (representing producers in various industries including retail, food, home and garden, paper products, electronics, apparel, building materials, and shipping packaging) (Perkins Coie); CTA; AMERIPEN; TRP; CAA; FPI

Comment: AMERIPEN similarly commented that "A label cannot realistically be deemed to 'protect,' 'contain,' 'transport,' 'serve,' or 'facilitate the delivery of' a product. Therefore, AMERIPEN [recommends] striking this subparagraph to properly align with the statutory definition of 'packaging'". Perkins Coie provided a similar comment, specifying that "Labels, including hang tags and stickers, do not accomplish any of these objectives". CTA commented that "[n]either the definition of 'packaging materials' in SB 901 nor any other provision of the statute includes 'labels affixed to packaging or products' within the scope of the law. The Department's unilateral addition of this category constitutes regulatory overreach and must be corrected". CTA further commented that "[t]he statute's enumerated inclusions — Section 9-2501(n)(2) — cover primary, secondary, and tertiary packaging; service packaging such as carry-out bags and take-out containers; and beverage containers. Product labels are conspicuously absent from this list. The statute also sets forth what "packaging materials" does not include, in Section 9-2501(n)(3), and product labels are not mentioned there either, because they were never within scope to begin with", and commented that "[t]his is not a clarification of the statute; it is an expansion of it. This expansion has particularly serious consequences for CTA's members. Consumer electronics and batteries are subject to legally mandated and industry-standard labeling requirements, including recycling symbols and instructions for proper end-of-life management of both the product and its battery. If the Department's regulations extend to product labels, they would effectively subject the recyclability labeling requirements for electronics and batteries to MDE's EPR for Packaging framework — expanding this law into product regulation territory that it was never intended to reach. Maryland has separate, well-established statutory frameworks governing electronics recycling (see Env't § 9-1728 et seq.) and battery management. The draft regulations should not be read to disturb those frameworks". CTA also commented "that other states that have enacted EPR for packaging legislation — including Colorado, Oregon, and Minnesota — have not extended the definition of "packaging" to cover product labels. In California, Circular Action Alliance (the PRO) has stated that they plan on submitting exemption requests for labels and adhesives, pointing to an understanding that compliance targets for labels could have serious implications towards producers. The Department should follow this established precedent" and recommended that the Department "strike proposed subsection (iv) — 'Labels affixed to packaging or products' — from the definition of 'Packaging' in the draft regulations", "strike draft Section 03B.(5) in its entirety", and "remove any additional references to product labels throughout the draft regulations".

Comment: TRP recommended "that labeling instead be addressed as a descriptor item under 26.04.14.03(B)(2), 'Components and elements that are supplemental, auxiliary, or subordinate and integrated into packaging'. As it is currently drafted, the separation of labeling into what appears to be a type of packaging under the Packaging definition in 26.04.14.02 and a type of Covered material in the description of the Covered materials in 26.04.14.03 may confuse producers who interpret these as the Department intending to treat on-package labeling as distinct from the package. This would lead to such questions as: 'If a glass jar includes a label that materially affects the recyclability of the jar, if the label is not easily removable by the consumer, does that glass jar need be reported in a new multimaterial glass category?' Or alternatively, 'if a PET jar has a PET label that is not removed, is it still necessary to report the label as a separate label category?' Treating labeling as distinct from packaging would have additional consequences for reporting, compliance, and compliance plans".

Comment: CAA provided the following comment: "The added text '(b)(iv) Labels affixed to packaging or products' is redundant. By definition, a label attached to a package is a component of that package. It is also unclear why labels are specifically referenced, but not other packaging elements or components. We recommend the definition align precisely with the statute by removing the (b)(iv) bullet, or simply removing the definition entirely". FPI recommended "the removal of .. 'labels affixed to packaging or products' .. as we believe these concepts are already captured and can be addressed through producer guidance".

Response: Shipping labels, labels with universal product codes (UPCs), stock keeping unit (SKU) are expressly considered packaging as they "facilitate the delivery of" products. Additionally labels that are associated with "brands, provide sale in bulk or display the product" are also considered packaging. Other labels may be considered "components and elements that are supplemental, auxiliary, or subordinate and integrated into packaging". Labels that are not packaging or components of packaging but that meet the definition of paper products are considered paper products.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

23. Comment Topic: Definitions - "Paper products"

Commenter(s) Name and Affiliation: Maryland Chamber of Commerce; Perkins Coie; AF&PA; CBA; Bridget Corridon, Personal Care Products Council (PCPC); Dan Persica, Domtar; HCPA

Comment: Perkins Coie, on behalf of producers in various industries, commented that "the definition of 'Paper Products' in section .02(B)(22)(c) should be revised to include an explicit carveout for paper packaging sold empty at the time of sale to avoid any ambiguities regarding the covered material status of products that could be classified as both packaging and a paper product."

Response: Regulation .02(B)(22)(c)(iii) states that "'Paper products' does not include…paper products that also meet the definition of packaging in this regulation". In guidance, packaging is often written as follows to clarify that there is no overlap between these two categories: "Packaging (including paper packaging)".

Comment: Perkins Coie specifically requested that "exclusion #15 in the guidance should be revised to clarify that both plastic and paper plates sold at a store without food or other materials would not be considered a covered material and would not need to be reported. The guidance should also clarify that non-food service paper packaging sold to consumers like gift wrap paper and paper gift cards are also excluded". Perkins Coie's additionally commented that "it would be counterintuitive to the purpose of the law to require producers to report and pay fees for paper packaging that is more sustainable and easily compostable than plastic packaging". Perkins Coie recommended that "the regulations should also explicitly exclude "gift wrap" from the definition of "Paper Products" to avoid any ambiguity. Please include an additional exception under .02(B)(22)(c). In addition, gift wrap that is sold as a product itself would not be "packaging" under .02(B)(21)(c). Only the packaging used to protect or contain the gift wrap would be a covered material." Gift wrap that meets the definition of a paper product is considered a paper product. Gift wrap that meets the definition of packaging is considered packaging. Maryland Chamber of Commerce commented that "The definition of paper products could inadvertently include products not intended to be regulated under the program" and recommended "[clarifying] the definition to ensure it applies only to products commonly recognized as paper products and aligns with recycling market categories. PCPC recommended that "all categories of excluded packaging should also exclude the underlying products". AF&PA provided the following comments related to paper products Subsection (b) includes paper products generated by the residential, industrial, commercial, and institutional sectors. This is not supported by the findings of the Maryland Statewide Needs Assessment (2025):
"The operational costs of collecting high quality cardboard and clean office paper on a source separated basis is assumed to have a net cost of $0, as revenues from this commodity stream can be sufficient to offset operations costs." (Page 100)

• The addition of subsection (b), which was not included in the enacting legislation, appears to be a misguided effort to have paper products, which are processed at a net cost of $0 according to the Maryland Needs Assessment, subsidize the financial burden of program.

• As the enacting legislation does not include this language, MDE should define "paper products" in a manner mirroring "packaging."
• If MDE includes this language in the regulation, it implies that the Needs Assessment findings are erroneous. The Needs Assessment serves as the benchmark for program performance. If the underlying data is not defensible, the program itself is not defensible.
• The inclusion of this language in regulation is also inconsistent with language in the enacting statute, creating conflict. The definition of "covered materials" includes paper products, "sold, offered for sale, imported, or distributed in the State." The proposed inclusion of the word "generated" implies that the paper products are not only the products in the form in which they are sold, but also in the form as waste to be recycled after use in these sectors.
Domtar provided similar comments regarding the inclusion of "industrial, commercial, and institutional" paper, stating that "these streams should not be added as an attempt to legislate through regulation. MDE should explicitly state that paper products processed through the industrial, commercial, and institutional streams are excluded".
<u>Response</u>: With regards to comments related to the inclusion of paper products for industrial, commercial, and institutional use, the Department has determined that paper products for industrial, commercial, and institutional use fall within the scope of the law, as the statute clarifies that packaging is only for personal, noncommercial use, but does not indicate the same for paper. According to MDE's needs assessment, paper is approximately 26.3% of the waste stream, meaning 1,186,363 tons of paper were disposed of as solid waste in CY2024 (Page 20 Table 2-1). Of that tonnage, we estimated that 692,626 tons or 62% of the 1,186,363 were from the commercial sector. Commercial Paper also increased their share of the commercial waste stream from 2016 to 2024, which suggests that paper recycling is not increasing in relative terms. While the personal, non-commercial use language for paper products was voted on and discussed in the Environment subcommittee, during the 2025 legislative session, this language was ultimately struck and did not make it to the final enrolled legislation. Therefore, the Department believes it was the legislative intent to not limit "paper products" to personal, non-commercial use.

<u>Comment</u>: AF&PA provided the following comment: "The definition of paper products in subsection (a) is insufficient for program implementation. This language should be updated to reflect that 'paper products mean paper' so that it can be easily understood by those obligated under the program and aligned with legislative intent. An example of how the current definition fails to stand up to scrutiny would be a wooden chair. Without a workable definition, the woody fiber in a chair would risk such items being considered a 'paper product' when that is clearly not the case. Further, cellulose and its derivatives are commonly used as thickening agents, food additives, films, and filters, none of which serve a paper-related function. Without a workable definition that can be easily understood, the proposed language risks producer confusion and programmatic dysfunction". CBA provided the following similar comment: "Consumer Brands recommends clarifying the definition of paper products in paragraph (22) of subsection B of section .01, recognizing that the inclusion of cellulosic fiber does not inherently make an item a paper product, and rather focusing the definition on the functional purpose of a paper product". PCPC also provided a similar comment.
<u>Response</u>: The Department notes that the language referenced is from statute. To address the concern for differentiating whole wood furniture to a paper product, the Department will provide examples in guidance.

<u>Comment</u>: AF&PA commented that "the proposed regulations create a programmatic conflict as generation does not equal sales. A paper product may be generated in the state but may not have been sold, imported, or distributed into the state by a producer. The conflict will complicate implementation. Producers report products sold or distributed into the state while waste collection systems measure products generated in the state, and these two datasets will never align. This

misalignment will result in problems allocating costs, as no cost-allocation formula will allow for alignment between what producers introduce into the market and what enters the waste management system. It also raises questions about enforcement as regulators cannot reasonably enforce obligations on producers for materials they did not place on the market.
Response: To best align with the intention of the law and reduce confusion, the Department will adjust the definition.

Department determination: To clarify regarding confusion about use of the word generated in the definition of a paper product, the Department has decided to adopt the definition of "paper product" as follows which removes the term "generated", which the Department has made the following adjustment to better align with existing statutory language:

> *(22)..(b)"'Paper products' includes paper products* ***offered for sale, imported, or distributed in the State and sold or supplied for use within*** ~~***generated by***~~ *the residential, industrial, commercial, and institutional sectors."*

24. Comment Topic: Definition Recommendation - "Postconsumer Recycled Content" and "Recycled Content"
Commenter(s) Name and Affiliation: Martha Ainsworth, Maryland Chapter of the Sierra Club (Sierra Club); Peter Blair, Just Zero

Comment: The Maryland Chapter of the Sierra Club and Just Zero proposed adding definitions for "Postconsumer Recycled Content" and/or "Recycled Content". More detail can be found in the Sierra Club's attached comments on page 1 and in Just Zero's attached comments on pages 3-7.
Response: Regarding use of the terms "postconsumer" and "non-postconsumer" in the context of Regulation .02(B)(25)(l), as this definition is impactful to producer registration, the Department has determined that in this context it is not necessary to create a distinct definition of postconsumer recycled content since the paper mill may produce container board derived from 100% postconsumer or non-postconsumer recycled content. The Department interprets this to mean that the paper mill must produce container board derived from 100% recycled content (regardless of whether it is pre- or postconsumer recycled content). At this time and in this context, the Department considers only material that has undergone a process that meets the definition of "recycling" and is then used in produced container board to be recycled content. Development of clarification for the terms "postconsumer recycled content" and "recycled content" is ongoing, as these terms are also subsequently used in the context of producer responsibility plans and targets.
The Department additionally recognizes that alternative collection programs must self-certify "that the final destination is for recycling and is going to a responsible end market, as defined in this chapter". Self-certification as stated shall be provided in the submittal for Department's approval.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

25. Comment Topic: Definitions - "Primary packaging"
Commenter(s) Name and Affiliation: FPI

Comment: FPI made the following comment: "With respect to the proposed definition of 'primary packaging,' we recommend removing the reference to 'food or beverage,' as the term 'product' already encompasses food and beverage items".
Response: The Department agrees that, in this context, the food or beverage would be considered the product that the primary packaging is most closely containing.

Department determination: The Department does not propose to change the scope of this definition; however, the Department has decided to adopt the following definition of "Primary packaging" to provide clarification:

*(24) "Primary packaging" means packaging that is most closely containing the product, **including packaging that is most closely containing the** food or beverage.*

26. Comment Topic: Definitions - "Producer"
Commenter(s) Name and Affiliation: AF&PA; Perkins Coie; Madeline M. Humphrey, Bressler Amery & Ross, P.C; AAI; AMERIPEN; Peyton Bynum, Horizon Ag Products; MRA

Comment: AF&PA commented that the language in Regulation .02(B)(25)(l) "creates a gap for mills that use 100 percent recycled content but do not manufacture container board such as recycled paperboard or molded fiber packaging".
Response: The Department has determined that this exemption is not intended for mills that do not manufacture container board.

Comment: Regarding Regulation .02(B)(25)(m), AF&PA commented that "[u]sing the word 'producer' in bullet (iii) to define the exempt producers, creates confusion. The draft does not define 'producers of food serviceware' specifically, therefore we rely on the hierarchy for packaging which starts with the brand owner of the item that uses the packaging. Although this is an exemption likely intended for food service providers that use unbranded food serviceware and places the producer responsibility on to the person that first distributes into the state, there are problems with reaching this conclusion. The producer hierarchy relies on the sale of the 'item,' which would be the food in the food serviceware but the first distribution into the state would be of the food serviceware and not the food item".
Comment: AF&PA:"Further when considering unbranded food serviceware in the context of branded items, the draft has two different uses of 'item' which is not a defined term. In (25) the definition of Producer, 'item' is a purchased good that is sold in or with packaging. Within the Covered Material Categories, 'item' appears to be used to identify various types of plastic packaging. And as with the hierarchy for producers of packaging sold at a retail location, for items sold via e-commerce, there appears to be a gap in identifying the producer for service ware that is sold as the good and not filled.
Comment: Perkins Coie: "The proposed regulations and accompanying guidance clarify that service packaging, including takeout containers and shopping bags, are covered materials, but do not explain how to determine the producer for service packaging. Accordingly, the Department should revise the regulations to include the identification of the responsible producer for service packaging used by retailers, restaurants, and food courts. As currently drafted, the proposed regulations suggest that the producer of all packaging is the manufacturer of the item contained in the packaging, rather than the manufacturer of the packaging itself. Restaurants and food service establishments would become the responsible producer for service packaging simply by using service packaging to contain and sell their goods. Similarly, retailers that use service packaging to hold goods made by other producers could also be required to report and pay fees. We believe this result is contrary to the intent of the Act's producer definitions. We request that the Department include an additional producer definition specifically for service packaging that ties the responsible producer to the brand owner of the service packaging (if the packaging is branded) or to the original manufacturer or importer of the service packaging (if the packaging is unbranded). This approach would more accurately reflect the supply chain for service packaging and ensure that producer responsibility is assigned to the entity best positioned to influence packaging design and material choices. We suggest the following framework for determining the responsible producer for service packaging, which is consistent with the framework used in Colorado (Solid Waste Regs. 18.2.2)...".

Response: FAQ question #1 in guidance discusses "food serviceware". Producers of materials that meet the description of food serviceware provided in guidance, are considered producers of covered materials. Consistent with the statute, the exemption identified in .02B(25)(m) describes that if the entity that owns or operates a restaurant, food cart, or similar establishment that is a producer of food serviceware - branded or unbranded - they are subject to the requirements detailed in this law of a producer.The Department has determined that, per statute, producers of packaging must follow the definition of a producer of packaging and producers of paper products must follow the definition of a producer of paper products.

Comment: Perkins Coie provided the following comment: The proposed regulations and accompanying guidance clarify that service packaging, including takeout containers and shopping bags, are covered materials, but do not explain how to determine the producer for service packaging. Accordingly, the Department should revise the regulations to include the identification of the responsible producer for service packaging used by retailers, restaurants, and food courts. As currently drafted, the proposed regulations suggest that the producer of all packaging is the manufacturer of the item contained in the packaging, rather than the manufacturer of the packaging itself. Restaurants and food service establishments would become the responsible producer for service packaging simply by using service packaging to contain and sell their goods. Similarly, retailers that use service packaging to hold goods made by other producers could also be required to report and pay fees. We believe this result is contrary to the intent of the Act's producer definitions. We request that the Department include an additional producer definition specifically for service packaging that ties the responsible producer to the brand owner of the service packaging (if the packaging is branded) or to the original manufacturer or importer of the service packaging (if the packaging is unbranded). This approach would more accurately reflect the supply chain for service packaging and ensure that producer responsibility is assigned to the entity best positioned to influence packaging design and material choices. We suggest the following framework for determining the responsible producer for service packaging, which is consistent with the framework used in Colorado (Solid Waste Regs. 18.2.2):

Comment: Bressler Amery & Ross, P.C., on behalf of a client who is "a printing and mailing service provider whose customers are large national financial institutions that own the brands displayed on the mailed materials" commented that "at the institutions' direction, our client prints financial statements, purchases the packaging materials used to directly contain and mail those statements (generally envelopes), and distributes the mailings to the institutions' customers, including recipients into the state via remote distribution. In your definition of "producer," you distinguish between packaging used to directly contain the product and packaging used to ship the product. In this case, we understand that the envelopes used to directly contain the financial statements would be the responsibility of the brand owner. However, in some circumstances our client places multiple envelopes into a box for shipment to a customer. We wanted to confirm whether, in those circumstances, the printing and mailing service provider or the financial institutions would satisfy the definition of "producer" for that secondary packaging (i.e., the boxes)".

Response: Consistent with the statute, producers are exempt as defined or follow a hierarchical determination of producer responsibility. For all determinations of responsibility, the Department recommends discussing obligation with your legal advisor. For those entities submitting under the PRO plan, consider discussing with the Producer Responsibility Organization. If an entity identifies they are exempt, they must submit this information in accordance with Regulation .09.

Comment: AAI commented that these scenarios [the Department notes that the comment provided referenced Section (25)(b)(ii), however we believe it discusses Regulation .02(B)(25)(f)] potentially conflict with each other making it difficult to understand whether we are included. For clarity, we suggest striking from [Regulation .02(B)(25)(f)(ii)] "used in a commercial enterprise." Because many of our paper products would largely be used in a commercial enterprise in the business-to-business context, with most of that covered paper never reaching the consumer, we believe this would eliminate the accidental inclusion of paper products that we use while moving product through the extended supply chain".

Response: The Department notes that the language the AAI suggests striking is statutory language. For the Department's response regarding the inclusion of paper products for ICI use, please see *Comment Topic: Definitions - "Paper products"*.

Comment: AMERIPEN provided the following comment: "The definition of 'producer' in subsection (B)(25) largely reflects what is provided in statute and in both Minnesota's and Washington's laws, which is helpful in providing interstate harmony for a fundamental aspect of EPR. However, it would benefit from further clarification that manufacturers of components of packaging who are not obligated producers pursuant to this definition should not be considered the producer of the covered material. This will avoid risking confusion as to whether these component manufacturers should be obligated under the law even though they do not control packaging decisions for consumer products. It should also be noted that components are typically provided in business-to-business transactions that will not be covered under the Act. AMERIPEN thus recommends adding a tenth paragraph to subsection (B)(25) that excludes obligation for 'A manufacturer of a component part or parts, if another entity is obligated as the producer for the packaging to which the component part is, or component parts are, affixed'.

Response: In consideration of this request, the Department has determined that adding additional exemptions may not meet the legislative intent. Components of covered materials only become packaging when they are integrated into the packaging (i.e., primary packaging - film affixed to the interior of the paperboard for a Kleenex® tissue box - the film is a component; however, only is 'packaging' when it is integrated into the box not when sold in a roll to the manufacturer the packaging) Component manufacturers may not control the entirety of the package when it reaches the consumer, covered materials include "components and elements that are supplemental, auxiliary or subordinate and integrated into packaging". Therefore, the producer of the packaging is the entity that is obligated under the law and subject to the requirements. Whether or not that component manufacturer is the producer for all of the packaging is subject to the laws hierarchy. Additional clarification may be found in guidance.

Comment: MRA provided the following comment: "While many MRA members are captured in the definition of "producer" due to the sale of private-label goods – often referred to as the "store brand" – retailers will also be selling a wide variety of items with packaging developed and initially sold by other producers. It is unclear at this time whether retailers will be held responsible for other producers' participation in the program if the retailer is selling items with packaging manufactured by another producer; for example, retailers have expressed concerns about the possibility of being fined for the sale of an item initially sold by a separate producer that has neglected to pay the program's fees. Retailers cannot track whether every single impacted producer selling goods through their establishment or online marketplace are complying with the law and regulations as required. Regulations should explicitly outline that the initial producer is ultimately responsible and that unaffiliated retailers that sell their products are not liable should that producer fail to comply with the program but continue to sell items into the state.

Response: The designation of producer is obligated in hierarchy through statute. In some cases, a retailer may be a producer. A list of registered producers through a PRO plan or individually through an IPP are maintained by the Department. Questions on enforcement are defined by statute and additional context is provided in Regulation .11.

Comment: Horizon Ag Products provided the following comment: “We are attempting to determine if we are subject to registering with CAA for the packaging producer responsibility reports and fees.
We produce soil amendments and fertilizers that are packaged in supersacks, totes, and bottles. Around 95% of our product is purchased by another company who places our material into their blends. That company does have locations in Maryland that we ship to. Would we be responsible for reporting all of that packaging? Or just the other 5% that goes out with our name on it?”.
Response: Please refer to the definition of a producer and associated guidance in making your determination. Consistent with the statute, producers are obligated as defined or follow a hierarchical determination of producer responsibility. For all determinations of responsibility, the Department recommends discussing obligation with your legal advisor. For those entities submitting under the PRO plan, consider discussing with the Producer Responsibility Organization.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

27. Comment Topic: Definitions - “Recycling”
Commenter(s) Name and Affiliation: Just Zero, AF&PA, GPI, Sierra Club

Comment: AF&PA recommended “explicitly defining ‘energy generation’ and ‘fuel production”. This comment and similar comments presented by the Maryland Chapter of the Sierra Club and Just Zero related to specific technologies such as pyrolysis and gasification may be addressed in future regulations, guidance, and/or producer responsibility plans.
Response: At this time, the Department asserts that energy generation and fuel production do not meet the definition of recycling (along with all other items listed in Regulation .02(B)(28)(b)), and energy generation and fuel production are interpreted literally to mean a process that generates energy or fuel.

Comment: AMP Robotics Corporation provided the following suggested change to the definition of recycling: “‘Recycling’ means the process of collecting, sorting, cleansing, treating, and constituting materials that would otherwise be or have been disposed of and returning them to or maintaining them with the economic mainstream in the form of recovered material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace.”
Response: The Department is not obligated to address covered materials otherwise “previously disposed”. Modifying the definition of recycling to include materials that were previously disposed as solid waste would change the intent of the legislation. This is further reinforced by the following language from Environment Article §9–2501(i)(2), Annotated Code of Maryland and Regulation .02(B)(13)(c): “‘Covered services’ does not include disposal of covered materials”.

Comment: AF&PA provided the following: “Additional clarity is needed to define ‘economic mainstream’ and to determine how that definition of economic mainstream might impact marketplace innovation”.
Response: The term ‘economic mainstream’ is provided in the statute for the definition of recycling. During this phase of the regulations the Department has not provided an additional definition and considers this topic open for further discussion for future phases.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

28. Comment Topic: Definitions - "Recycling rate"
Commenter(s) Name and Affiliation: Paula Soos, AMP Robotics Corporation

Comment: AMP recommended that "the following language be included in the proposed definition of recycling rate. For purposes of evaluating system-wide material recovery effectiveness, recycling rate may also be calculated as the amount of recyclable covered material recycled divided by the total municipal solid waste generated within a jurisdiction during the same period".
Response: The definition of recycling rate as proposed is identical to the statutory definition, and limiting to municipal solid waste generated does not encompass all materials managed in the ecosystem nor covered materials that are subject to the statute.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

29. Comment Topic: Definitions - "Refill" and "Reuse"
Commenter(s) Name and Affiliation: PCPC, GPI, HCPA, ACI, AMERIPEN; Brennan Georgianni, American Cleaning Institute (ACI);

Comment: PCPC provided the following comment: "to harmonize with other EPR states' approaches (such as California's SB 54), anything that qualifies as reuse/refill should be exempt from the definition of a covered material". California's statute defines "covered material" as "single-use packaging" and "plastic single-use food service ware". Maryland's statute is not comparable in this respect; an exemption for reusable or refillable materials is not present in Maryland's statute and there is no language in Maryland's statute indicating that refill or reuse are intended to be excluded from the definition of a "covered material".
PCPC also commented that "'repeated filling' should allow for at-home refill in addition to in-store refill models". HCPA recommended that "[t]he term 'repeated refilling' as used in the definition of 'refill' should clearly include refill by a consumer at home, refill by a consumer in store, and refill by a producer". HCPA also recommended "taking into consideration the additional clarity around 'reusable' and 'refillable' that California included in its proposed packaging EPR regulations, the most recent draft of which was published in January 2026". AMERIPEN also recommended "that in home refill be acknowledged as a management pathway, consistent with California's EPR statute; this can be achieved by amending (B)(31)(b) as follows: 'Supported by adequate logistics and infrastructure to provide convenient access for consumers, including for refill conducted within a home; and[…]'." ACI commented that "When defining terms for the implementation of this program, it is critical that definitions of refill be reflective of all types of refill systems available to consumers. As currently written, §B(31)'s definition of 'refill' is unclear and does not sufficiently outline the exclusion of packaging systems intended for repeated at‑home consumer refill from the definition of covered products. To avoid confusion and unintended program scope, the definition should clearly specify that 'refill' refers to packaging that is intentionally designed, marketed, and sold to be refilled by consumers in the home. Consistent with this clarification, ACI respectfully requests that the Department explicitly state in its regulations that at‑home consumer refill materials are not considered covered products under the state's EPR program". AMERIPEN recommended that "instead of directly defining both terms, the rules specify that the PRO or independent producer, as applicable, has responsibility for determining the standards for what qualifies as 'refill' and 'reuse.' Should the Department not make this change, AMERIPEN recommends the Department specify the process and/or criteria it will use to determine when something is durable, as provided in paragraph (B)(35)(b)". GPI recommended "that future regulations surrounding refill requirements ensure adequate time is permitted to allow for refill and rewash infrastructure to be established. Glass bottles

can be and are currently made in niche markets to required specifications in this area, having a refill life of 20 to 50 reuses per bottle, and can work to support a properly outlined initiative in this space".
Response: Regarding AMERIPEN's recommendation not to directly define both terms, the Department notes that both terms are directly defined in statute and it is outside of the authority of the Department to remove these defined terms. In response to other comments from PCPC, HCPA, ACI, AMERIPEN, and GPI: to maintain the intention of the advisory council and meetings, continued discussions during those meetings and potentially in future regulation development processes may discuss topics such as durability and standards for reuse and refill (see meeting archive for the discussion on reuse and refill March 2026). Regarding ACI's request that at-home consumer refill materials are not considered covered materials, the Department asserts that any material that meets the definition of a covered material is considered a covered material. If the at-home consumer refill material is "is sold or supplied with the product", it may be considered a covered material. If it is sold separately from the product (i.e. is the product) and does not meet the definition of a paper product, the at-home consumer refill material may not be considered a covered material.

The definition of "refill" and "reuse" and associated topics such as producer responsibility plans and service provider reimbursements may be further addressed in future regulations, guidance, and/or producer responsibility plans.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

30. Comment Topic: Definitions - "Responsible end market"
Commenter(s) Name and Affiliation: Just Zero; WM; AMERIPEN; NWRA-MD; Justin Short, Recycled Materials Association (ReMA)

Comment: Just Zero recommended that the Department "expand the definition of 'Responsible End Market'", and recommended that "Maryland should follow the leadership of states that have adopted comprehensive standards to ensure that materials counted as recycled are (a) transparently tracked through the recycling system, (b) managed in a manner that protects the environment, (c) processed at facilities that comply with all applicable laws and permits, and (d) ultimately reprocessed into new consumer products. Minnesota, Oregon, and Maine provide strong models". More detail, including definitions used by other states, can be found in Just Zero's submitted comments. AMERIPEN recommended that "these forthcoming rules align with the "responsible end market" definition in other states, such as Oregon and California, and work to ensure that the requirements for responsible end markets verification activities are truly feasible for both the PRO and recycling service providers". AF&PA recommended that MDE "align and harmonize, where possible, the Responsible End Market (REM) requirements with the other EPR states in the US. MDE should look to Circular Action Alliance (CAA) for guidance as CAA is working to develop a framework to comply with the various REM requirements".
Comment: AF&PA also expressed support for "reference to existing industry standards for recyclability and repulpability. In the Approved Program Plan for the State of Oregon, Circular Action Alliance granted domestic paper mills an exemption for paper yield verification. They came to this conclusion based on input from us, the Technical Association of the Pulp and Paper Industry, and Moore & Associates that overall yield performance in the U.S. is never below 60%. Additionally, paper mill operators expressed strong concern that sharing yield information negatively impacts their strategic advantage. We suggest that MDE adopt a similar yield exemption for domestic paper mills". AF&PA also expressed support for "the ability to leverage other certification and verification schemes to meet the REM requirements and minimize any duplication of process. We urge MDE to keep in

mind that this requirement is not to actively enforce other jurisdictions' regulations and laws, it is to review for evidence of violations with the respective competent authorities".

Comment: WM provided the following recommendation "that MDE amend the 'Benefits the environment' portion of the 'Responsible end market' definition under COMAR 26.04.14.02(32)(b) as follows:

'Benefits the environment (i.e., minimizes harm to the environment)'. All responsible end markets cause some amount of environmental impact, so this clarification is helpful to ensure accuracy regarding how these markets are described". NWRA-MD similarly provided the following comment: "All responsible end markets have some environmental impact. NWRA-MD encourages MDE to consider alternative language, such as 'minimizes harm to the environment' and/or 'is in compliance with all applicable state and federal environmental laws and regulations'".

Comment: ReMA provided the following comment: "when further requirements and clarification for responsible end markets are considered, a responsible end market entity should be defined as the first entity beyond the materials recovery facility, depot, drop-off, or other collection entity which processes a recyclable material into a recycled feedstock which can be used for manufacturing a virgin feedstock substitute or in a substantially similar manner as a virgin or primary feedstock would be used. This approach establishes a consistent standard across commodities that will remain applicable as processing technology and market dynamics evolve over time. It is also reflective of how materials are processed at MRFs and then marketed for further processing into commodity-grade recycled feedstock materials. For example, metal covered materials that are sometimes smelted directly by a mill – which would make that mill the responsible end market entity - may also be processed into feedstock by a metal shredder, who would then be the appropriate responsible end market entity."

Response: To maintain the intention of the advisory council and meetings, continued discussions during those meetings and potentially in future regulation development processes may discuss topics such as responsible end markets and harmonization with other EPR states

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

31. Comment Topic: Definitions - "Service provider"
Commenter(s) Name and Affiliation: WM; NWRA-MD; TRP

Comment: WM and NWRA-MD recommended including the following language in the definition of "service provider": "A private entity that is contracted with a local government to provide covered services for covered materials within the local government's jurisdiction regardless of whether the local government contracted for or otherwise arranged similar services before the approval of the applicable producer responsibility plan."

Comment: WM commented that "Read literally, the definition of 'Service provider' in COMAR 26.04.14.02(37)(b) could be interpreted to exclude private entities that have contracts with local governments. This interpretation is inconsistent with Maryland's EPR statute, which does not limit 'service provider' to [a] private entity that is not contracted with a local government.' If private haulers contracting with local governments are not explicitly listed as "service providers," WM and other haulers risk being ineligible for reimbursement, forced into local-only claims processes, or excluded from registration. In other state EPR programs WM has experience with, we are being asked to recoup costs through our local government customers, which is not always effective and imposes unnecessary burdens on both recycling companies and local governments. For example, in the Colorado EPR program, a mechanism does not currently exist that allows private haulers to directly request reimbursement for collection services under the program. Local governments have many reasons for selecting a private hauler to provide services. These reasons include improved services, lower costs, and increased safety. Creating a system that requires a private hauler to recoup costs through the local government negates the efficiencies gained by contracting out this work. Permitting private entities to request reimbursement under the program directly more efficient and can avoid some potential disputes between haulers and local governments regarding reimbursements".

Comment: NWRA-MD provided the following comment: The definition of (37)(b) Service Provider should be clarified to ensure that private entities that have contracts with local governments are not excluded. As currently drafted, we believe this definition could make private recycling haulers ineligible for reimbursement. This comment is based on our experience with EPR programs in other states, where private waste haulers are required to recoup costs through our local government customers, which we have found burdensome for both recycling companies and local governments.

Comment: TRP provided the following comment: "A subsection has been added that was not in the statutory language: '(b)(ii) A private entity that is not contracted with a local government, that provides covered services for covered materials, such as through a subscription model.' We believe that the addition of this phrase provides unnecessary detail, especially in the second and third clause, that may cause confusion. We believe that the definition of "service provider" in statute, as §9-2505(BB)(1) "Service provider means an entity that provides covered services for covered materials" covers both a public and private entity. If the Department wishes to include 26.04.14.02(37)(b)(ii), we advise revising the phrase to state "A private entity that is not contracted with a local government as covered in (b)(ii) of this section, that provides covered services for covered materials, within a jurisdiction regardless of whether the entity provided, contracted for, or otherwise arranged for similar services before the approval of the applicable producer responsibility plan."

Comment: Regarding Regulation .02(B)(37)(b)(ii), TRP also provided the following comment: "We encourage the use of existing private entities to provide alternative collection programs, funded by the PRO or IPP responsible entity, of certain covered materials to ensure an optimal level of convenience for consumers and collection for those materials. However, we want to ensure that those private entities are not charging consumer-facing fees for the collection and management of covered materials, as that is a PRO responsibility". TRP commended that "within statutory language, under Section 9-2505(C)(1)(IX), it is stated that the PRO will pay for the entirety of the program plan without any new or additional consumer-facing fees to members of the public, businesses, service providers, the state or any political subdivisions, or any other person who is not a producer. Under this language, the only enforcement of additional consumer-facing fees falls upon the PRO". TRP recommended "that further regulations include a prohibition on service providers charging any new or additional consumer-facing fees for the collection and management of covered materials".

Response: The definition of "service provider" is related to topics such as program plans, producer fees, establishment of the list described in Environment Article §9-2508, Annotated Code of Maryland. To maintain the intention of the advisory council and meetings, continued discussions during those meetings and potentially in future regulation development processes may discuss topics such as service provider, reimbursements, registration, etc.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

32. Comment Topic: Definitions - "Small format"
Commenter(s) Name and Affiliation: CBA; PCPC; ACI; AMERIPEN; CAA

Comment: CBA provided the following comment: "These regulations should seek to reinforce favorable consumer recycling behavior and not unintentionally incentivize behavior that runs contrary to established best practice. Consumer Brands recommends MDE to clarify that packaging components like caps and lids should not be treated as separate, distinct covered materials to avoid consumer confusion and encourage recycling best practices".

Comment: PCPC provided the following comment: "PCPC encourages the Department to adopt and implement the APR Design Guide standard in the draft regulations for small format packaging. Doing so would promote regulatory clarity, incentivize packaging design for recyclability, and reduce the risk of misclassification that could limit the capture of recoverable materials. The use of technically grounded and operationally validated criteria—such as those found in the APR Design Guide—is essential to ensuring that the regulatory framework supports both environmental outcomes and practical feasibility for producers.

Comment: PCPC and ACI provided the following comment: "Furthermore, the draft regulations classify any component with sides measuring two inches or less as a small format covered material. This presumably covers bottle caps and lids as separate and distinct packaging that must comply with all requirements. Consumers have long been educated to reattach bottle caps prior to recycling the larger package. Reattaching caps to bottles, regardless of cap size, enables recovery of the cap material within the recycling stream and leads to even greater circularity. The proposed regulations should seek to reinforce this favorable consumer recycling behavior and not drive distinction between the bottle cap and the package, consistent with the Association of Plastic Recyclers (APR) Design Guide".

Comment: AMERIPEN provided the following comment: "Subsection (B)(39) defines 'small format' packaging but lacks reference to the Association of Plastic Recyclers SORT-S-02. This is an alternative size sorting test for measuring what materials can pass through a glass screen at a sortation facility. Additionally, some 'small format' components like bottle caps can be managed successfully when reattached to the rest of the packaging and producers may even direct consumers to reattach such components. Therefore, AMERIPEN recommends adding language at the end of the definition that states, ''Small format' does not include material that achieves the 'APR Design® Preferred' category in the Association of Plastic Recyclers SORT-S-02 sorting potential test method. 'Small format' does not include a component of packaging that is designed to be reattached before disposal and is actually reattached'".

Comment: CAA recommended "that the 'small format' definition be removed from the regulations. A strict definition is inherently limiting, does not apply consistently across material types, and fails to account for the evolution of sorting technology at materials recovery facilities (MRFs). Codifying such a definition could inadvertently deter innovation in material design and handling. However, if MDE determines a definition is necessary, we recommend the adoption of an established, technically informed standard to ensure consistency. The Association of Plastic Recyclers (APR) sorting test document 'Sort-B-02 – Evaluation of Size Sorting Potential for Articles with at least 2 Dimensions Less than 2 Inches" provides a suitable model'".

Response: The Department notes that the term "small format" is used only in the context of registration, and its use is harmonized with reporting categories in Colorado, Oregon, and California. Covered materials that are multimaterial should refer to guidance provided for multimaterials in the *Categories of Covered Materials for Registration* section of guidance for clarification about how to report covered materials composed of multiple component parts.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

33. Comment Topic: Definition Recommendation - "Waste Reduction"

Commenter(s) Name and Affiliation: PakTech; AMERIPEN; Kelly Doordan, Trash Free Maryland (TFM); Maggie Ostdahl, National Aquarium; Melissa Jung, Upstream; AF&PA

Comment: PakTech and AMERIPEN advocated for establishing a definition of "waste reduction" that does not equate waste reduction with source reduction. PakTech provided the following comment: "we are concerned that since the term 'waste reduction' is undefined, it will be all too easy to apply the concepts of source reduction to the term 'waste reduction'. We would be categorically opposed to such an approach".."we believe 'waste reduction' should simply be defined as a method to require producers to be as efficient as possible in their manufacturing processes and to not create overall solid waste as defined in Section 9-101". PakTech suggested the following language: "'Waste Reduction' means producers, and their downstream manufacturing partners, will take care to reduce the amount of solid waste, as defined in Section 9-101 in their manufacturing processes to the greatest extent practicable", and recommended that "instead of regulating specific material types or commodities, the Department should focus on the total amount of waste a company produces. This encourages efficient manufacturing and less waste while protecting recycling efforts". More detail can be found in PakTech's submitted comments. AMERIPEN provided the following comment: "SB 901 and the draft regulations use the term 'waste reduction,' and derivative terms, but they are left undefined. It is important to acknowledge that 'waste reduction' activities do not equate to packaging 'source reduction,' which is a different concept and is not used in SB 901 or the proposed regulations. Rather, 'waste reduction' encompasses the removal of packaging from the waste stream (i.e., landfills) and movement toward recovery and higher uses such as recycling and composting" AMERIPEN recommended the following definition: "'Waste reduction' means to divert material away from the disposal stream and toward recycling, refill, reuse, or composting", or alternatively recommended "that the Department add a provision stating that each program plan proposal is responsible for defining the scope of 'waste reduction'".
Comment: TFM, the National Aquarium, and Upstream, recommended referencing Minnesota's definition of "waste reduction" in order to establish a similar definition in Maryland's regulations. TFM and the National Aquarium provided the following comment: "We urge the Department to establish a clear definition of waste reduction in the regulations that includes the contributions of source reduction and refillable packaging. As an example, Minnesota's packaging producer responsibility legislation provides a definition of waste reduction that includes refill. Explicitly including source reduction and refill supports the expressed legislative intent and covered services defined elsewhere in the legislation". TFM recommended defining "'waste reduction' since percentage of covered materials to be waste reduced is among the performance goals and metrics that will be reported. The waste reduction goal is a distinct goal that SB901 enumerates separately from recycling, composting, reuse, return, postconsumer recycled content, and greenhouse gas reduction goals. Source reduction supports the waste hierarchy of prevention first as well as the legislative intent to reduce packaging waste sold in the state. Refill as defined in the statute also supports reducing demand for new production of covered materials and is distinct from reuse. Waste reduction should be defined to incorporate refillable covered materials so that producers who offer consumer-refillable packaging may count contributions toward the waste reduction target". Upstream provided the following comment: "the statute requires the packaging producer responsibility organization (PRO) to establish a target for waste reduction, which is not defined. We strongly urge MDE to establish a clear definition for waste reduction in the regulations and suggest referencing Minnesota's definition from SF 3887 (Subd. 39). This definition incorporates refillable covered materials such that producers who convert their products into refillable formats as defined in statute will contribute toward this target".
Comment: AF&PA commented that "there are still many elements of the enacting legislation that are not addressed in this draft regulation. These include"…"a definition for 'waste reduction'".
Response: These regulations are predominately focused on registration of covered materials and alternative collection programs. Only those covered under the exemption for hazardous or flammable products regulated under Regulation .05(B)(1)(i) that prevent the packaging from being waste

reduced are being considered in this regulatory promulgation. The Department intends to further evaluate this topic as it relates to covered services.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.03 Covered Materials.

34. Comment Topic: Covered Materials - Compostable Packaging
Commenter(s) Name and Affiliation: BPI, FPI, AMERIPEN

Comment: BPI recommended "striking [Regulation .03(B)(7)(b)]. Compostable packaging is already defined in the chapter and subject to the requirements of Environment Articles §9-1701 and §9-1702".
Comment: FPI commented that "on covered materials, we recommend the removal of "compostable packaging" .. as we believe these concepts are already captured and can be addressed through producer guidance".
Comment: AMERIPEN provided the following comment: "Subsection (B)(7) governs the scope of covered packaging that is compostable and requires it to be labeled as specified or to be a singular organic material as specified. This framework seemingly allows unlabeled compostable packaging not to be considered 'covered packaging' and thereby allows it to avoid regulation under SB 901. Although such unlabeled packaging may not comply with the state's labeling requirements, it is unclear why the Program would not consider it obligated. For similar reasons, the regulations should not base compostable packaging's 'covered' status on whether it is a 'singular organic material.' Therefore, AMERIPEN recommends replacing subsection (B)(7) so it simply reads as follows: 'Compostable products, as defined this chapter'". AMERIPEN also provided the following comment: "On page 12, the Guide states, "Certified compostable food serviceware requires specific labeling in order to register under that category. All other materials do not need to be labeled for registration." AMERIPEN appreciates and agrees with the policy that materials generally need not be labeled. However, as raised earlier in this letter, labeling compostable food serviceware (or any material) does not determine whether it is a covered material subject to the law. AMERIPEN disagrees with the interpretation that it does and recommends revising the Department's approach to not consider labeling".
Response: The intention of the clarification in .03 on compostable packaging was to provide reference to the labeling that is not specifically included in the definition in .02. It was not meant as a mechanism to exclude unlabeled packaging but rather illustrate that without a label, the covered material would only be eligible to register as another category to ensure alignment with Maryland's labeling within Environmental Article §§9-2102 through 9-2104, Annotated Code of Maryland.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided to adopt the following language (Regulation .03(B)):

> ***Packaging that meets the definition of 'compostable'***~~***Compostable packaging***~~*, as defined in this chapter;* ***including:*** ~~***and***~~
>
> > *(a)* ***Packaging that*** *meets labeling requirements in Environment Article, §§9-2102 and 9-2104, Annotated Code of Maryland or other standards as approved by the Department; or*
> >
> > *(b)* ***Packaging that*** *is a singular organic material with no processing, additives or changes to molecular structure, demonstrated to the Department and subsequently approved by the Department;*

35. Comment Topic: Covered Materials - Food Serviceware / Food Service Packaging
Commenter(s) Name and Affiliation: AMERPIPEN, Perkins Coie, FPI, CAA, Melvin R. Thomas on behalf of the Restaurant Association of Maryland (RAM)

Comment: Perkins Coie, on behalf of producers in various industries, FPI, and CAA shared similar comments regarding the inclusion of "food serviceware" as a subsection of "food service packaging". FPI commented that "'Service packaging' is expressly described as packaging designed and intended to be filled at the point of sale, whereas many items commonly referred to as food serviceware (such as utensils and straws) are not filled with a product at the point of sale and instead function as ancillary items that support food consumption or delivery. For this reason, the added reference to 'food serviceware' under service packaging should be removed". Perkins Coie also commented that "the guidance document should include pictures and more detailed examples of 'Take-out and home delivery food service packaging' consistent with the regulations. The list of examples of 'food serviceware' on page 27 should be removed or revised to include only 'Take-out and home delivery food service packaging'". CAA commented that "the statute and language in B.(3) defines service packaging to be 'designed and intended to be filled at the point of sale'. It is not clear what food serviceware is meant to include. Other Maryland jurisdictions have used the term food 'serviceware' to include items that are not covered by this statute, such as cutlery, stirrers and straws, which would not be filled at the point of sale". The RAM commented that "No definition of "food serviceware" is provided in the law and draft regulation. On page 28 of the draft guidance document under "Definitions," the Department acknowledges that there is no specific term defined as "food serviceware," and mentions that it is described in the law. It would be helpful if the Department could reference that specific language in the law. The Department's draft guidance says that food serviceware also includes (but not limited to) utensils, straws, napkins, condiment packages, and other items. However, these items are not service packaging designed and intended to be filled at the point of sale as described in the language of the law (as cited above). This appears to be a very broad interpretation. It would be helpful if the Department could provide the rationale for this broad interpretation. Perkins Coie commented that "the term 'food serviceware' should be removed from the scope of 'service packaging' in section .03(B)(3)(c) because it is not included in the scope of 'service packaging'". Other comments, like RAM's comment that "including 'food serviceware' without a clear definition creates unnecessary confusion and uncertainty for producers. The Department's intent should be clarified— either through a definition or accompanying guidance", focus on recommendations to provide an accompanying definition or clarity to the term "food serviceware". The RAM also recommended clarification that "items such as napkins, paper towels, cutlery, and straws are excluded due to food safety and hygiene concerns".
Response: The Department agrees that food serviceware, as interpreted in guidance, is not limited to food service packaging. The Department notes that clarification about the term "food serviceware" is provided in guidance FAQ #1. Illustrations of food serviceware and food service packaging - as associated with covered materials - are discussed in guidance.The Department provided related responses in *Comment Topic: Exempt and Excluded Materials - Napkins, Paper Towels, or Other Paper Intended for the Absorption of Liquids*. Please note, the packaging definition in statute uses the term 'includes' which means includes by way of illustration and not by way of limitation.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided to adjust the language in Regulation .03(B)(3) with the following and add the following language to Regulation .03(C):

B. (3) Service packaging designed and intended to be filled at the point of sale, including:
(a) Carry-out bags;
(b) Bulk good bags; and

(c) Take-out and home delivery food service packaging~~, including food serviceware;~~
(4) Any food serviceware not included in (3);

C. Covered paper products include:
…
(3) Food serviceware that meets the definition of a paper product

36. Comment Topic: Covered Materials - Covered Paper Products
Commenter(s) Name and Affiliation: FPI, AMERIPEN, CAA

Comment: FPI recommended "the removal of .. "multimaterial packaging" as [they] believe these concepts are already captured and can be addressed through producer guidance". FPI additionally suggested "that the concept of "multimaterial" can be incorporated into the "covered material type" definition rather than as a standalone definition".
Response: Please refer to the Department's response to *Comment Topic: Definitions - "Multimaterial"*.

Comment: AMERIPEN provided the following comment: "Subsection (C)(3) identifies "[m]ultimaterial products that are at least majority paper by volume" as covered paper products. AMERIPEN recommends adding the caveat "that is not packaging" to the end of the provision to avoid potential overlap in scope for packaging and paper products."
Response: The definition of "paper products" in Regulation .02 clearly states that "paper products" does not include "paper products that also meet the definition of packaging in this regulation".

Comment: CAA provided the following comment: "Section C.(1) appears to capture material generated at locations ("industrial, commercial, and institutional sectors") the statute does not define as "covered entities". CAA reiterates that the PRO is not responsible for materials generated at non-covered entities".
Response: Please refer to the Department's response to *Comment Topic: Definitions - "Paper products"*.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided to adjust the language in Regulation .03(B)(3)** to provide additional clarification and align with the definition of "paper products":
C. Covered paper products include:
~~(1) Paper generated by both the industrial, commercial, and institutional sectors and the residential sector;~~
*(1~~2~~) Paper products **offered for sale, imported, or** ~~**sold**~~ distributed **in the State and sold or supplied** for use **within the residential**, industrial, commercial, **and** ~~**or**~~ institutional **sectors** ~~**businesses; and**~~*
**Please also refer to *Comment Topic: Covered Materials - Food Serviceware / Food Service Packaging* for additional definition updates.

37. Comment Topic: Covered Materials - Covered Packaging and Paper Products Redundancies
Commenter(s) Name and Affiliation: CAA, AMERIPEN

Comment: CAA commented on Regulation .03(B)(5)-(11), noting that these categories are already broadly captured under the language in B(1)-(3). AMERIPEN commented more generally that "the level of detail provided in this section for the scope of covered packaging and covered paper products is unnecessary for a standalone regulation. These two covered material types are defined already in

COMAR 26.04.14.02. If the Department believes it is necessary to retain this language, AMERIPEN recommends shifting the two types into the Definitions regulation for convenience and consolidation."
Response: Regulation .03 does not change the scope of what meets the definition of a "covered material". Rather this section is meant to provide additional specificity that may be useful for registering producers.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

38. Comment Topic: Covered Materials - Specific Scope Questions
Commenter(s) Name and Affiliation: Tim Bagshaw

Comment**:** Tim Bagshaw provided the following comment: "It's not clear to me whether each of these types of products are within the scope of the current EPR: (i) credit/debit/gift cards; (ii) blank envelopes (that have plastic windows and adhesive to close them); (iii) envelopes (that have plastic windows and adhesive) and also personal information like a person's name, address, etc.; and (iv) the paper inserts/fliers that sometimes come with credit cards, credit card offers, donation requests, etc.".
Response: The Department recognizes there are specific instances where producers may be uncertain as to their specific material and whether it is considered a "covered material" or not. The Department has opted not to provide a complete list within the regulations and will address specific questions as necessary. If there are repetitive questions asked on a potential material, the Department typically provides this in guidance to reduce confusion. Please refer to the Department's responses to *Comment Topic: Exempt and Excluded Materials and Covered Materials*. Please note that newsprint is exempt and is defined in Environment Article 9-1707, Annotated Code of Maryland[7]. Consider review of guidance for this law and supporting regulation.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

39. Comment Topic: Covered Materials - Primary, secondary, and tertiary packaging
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN commented that "Subsection (B)(1) provides that '[p]rimary, secondary, and tertiary packaging intended for the consumer market' are all covered packaging, but subsection (B)(11) acknowledges that there are cases where primary packaging is exempt. To avoid a potential inconsistency between these subparagraphs, and if the Department does not extend exemptions beyond primary packaging as requested below, AMERIPEN recommends consolidating them into one subparagraph as follows: 'Primary, secondary, and tertiary packaging intended for the consumer market, but excluding exempt primary packaging.'"

Response: The Department notes that the following language was provided in draft guidance in the *Covered Materials* section associated with Regulation .03:

"What are Covered Materials Subject to the Regulations?

7 https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gen&section=9-1707&enactments=False&archived=False

> The definition of "covered materials" is described in COMAR 26.04.14. This includes all non-exempt and non-excluded packaging and paper products. Exemptions and Exclusions are addressed in the associated section within this document."

This is additionally clarified in the statutory definition of "covered material" (the following language is also included in Regulation .02): *"'Covered materials' does not include exempt or excluded materials as defined in this chapter".*

Regulation .03 is intended to provide specificity about what material the Department has determined is captured in the definition of "covered material". It is not meant to change the scope or definition of "covered material". The Department has determined that covered materials do not include exempt or excluded materials, as defined in this regulation.

Department determination: Upon consideration of these comments and for the reasons discussed above, MDE has determined that the request to consolidate .03(B)(1) and .03(B)(11) is a minor change that does not impact the scope of these regulations. The Department had decided to remove .03(B)(11) and incorporate that language into .03(B)(1) as follows:

> *B. Covered packaging includes:*
> *(1) Primary, secondary, and tertiary packaging intended for the consumer market,* ***except those that are exempt or excluded materials as defined in this chapter****;*
> ...
> ~~***(11)Secondary and tertiary packaging associated with exempt primary packaging.***~~

40. Comment Topic: Covered Materials - Minor Revision
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN recommended the following "technical correction to paragraph (B)(2)(a) as follows: '[…]to a product and:'".
Response: The Department will update technical corrections.

Department determination: The Department has made this minor technical correction and updated Regulation .03(B)(2)(a) as follows:

> *"(a) Those components and elements that are directly attached to a product* ***and:~~;~~****"*

41. Comment Topic: Covered Materials - Wood Pallets
Commenter(s) Name and Affiliation: AF&PA

Comment: AF&PA commented that "wooden pallets are typically only used as tertiary packaging in B2B transactions and should be exempt from the obligations of the Act, according to 16(a)(xiv). They also meet the criteria to be considered reusable packaging as defined by 02(35). We encourage MDE and CAA to explicitly categorize pallets as exempt reusable covered material".
Response: The Department notes that covered materials include reusable covered materials. Additionally, the Department has evaluated that pallets may be provided to consumers purchasing bulk goods.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.04 Categories of Covered Materials for Registration.

42. **Comment Topic: Categories of Covered Materials for Registration - Paper - Aseptic & Gable Top**
Commenter(s) Name and Affiliation: AF&PA; Jordan Fengel, Carton Council; CBA; AMERIPEN

Comment: AF&PA, Carton Council, CBA, and AMERIPEN recommended combining aseptic cartons and gable-top cartons into a single category. Comments discussed harmonization with other states, co-management and baling, small volume, and other considerations.
Response: The Department has made the decision to separate aseptic and gable-top cartons into two distinct categories for registration because of their differing material compositions, which the Department has determined in the State's current system, their value downgrades mixed paper bale pricing and the current tonnages of materials being returned do not distinctly provide tonnage for unique bales. The Department is interested in the final disposition of the non-paper components of these types of packaging. Aseptic containers are a more complex multimaterial composed of layers of polyethylene, paperboard, and aluminum. Based on current quantities received by the recycling system, unique materials compositions of these two categories, and further modeling of these packaging types, the Department has considered reporting for these two packaging types to be accounted for separately.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

43. **Comment Topic: Categories of Covered Materials for Registration - Glass - Pigmented vs Non-pigmented**
Commenter(s) Name and Affiliation: GPI and AMERIPEN

Comment: GPI and AMERIPEN recommended combining "Non-pigmented or non-colorant-containing glass bottles, jars, and other containers" and "Pigmented or colorant-containing glass bottles, jars, and other containers" into a single category that does not distinguish between pigmented and non-pigmented glass. GPI provided the following comment: "While we understand that there may be some minor differences regionally in the commodity value of recovered glass distinguishing by color, it is relatively insignificant when the glass is recovered in single-stream or curbside programs due to the contamination. We are not certain that there is much value in the additional reporting data cost of CMC reporting based on whether the product is clear or has pigment", and AMERIPEN commented that "the glass material class in subsection (B)(7) separates categories based on whether they are pigmented; this introduces an unnecessary level of granularity into reporting and reduces harmonization with other states".
Response: The Department has made the determination to separate pigmented glass from non-pigmented glass due to the fact that they in some cases, and consistent with existing Maryland markets, have different end markets, and may differ in value and potentially impact recycling rates.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

44. **Comment Topic: Categories of Covered Materials for Registration - Glass - Small Format**
Commenter(s) Name and Affiliation: AMERIPEN, GPI

Comment: AMERIPEN recommended "adding a small format glass category for consistency with other classes and other states' categorizations". Glass breakers are often placed at the front of MRFs, according to the Sustainable Packaging Coalition (https://sustainablepackaging.org/wp-content/uploads/2025/09/How-MRFs-Work_SPC.pdf) and GPI's MRF Best Practices identify "a glass breaker/fines screen combinations located immediately below or just after the OCC screen". GPI's MRF Best Practices also note that "for glass to be considered for further secondary processing into cullet".."<⅛ [inch] fines are not considered glass in most MRFs and are counted as disposable residue". (https://static1.squarespace.com/static/61b12c4e31f2761943c9622d/t/6838845bc3f20c3abb40a1a5/1748534363762/mrf-best-practices.pdf). GPI also provides the following assessment in their publication, "Small format packing collaboration": "According to research conducted by Closed Loop Partners' (CLP) Center for the Circular Economy, upgrades to glass screens to keep packaging between two-and-three inches – like PET, aluminum containers and other materials – from leaving the container line, and out of the glass stream led to cleaner glass and optimized sortation. The Center's intervention at one US MRF measured that upgrading the glass screen resulted in an approximately 67% reduction in mid-to-large size 'small' plastic contamination in the glass stream" (https://www.gpi.org/gpi-news/small-format-packing-collaboration).

Response: The Department has therefore evaluated that small format materials that are not glass are identified in separate registration categories because they pass through MRF screens and often end up as contamination in the glass stream. Small format glass that passes through a MRF screen would not contaminate the glass stream because it is also glass and is designed to pass through glass breaker screens. Additionally, the Department notes that Maryland has harmonized with Colorado and Oregon, neither of which include a small format category for glass reporting.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

45. Comment Topic: Categories of Covered Materials for Registration - Harmonization
Commenter(s) Name and Affiliation: PCPC, AMERIPEN, and CAA

Comment: PCPC, AMERIPEN, and CAA shared similar comments requesting that the Department generally increase harmonization between Regulation .04(B) and categories in other states.

Response: The Department has made significant efforts to take harmonization into consideration in the development of Regulation .04(B). This included cross referencing other states' lists, including those proposed by CAA. While harmonization is important, ensuring that the program meets the intended objectives of the statute is the Department's highest priority, and the Department has also accounted for Maryland's intersecting laws, infrastructure, and material landscape.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

46. Comment Topic: Categories of Covered Materials for Registration - Metal
Commenter(s) Name and Affiliation: TRP

Comment: TRP recommended "'aluminum beverage cans' and 'steel cans' to the existing list of metal packaging. While both would currently fall under '(c) Other forms of steel not identified [..]' and '(g) Other forms of aluminum not identified [..]', we suggest these two categories be identified for producers as they are common metal packaging types recognized by distinct industry scrap bale

specifications (see ISRI Bale Specifications for Post-Consumer Aluminum Can Stock and Steel can bundles)".
Response: At this time, the Department has determined that this category will not be expanded in order to promote harmonization with other states (Oregon and Colorado).

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

47. Comment Topic: Categories of Covered Materials for Registration - Organics
Commenter(s) Name and Affiliation:

MDE Response: BPI, AMERIPEN, Kemira, FPI, Veteran Compost

Comment: BPI provided the following comment: "in section 2B, subsections (1) "Certified Compostable Organics," (4) "Rigid Plastics" (especially (4v) "bioplastics.."), and (8) "Wood and Other Organics" should be removed. All certified compostable covered products, regardless of material origin, should meet the certification standards as per Environment Article, §§9-2102—9-2104." AMERIPEN commented that "treating only certified compostables as categories may leave the other compostables unaddressed and unfunded in the Program, despite them meeting the definition of packaging. To address this, AMERIPEN recommends revising the category to encompass all compostable materials regardless of certification". AMERIPEN also discussed updating guidance accordingly. Kemira recommended "recognition of established third-party certifications, facility testing protocols, and clear criteria for acceptance within the 'Certified Compostable Organics' registration category". FPI offered the following input: "should the Department elect to retain categories within the proposed regulations": "with respect to the 'certified compostable organics' category, the Department could improve clarity by revising the language in B(1)(d) to specify "paper food service packaging that meets an existing compostability labeling standard approved by the Department. While the guidance document offers some indication of which standards may be recognized, incorporating this clarification directly into the regulatory text would provide greater certainty. We suggest citing ASTM D6400, ASTM D6868 and ASTM D8410-22 (and successor standards) to improve clarity and predictability for producers".
Comment: Regarding Regulation .04B(d), Veteran Compost provided the following comment: "Why are paper compostable items being treated differently than other items when it comes to labeling? What is this "approved standard" that the Department will be using?"
Response: Compostable covered materials that do not meet the criteria to be included in Regulation .04(B)(1), may be reported under the appropriate subsequent category (some examples of alternate categories include .04(B)(4)(v) and .04(B)(8)). The category a compostable covered material is included in does not alter the definition of "compostable". Any material that meets the definition of a "covered material" is considered a covered material and must be reported into a covered material category for registration. Please review *Comment Topic: Covered Materials - Compostable Packaging*. Regarding Kemira's comment, the Department notes that Environment Article, §§9-2102 through 9-2104, Annotated Code of Maryland, referenced in Regulation .04(B)(1), includes references to specific standards. In response to Kemira and FPI's comments, the Department will not be providing specific ASTM or other labeling standards as the Department has provided appropriate registration categories, accordingly. For questions on these topics, the Department may provide guidance..

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

48. Comment Topic: Categories of Covered Materials for Registration - Resin Identification Codes (RICs)
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN commented that they "[do] not support the intermingling of labeling and EPR regulations, as those are separate policies, and variation in state labeling policies is very problematic. Therefore, AMERIPEN recommends removing references to RICs in the list and thus categorizing materials by the resin itself". AMERIPEN also commented that "the categories under "Rigid Plastic" in subsection (B)(4) reference corresponding resin identification codes (RICs). RICs are used for labeling certain plastic materials to assist in their sortation, but do not impart any recyclability instructions themselves. Categorization should be based solely on the actual composition of a material".
Response: The Department notes that categorization by RIC code is optional. As the primary identifier of categories are listed by material name *or* RIC. Inclusion of the common RICs are provided as an opportunity for ease of identification but are not required as a label if the material category meets the written description of plastic type itself. . the Department has determined that at this time, no change is needed for the purposes of registering producers. Use of RIC codes is used consistently across Colorado, Oregon, and California program covered material lists.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

49. Comment Topic: Categories of Covered Materials for Registration - Identification of specific materials
Commenter(s) Name and Affiliation: CAA

Comment: CAA provided the following comment: "It is unclear how requiring producers to provide a descriptive list of items in the "other" materials category during annual registration will help to achieve program goals or aid in program implementation, particularly if these are small tonnage materials. CAA recommends removing this requirement from rules to minimize the additional reporting burden without a clear purpose".
Response: This comment is referring to categories marked with an asterisk ("*"). The purpose of requiring additional specificity in these categories is to ensure that producers are reporting correctly into these categories. Additionally, this specificity is intended to understand potentially emerging material categories.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

50. Comment Topic: Categories of Covered Materials for Registration - Multimaterial
Commenter(s) Name and Affiliation: TRP

Comment: TRP provided the following comment: "If it was the intention of the Department for multimaterial packaging to be distinct from other covered material types, we suggest that

"multimaterial packaging" be added as a category, or for multimaterial to be added as subcategories to paper, rigid plastic, metal, glass, wood and other organics, and reuse/refill". Additional related comments can be found in TRP's submitted comments.
Response: It was not the intention of the Department that multimaterial receive its own category; however, it is important to understand how producers should properly register multimaterials, and that a multimaterial package is included as a covered material. There is no benefit in grouping all multimaterial packaging as one category, as multimaterials may vary in recyclability, composition, based on how components are integrated, and existing markets for specific multimaterials. The *Categories of Covered Materials for Registration* section in guidance provides specific information about how to register a multimaterial.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

51. Comment Topic: Categories of Covered Materials for Registration - Instructions
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Page 11 of the Guide states that the categories listed in this section 'are designed to be considered in the order they are presented, linearly' when determining to which category a covered material belongs. However, this is not specified in the rule itself. AMERIPEN recommends adding such direction into section (A)".
Response: Guidance is provided in association with regulations to provide additional detail and clarification. Based on the recommendation provided, and to reduce confusion for reporting categories, the Department is clarifying the text in Regulation .04A.

Department determination: Upon consideration of these comments and for the reasons discussed above, MDE has decided clarify the text in Regulation .04 as follows:

> *"A. Applicability. Covered materials must be identified on the registration form submitted annually by an individual producer or a PRO. All covered materials must be reported under one of the following categories,* ***in sequential order as listed in §B of this regulation.*** *If a material meets…"*

52. Comment Topic: Categories of Covered Materials for Registration - Paper - Molded Fiber
Commenter(s) Name and Affiliation: CTA

Comment: CTA provided the following requested "that the Department amend the single molded fiber category under the Categories of Covered Materials for Registration at Section .04B(2)(k) by creating two distinct categories: one for clean molded fiber and one for food-service ware and other food-contaminated molded fiber products. Food-contaminated molded fiber presents recyclability and collection challenges that differ significantly from clean molded fiber, and if these materials remain combined in a single category, their lower recyclability could depress the overall recycling rate and create ambiguity for producers. To avoid these unintended consequences and ensure consistency with the statute's goals, CTA requests that the Department include explicit exclusionary language for food-service ware and other food-contaminated molded fiber products separate from clean molded fiber".
Response: Paper food serviceware or other that is a certified compostable organic (i.e., has appropriate labeling as indicated in Regulation .04(B)(1)) should be reported accordingly in(d). Molded fiber that is intended as a mechanism to serve food that is certified compostable organic and is labeled by a standard approved by the Department would also register into category (d). Paper food

serviceware or other molded fiber products that are not a certified compostable organic, and that do not meet labeling standards, would therefore be appropriately reported into a subsequent category. Food contamination, which would occur after producer distribution, is an impediment to recyclability across multiple categories of covered materials and does not warrant separate registration categories.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic. See *Comment Topic: Categories of Covered Materials for Registration - Instructions* for more clarification on this topic.

53. Comment Topic: Categories of Covered Materials for Registration - Paper - Other Paper Laminates
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Paragraph (B)(2)(n) is a category for 'Other paper laminates not identified in subsections §B(2)(a)— (m),' and paragraph (B)(2)(o) is a category for 'Other paper not identified in §B(2)(a)—(n).' This is an unnecessary distinction, and AMERIPEN therefore recommends eliminating paragraph (B)(2)(n)".
Response: This distinction was intentionally made to ensure that paper laminates are captured in distinct registration categories. Additionally, separating other paper laminates from other paper is harmonized with both Oregon and Colorado's reporting categories.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

54. Comment Topic: Categories of Covered Materials for Registration - Paper Products vs. Packaging
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Both paper product categories and paper packaging categories are grouped together under subsection (B)(2). To make it easier to parse the list, AMERIPEN recommends splitting this class into 'Paper Products' for subsections (B)(2)(a) – (e) and into "Paper Packaging" for the remaining subdivisions".
Response: The Department at this time has determined that producers of all covered materials, both paper products and packaging, are to follow the categories sequentially and make their determination accordingly. This is to ensure that all registering producers capture their material in the correct category. For example: some producers of paper products may be reporting material that fits into categories B(2)(f)-(o); paper products are not limited to "printed paper", and therefore may not be appropriately captured by B(2)(e); and packaging could meet the definition of "small format paper" B(2)(a). It would therefore be inappropriate to limit these categories to either group.

Department determination: Upon consideration of these comments and for the reasons discussed above, MDE has decided to adopt Regulation .04(B)(2) as identified in *Comment Topic: Categories of Covered Materials for Registration - Instructions*.

55. Comment Topic: Categories of Covered Materials for Registration - Plastics - Flexible Plastics
Commenter(s) Name and Affiliation: TRP

Comment: TRP recommended the following: "(5) Flexible Plastic – While PE (#2 and #4) and polypropylene (#5) film are the most common types of flexible plastic on the market today, we suggest that subsections for PET (#1), PVC (#3), PS (#6), and multimaterial laminate be written as separate categories so that producers can report this data to the Department".
Response: At this time, the Department has decided to keep these categories as proposed, in order to promote harmonization, as neither Colorado nor Oregon separates out flexible plastic categories for PET, PVC, or PS. Regarding multimaterial laminate, see the Department's response to *Comment Topic: Categories of Covered Materials for Registration - Multimaterial*.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

56. Comment Topic: Categories of Covered Materials for Registration - Plastics - Small Format
Commenter(s) Name and Affiliation: TRP

Comment: TRP recommended "revising [(3) Small Format Plastic] to 'Small Format Rigid Plastic' to indicate that it would not include small format flexible plastic packaging".
Response: Small format materials are considered higher risk for contributing to contamination, regardless of material composition, with the exception of glass (see the Department's response to *Comment Topic: Categories of Covered Materials for Registration - Glass - Small Format*). Therefore, the Department has determined that a distinction between flexible and rigid small format plastic is unnecessary. Additionally, neither Colorado nor Oregon distinguishes between small format flexible plastic and small format rigid plastic, so this decision supports harmonization across states.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

57. Comment Topic: Categories of Covered Materials for Registration - Plastics - Expanded and Foamed
Commenter(s) Name and Affiliation: FPI; Walter Reiter, EPS Industry Alliance (EPS-IA)

Comment: FPI made the following recommendation: "Should the Department elect to retain categories within the proposed regulations", FPI recommended "one 'plastic' category as the current 'rigid plastic' list includes expanded and foamed plastics, which may create confusion in reporting".
Response: The Department notes that it is appropriate to register plastics in identifiable categories that distinguish composition and what can be managed for recyclability in markets. The Department has taken initiative to harmonize, to the extent appropriate, with other states; it is not a practice in any other state to combine all plastics into a single reporting category, nor does it benefit the intent of the law to provide greater recyclability and compostability of all packaging and paper products.

Comment: EPS-IA provided the following comment: "EPS is a rigid expanded protective packaging made from the polystyrene polymer. Rigid expanded protective packaging can also be made from other polymers including polyethylene, polypropylene and polyurethane. Visual distinction of these different polymers is challenging. The suggested modifications are intended to reduce ambiguity for service providers, regulators, producers, and the PRO by:
1. Applying parallel granularity to expanded polyethylene and expanded polypropylene;
2. Clarifying and standardizing the use of "rigid," "expanded," and "non-expanded" as physical descriptors across all plastic resin categories; and

3. Utilizing parallel structure to recognize expanded materials are comprised of multiple polymers".
EPS-IA suggested the following alternative language for Regulation .04(B)(4):
"(m) LDPE or RIC #4: Other rigid expanded or foamed packaging not identified in §B(4)(l) of this regulation;"
"NEW (xx) LDPE or RIC #4: Other rigid non-expanded packaging not identified in §B(4)(l) of this regulation;"
"(q) PP or RIC #5: Other rigid expanded or foamed packaging not identified in §B(4)(n) or (o) of this regulation;"
"NEW (xx) PP or RIC #5: Other rigid non-expanded packaging not identified in §B(4)(n) or (o) of this regulation;"
"(s) PS or RIC #6: Other rigid expanded or foamed packaging not identified in §B(4)(r) of this regulation;"
"(u) RIC #1 through #7: Other rigid containers or packaging;"
Additional details can be found in EPS-IA's submitted comments.
Response: Expanded polystyrene is of specific interest as it is a material that is also regulated under Maryland's Polystyrene Food Service Products Ban (Environment Article §§9–2203 through 9-2207, Annotated Code of Maryland). At this time, categories (m), (q), (s), and (u) are not intended to be specific to expanded or foamed items, although expanded or foamed items may be reported into these categories, if one of these categories is most appropriate. Additionally, neither Colorado nor Oregon includes expanded material other than PS in a separate reporting category; in this respect, Maryland is harmonized with both states.

Department determination: The Department has not made any updates to Regulation .04(B)(4) based on the above comments. However, the Department notes that there was an extra period included at the end of Regulation .04(B)(4)(w). The Department has decided to adopt Regulation .04(B)(4)(w) as follows, with this minor typographical error corrected:

> *"(w) *Mixed rigid plastic or other rigid plastic not identified in §B(4)(a)—(v) of this regulation."*

58. Comment Topic: Categories of Covered Materials for Registration - Reuse, Return, and Refill
Commenter(s) Name and Affiliation: TFM, National Aquarium, Upstream, TRP

Comment: TFM, the National Aquarium, Upstream, and TRP recommending adding additional categories or subcategories for reuse and refill.
Response: Reuse and refill covered materials may still be made out of a range of different materials, and these materials may eventually end up impacting recycling streams. Therefore, it is important to understand covered materials by material type.

Department determination: UUpon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

59. Comment Topic: Categories of Covered Materials for Registration - Updates and Location
Commenter(s) Name and Affiliation: NWRA-MD, FPI, RAM, CAA, PCPC

Comment: NWRA-MD provided a recommendation on Future Changes to Covered Materials List as follows: While the Draft Regulations include a list of covered materials, it can be anticipated that this list will change or be updated from time-to-time. NWRA-MD requests that a provision be added to the Draft Regulations that establishes a clear and predictable transition timeline for changes to covered materials. Sudden additions or removals to the list can disrupt collection routes, Materials

Recovery Facility ("MRF") operations, contract obligations, and public education efforts. These changes could also result in contamination risk and operational inefficiencies. NWRA-MD requests that there be a transition of at least 9-12 months when such changes to the list of covered materials occur, and that flexibility be allowed when existing contracts cannot be modified.

Comment: FPI provided a comment on Categories of Covered Materials Registration as follows: We appreciate the Department's effort to establish categories of covered materials for registration as a means of organizing producer reporting and supporting program administration. However, we respectfully recommend that categories of covered materials not be codified in regulation and instead be addressed through a more flexible mechanism, such as guidance documents, that can be updated over time.

Embedding detailed material categories directly in regulation reduces the ability to efficiently adapt the program as materials, packaging formats, and end-of-life management systems evolve. A guidance-based approach would allow for timelier updates and the opportunity for greater alignment with other extended producer responsibility programs for packaging.

Comment: RAM provided the following comment on Categories of Covered Materials as follows: Finally, we appreciate the Department's effort to establish categories of covered materials for registration as a way to organize producer reporting and support program administration. However, we respectfully recommend that these categories not be codified in regulation and instead be addressed through a more flexible mechanism, such as guidance that can be updated over time. Embedding detailed material categories directly in regulation limits the program's ability to adapt as packaging materials, formats, and end-of-life management systems evolve. A guidance-based approach would allow for more timely updates and greater alignment with other extended producer responsibility programs for packaging, ensuring consistency as the landscape continues to change.

Comment: CAA provided the following comments: Maryland's EPR law offers the flexibility to define covered material categories outside of formal regulation. To ensure the program can adapt quickly, CAA suggests utilizing guidance or technical memoranda rather than a rigid regulatory framework. Following the successful models in Colorado and Oregon, these lists should be managed and updated through program plan amendments to avoid unnecessary legislative or regulatory delays.

This will make it easier for the Department to update and adapt the list as needed in response to advancements in packaging technology, design, and recycling infrastructure – meaning residents will experience faster improvements to their services, including more convenient collection and the ability to recycle a wider range of materials.

CAA recommends that the Department remove the materials list from these regulations, and instead include the process the Department will use to develop, publish and amend the covered materials list outside of the rulemaking process. The statute does not require this list to be included in rules, and managing the list outside the rules will allow greater flexibility to address potential issues that might arise, and to make changes as the program develops. Oregon and Colorado manage their covered material category lists outside of rules for this reason.

Comment: PCPC provided the following comment: Finally, to ensure the program remains both effective and adaptable, PCPC urges the Department to avoid placing the covered materials list in the regulations and instead maintaining it in a technical document. In Maryland, amending regulations is itself a complex and lengthy process. Substantive changes made during this process require re-proposal and another full rulemaking cycle, further extending timelines and limiting the ability to make timely adjustments. In practice, this means even minor technical updates can take months or longer to complete, slowing the program's ability to respond to evolving packaging trends, new materials, or emerging environmental considerations. Housing the list in a technical document ensures the program can remain science based, responsive to emerging environmental conditions, and aligned with real-time industry practices, while still allowing transparency and opportunities for stakeholder engagement. Any modifications will carry significant operational and financial implications for both

producers and the PRO; therefore, stakeholders should be provided informal opportunities to review and comment on proposed updates before they are finalized.
Response: As categories of covered materials for registration are provided in Regulations, there is a clearly defined pathway for making updates to the list that includes consideration of stakeholder feedback through the public comment period, as well as public notice of the proposed and final changes made. Including this list in regulations ensures that materials categories are clearly defined for producers. Future producer responsibility plans, regulations, and/or guidance may provide more information about additional outreach responsibilities regarding updates to the list.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

60. **Comment Topic: Categories of Covered Materials for Registration - Minor Revisions**
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN recommended "adding '#5' after 'RIC' in paragraph (B)(4)(o) to address the missing number".
Response: The Department agrees with the recommendation to align with the other text of the regulation.

Department determination: The Department has decided to adopt Regulation .04(B)(4)(o) as follows, with this minor typographical error corrected:

> *"(o) PP or RIC **#5**: Other containers, cups, lids, plates, trays, and tubs not identified in §B(4)(n) of this regulation;"*

.05 Exempt and Excluded Materials.

61. **Comment Topic: Exempt and Excluded Materials - Collective Exemption Requests**
Commenter(s) Name and Affiliation: AHAM

Comment: AHAM provided the following comment: "AHAM notes that in other states it plans to seek collective exemption mechanisms for certain material classes where health, safety, and product-protection requirements make redesign impracticable. Maryland statute anticipates plan proposals for exemptions tied to health/safety requirements, and California's draft regulations provide a model for class-wide exemptions. However, the procedures for making such a request are often unclear and left to the PRO and are not complete in sufficient time to seek the exemptions. In California, where there have been delays in finalizing packaging EPR regulations and the PRO Plan, AHAM's data collection and planning for such a request is hindered. MDE should take steps to ensure that either the Department or the PRO clarify the process and evidentiary standards for such exemption requests in a timely manner to avoid ad hoc determinations".
Response: Maryland's statute states that "the Department may classify one or more types of packaging as an exempt material" Environment Article §9–2508(E)(1)(i). Because the Department is classifying packaging exemptions by type of packaging, rather than by individual producer, it is irrelevant whether the Department receives one or multiple requests from producers. Please review the process associated with exemptions as provided in Regulation .09.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

62. **Comment Topic: Exempt and Excluded Materials - Covered Materials Recycled Out of State**
Commenter(s) Name and Affiliation: Erin Hass, The Coalition for Protein Packaging (CPP)

Comment: CPP is writing to note that the draft regulations do not appear to include exemption language that was explicitly incorporated into the EPR legislation (SB901) enacted by the General Assembly and signed into law by Governor Wes Moore. Specifically, the statute provides that, notwithstanding any other law, Section 109 (Statewide Collection Lists) and Section 125 (Petition for the Exclusion of Certain Products) shall not apply to products packaged at establishments under the regulatory jurisdiction of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), including facilities regulated under federal or state meat and poultry inspection laws, as well as cheese, meat, and poultry prepared and packaged at retail locations. The statute further establishes a five-year exemption period, with an optional five-year extension contingent upon the development of recycling, including organics recycling, infrastructure capable of safely managing pathogen-contaminated packaging. Importantly, the legislative intent underlying this provision is clear and deliberate. The General Assembly explicitly recognized the unique food safety and public health considerations associated with FSIS regulated products, as well as the current limitations of recycling and organics infrastructure to safely manage pathogen-contaminated packaging. The inclusion of both a defined exemption period and a conditional extension reflect a balanced, forward-looking approach that preserves food safety while allowing time for infrastructure development.2 CPP shares the Department's goal of implementing an EPR program that is faithful to statute, protective of public health, and operationally sound. CPP recommended that the Department "incorporate this statutory exemption language into the final EPR regulations to ensure consistency with enacted law and clear legislative direction".
Response: The Department notes that these comments reference Environment Article §9–2505(C)(2), Annotated Code of Maryland, which only applies to performance goals, not exemption from the program overall.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

63. **Comment Topic: Exempt and Excluded Materials - Covered Materials Recycled Out of State**
Commenter(s) Name and Affiliation: Perkins Coie

Comment: Perkins Coie, on behalf of producers in various industries, recommended that "the regulations should include an explicit exemption for covered materials that are recycled or disposed of outside of Maryland. Other states, such as Oregon, include a carve-out for covered materials disposed of or recycled outside the state. See ORS 459A.863(6)(b)(J). The Act does not indicate an intent to regulate covered materials that are not ultimately discarded or recycled in Maryland, and the Department does not have jurisdiction over recycling or disposal activities in other states. We request that the Department add a new exemption specifying that covered materials recycled or disposed of outside of Maryland are not subject to the Act".
Response: Covered materials are those that are sold, offered for sale, imported, or distributed in the State (per the definition of covered material in statute). The statute authorizes that reimbursement for covered materials includes that they are reused/recycled/composted. To obtain this reimbursement, the activity must meet the definition of 'recycling' in Environmental Article §9-2501(s). If the covered material is sent to one of the pathways described in Environmental Article §9-2501(s)(2), they do not meet the definition of recycling and therefore are not reimbursable, in or out of state. The

Department has determined that, in alignment with statutory language, covered materials are determined based on their status of being sold, offered for sale, imported, or distributed into the state. Once a covered material has been sold, offered for sale, imported, or distributed, it is likely that it will be handled at some point by a Maryland service provider, and there is a possibility it could end up in Maryland's recycling or disposal streams. Additionally, covered material recycled out of state is still subject to responsible end market requirements.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to add an exemption to the regulations for covered materials that are recycled or disposed of outside of Maryland.

64. **Comment Topic: Exempt and Excluded Materials - Federally Regulated Food Packaging**
Commenter(s) Name and Affiliation: Perkins Coie

Comment: Perkins Coie, on behalf of producers in various industries requested that "the Department exempt packaging that is subject to federal food safety regulations administered by the FDA or the U.S. Department of Agriculture. At a minimum, the Department should follow Washington's approach and exempt noncompostable film plastic packaging used in direct contact with raw meat, which is not easily recyclable due to its unsanitary nature. RCW 70A.208.020(19)(g)." More detail can be found in Perkins Coie's submitted comments.
Response: For specific exemptions not already identified in statute, the appropriate pathway to apply for an exemption is through the process outlined in Environment Article §9-2508(e)(2), Annotated Code of Maryland. Please note the exemption on pathogen-contaminated packaging in Environment Article §9-2505(c)(2)(iii) is an exemption from the goals, not an exemption from being a covered material. Please note, noncompostable film packaging used in direct contact with raw meat has the ability to be cleaned and could be made unsanitary prior to being sent for recycling.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to add an exemption to the regulations for the requested material.

65. **Comment Topic: Exempt and Excluded Materials - Industrial, Commercial, and Institutional (ICI) / Business to Business (B2B)**
Commenter(s) Name and Affiliation: AAI; AHAM; Brandon Martin, Outdoor Power Equipment Institute (OPEI); RAM; AF&PA

Comment: AAI provided the following comment: "The Packaging and Paper Products – Producer Responsibility Plans Act includes a provision exempting material that a producer distributes to another producer that is subsequently used as packaging for a product distributed to a commercial business or entity that is solely for that entity's internal use. However, some of the definitions included in the rule could be interpreted to include these business-to-business transactions. In keeping with the intent of the Act and to ensure a workable program, we request that MDE expressly exempt business-to-business operations".
Response: For clarification on this topic, please see *Comment Topic: Definition Recommendation - "Consumer Market"*.

Comment: AHAM provided the following comment: "Packaging EPR frameworks must clearly distinguish between consumer-facing packaging and transport or commercial packaging used exclusively in distribution channels. Durable goods packaging frequently includes secondary and tertiary materials such as corrugated cartons, pallets, stretch wrap, and protective foam that are

removed prior to consumer use and most often managed through commercial recycling systems. These materials should not be treated as household waste for regulatory purposes because they do not enter the consumer waste stream. Maryland should explicitly exclude Industrial, Commercial, and Institutional (IC&I) packaging and all materials that do not enter the residential waste stream from any packaging EPR program". AHAM also commented that "durable goods packaging frequently enters the waste stream through retailers, delivery services, installers, and commercial facilities rather than directly through household curbside systems. EPR frameworks should recognize the roles and responsibilities of these actors in collection and material management. Assigning sole financial responsibility to manufacturers without accounting for channel-specific waste handling realities creates structural imbalance. Programs should allow recognition of documented commercial recovery activities and contractual recycling arrangements already in place. A fair system reflects the shared responsibility of manufacturers, retailers, service providers, and consumers in managing packaging at end-of-life. Maryland's EPR statute provides signals supporting this approach, including exempt-material concepts for certain business-to-business packaging distributions and a long-term packaging exempt-material pathway (as determined by MDE). MDE should clarify how producers or the appropriate responsible party can document commercial recovery and how such recovery is credited to prevent double-paying for systems not used.
<u>Response</u>: The Department has determined that, per statute, packaging that is not "sold or supplied with the product to the consumer for personal, noncommercial use" is not considered a covered material. The Department considers discussions associated with service provider reimbursements topic open for discussion ongoing.

<u>Comment</u>: OPEI recommended that "packaging that is used toward transporting, for example to the dealer or seller, should not get passed on to the consumer for recycling and there should be exempted".
<u>Response</u>: The Department notes that, per statute, "Packaging" must be "sold or supplied with the product to the consumer for personal, noncommercial use" (Environment Article §9–2501(n)(1), Annotated Code of Maryland). Additional clarification is provided in the definition of "packaging" in Regulation .02. Materials that do not meet either the definition of packaging or the definition of a "paper product" are not considered covered materials.

<u>Comment</u>: The Restaurant Association provided the following comment: "We also request that the regulations clearly exempt paper and plastic products used exclusively in back-of-house restaurant operations. These items, such as prep sheets, back-of-house paper towels, food-safe plastic film, and heat-stable sauce bags, are not customer-facing and serve essential food-safety and handling functions. Because these materials do not enter the consumer waste stream and are required for compliance with food safety protocols, we recommend explicitly excluding them from the definition of covered products. Additionally, we appreciate that the legislation generally excludes business to business packaging, but we believe it would be helpful if the Department expressly exempts packaging disposed of through commercial waste streams similar to Colorado, as those recycling systems are out of scope".
<u>Response</u>: For further clarification about the inclusion of paper products that are not introduced to a person other than the commercial or business entity that receives the paper product, please see the Department's response to *Comment Topic: Definitions - "Paper products"*. Additionally, please refer to *Comment Topic: Exempt and Excluded Materials - Napkins, Paper Towels, or Other Paper Intended for the Absorption of Liquids* for clarification regarding the following exemption for paper "products that are not accepted by materials recycling facilities or composting facilities because of the unsafe or unsanitary nature of the products" (Environment Article §9–2501(B)(o)(2)(ii)). Packaging, including plastic packaging, that is not "sold or supplied with the product to the consumer for personal, noncommercial use" is not considered a covered material. If all of the previously stated

information has been considered, and the material used in the back-of-house restaurant operation is a covered material but there is evidence that suggests that the specific should be exempt, the the appropriate pathway to apply for an exemption is through the process outlined in Environment Article §9-2508(e)(2), Annotated Code of Maryland and described in Regulation .09.

Comment: AF&PA provided the following comment: "(1)(k)(ii) – This language reflects the exemption provided in the enacting legislation and should be expanded to include paper products that are not introduced to a person other than the commercial or business entity that receives the paper product". AF&PA also commented that in the definition of "exempt material", "[s]ubsection (xiii) further disadvantages paper products" and "contradicts the Needs Assessment finding of $0 net cost for paper products and risks forcing already efficient streams to unnecessarily subsidize the program".
Response: For further clarification about the inclusion of paper products that are not introduced to a person other than the commercial or business entity that receives the paper product, please see the Department's response to *Comment Topic: Definitions - "Paper products"*.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to change the proposed regulatory language on the basis of the comments provided.

66. Comment Topic: Exempt and Excluded Materials - Legally Required Paper Products
Commenter(s) Name and Affiliation: AAI, Perkins Coie

Comment: AAI and Perkins Coie on behalf of producers in various industries requested an exemption for "legally required paper products". Examples identified included "recall notices", "warranty information", "labels such as the Monroney label", "receipts, financial statements, billing statements, medical documents, or other vital documents required to be provided in paper form by applicable consumer protection laws or other state or federal laws". Both AAI and Perkins Coie recommended aligning with the following exemption from Colorado: "printed paper used to distribute financial statements, billing statements, medical documents, or other vital documents required to be provided in paper form by applicable consumer protections laws or other state or federal laws". More detail can be found in AAI and Perkins Coie's submitted comments.
Response: For specific exemptions not already identified in law, the appropriate pathway to apply for an exemption is through the process outlined in Environment Article §9-2508(e)(2), Annotated Code of Maryland and described in Regulation .09.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to add an exemption to the regulations for the requested material.

67. Comment Topic: Exempt and Excluded Materials - Addition of Primary Packaging Language
Commenter(s) Name and Affiliation: AF&PA; AMERIPEN; NWRA-MD; CHPA; HCPA; CBA; CTA; EPS-IA; PCPC; Drew Vetter, Maryland Tech Council (MTC); Lea Kovach, National Association of Specialty Pharmacy (NASP); Maryland Chamber of Commerce; Darbi Gottlieb, AdvaMed; Perkins Coie; HDA; and ACA

Comment: AF&PA, AMERIPEN, NWRA-MD, CHPA, HCPA, CBA, CTA, EPS-IA, PCPC, MTC, NASP, Maryland Chamber of Commerce, AdvaMed, Perkins Coie, HDA, and ACA provided similar comments stating that the language "primary packaging" in proposed rules should be removed. Reasons provided included that the language conflicts with the statute's intent, conflicts with other

language provided in regulations, and arguments for material-specific secondary and tertiary packaging exemptions. More detail can be found in comments submitted by the listed parties.
Response: The definition of Primary Packaging *means packaging that is most closely containing the product, including packaging that is most closely containing the food or beverage*. The legislative intent is for more packaging to be widely reusable, recyclable and/or compostable. (See defined terms in Regulation .02 for Secondary and Tertiary Packaging). Regulations are provisions that help to further refine language provided in statute that meets the legislative intent. As primary packaging was not defined in statute, but was referenced in the definition of packaging, and the Department has provided one that meets the intention of the law while ensuring the maximum amount of potential packaging that can benefit from the laws provisions. Packaging intentionally exempted under the provisions associated with drugs and medications most closely containing those drugs/medications are exempt to protect the recycling and composting systems both as operators and as final markets. Where there is no direct contact/closely containing product, that packaging has the potential to be evaluated for recycling, compost, or reuse. Secondary and tertiary packaging associated with the products listed in Regulation .02(B)(16)(a) are not in all cases subject to "a specific federal or State health and safety requirement prevents the packaging from being waste reduced or made reusable, recyclable, or compostable" (Environment Article §9–2508(e)(2), Annotated Code of Maryland). The Department interprets the stated language from §9–2508 to be the basis for exempting materials associated with products. There are appropriate pathways for adding exempt materials that ensure they meet the requirements outlined in Environment Article §9–2508(e), Annotated Code of Maryland and described in Regulation .09.

Department determination: The Department recognizes that a blanket limitation on all secondary or tertiary packaging associated with products listed in §B(16)(a) of Regulation .02 may not be appropriate in specific cases. Therefore, have decided to adopt the following definition of "Exempt material":

(16) "Exempt Material" means a material, or any portion of a material that is:

(a) Primary packaging for infant formula, as defined in 21 U.S.C. § 321(z);

(b) Primary packaging for medical food, as defined in 21 U.S.C. § 360ee(b)(3);

(c) Primary packaging for a fortified oral nutritional supplement, or food which is formulated to be consumed or administered enterally for individuals who are unable to consume nutrition orally, used by individuals who require supplemental or sole source nutrition to meet nutritional or special dietary needs directly related to cancer, kidney disease, diabetes, malnutrition, or failure to thrive conditions, as defined by the International Classification of Diseases, Tenth Revision;

(d) Primary packaging for a product regulated as a drug or medical device by the U.S. Food and Drug Administration, including associated components and consumable medical equipment;

(e) Primary packaging for medical equipment or a product used in medical settings that is regulated by the U.S. Food and Drug Administration, including associated components and consumable medical equipment;

(f) Primary packaging for drugs, biological products, parasiticides, medical devices, or in vitro diagnostics that are used to treat, or that are administered to, animals and are regulated by the U.S. Food and Drug Administration under the federal Food, Drug, and Cosmetic Act or by the U.S. Department of Agriculture under the federal Virus–Serum–Toxin Act;

(g) Primary packaging for products regulated by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act;

(viii) Primary packaging used to contain liquefied petroleum gas and designed to be refilled;

(h) Newsprint subject to Environment Article § 9–1707, Annotated Code of Maryland;
(i) A paper product used for a magazine's print publication that has a circulation of less than 95,000 and that primarily includes content derived from primary sources related to news and current events;
(j) Primary packaging used to contain hazardous or flammable products regulated under the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard that prevent the packaging from being waste reduced or made reusable, recyclable, or compostable, as determined by the Department;
(k) Primary packaging for products subject to the Paint Stewardship Program under Environment Article, Title 9, Subtitle 17, Part V, Annotated Code of Maryland;
(l) Material that a producer distributes to another producer that meets the definition of packaging, and is subsequently used to contain a product that is distributed to an industrial, commercial, or institutional business or entity, and is not introduced to a person other than the industrial, commercial, or institutional business or entity that first received the product; or
(m) Packaging used for the long–term protection or storage of a product that has a lifespan of not less than 5 years, as determined by the Department.
~~(b)" Exempt material" does not mean secondary or tertiary packaging associated with products listed in §B(16)(a) of this regulation~~.

68. Comment Topic: Exempt and Excluded Materials - Napkins, Paper Towels, or Other Paper Intended for the Absorption of Liquids
Commenter(s) Name and Affiliation: Perkins Coie, HCPA, AF&PA, PCPC

Comment: Perkins Coie, on behalf of producers in various industries, recommended "that the Department include an exemption for "napkins, paper towels, tissues, sanitary wipes, or other paper intended to be used for cleaning or the absorption of liquids" consistent with Oregon's EPR law (ORS 459A.863(6)(b)(C)) and the general exclusion in the statute for "products that are not accepted by materials recycling facilities or composting facilities because of the unsafe or unsanitary nature of the products" (MD Code, Environment, § 9-2501(o)(1)). These products are all designed to be used by consumers to clean and handle a wide variety of messes and it is impossible for producers to determine if their products will be accepted by a recycling or composting facility once used. A broad exemption for "napkins, paper towels, tissues, or other paper products intended to be used for cleaning or the absorption of liquids" would resolve any ambiguity. AF&PA provided the following comment: "We support the language of subsection (c) and emphasize that the exemption should apply to all paper products that, through the normal and intended course of use, become unsafe or unsanitary. Fiber-based tissue, towels, napkins, cleaning wipes, facial/body wipes and similar absorbent products are routinely used in ways that result in contact with bodily fluid, food residues, cleaning agents, and other contaminants, and recommended that "while the proposed regulations exclude items that are not accepted because of unsafe or unsanitary nature, the state should provide further definition or require, as part of its assessments, that composting and recycling facilities specifically list items that they reject and why they reject them (i.e., hygiene issue, antimicrobials, interference with current recycling stream due to material, moisture, etc.)". AF&PA also commented that "the Maryland Statewide Recycling Needs Assessment (page106) specifically refers to paper towels as noted below in their contamination discussion, which supports the argument that this type of paper-based product meets the condition of §B(22)(b)(2) and should not be a covered material:.. '..residue materials include dirty or wet paper towels, noncompostable plastics, compostable plastics, metal, and glass". Additional details can be found in AF&PA's submitted comments. CBA provided the following similar recommendation: "bullet (ii) of subparagraph (c) of paragraph (22) of

subsection B of section .02 needs to clarify that this exclusion is for paper products that "through their use" become unsafe or unsanitary to handle". PCPC commented that "toilet paper, paper towels, tissues, cleaning wipes, and facial/body wipes items often are or become wet and contaminated either with bodily fluids or cleaning fluids which make them detrimental and unsafe or unsanitary for handling by material recycling facilities or composting facilities. For this reason, these types of products meet the condition of §B(22)(b)(2) and are therefore not a covered material. PCPC requests that the department clarify the definition of 'paper products' and specifically excluded toilet paper, paper towels, tissues, cleaning wipes, and facial/body wipes from the definition of 'paper products'". PCPC also added that "paper products should exclude any items that are NOT primarily disposed of through the solid waste curbside system. (e.g., toilet paper)". HCPA provided similar comments.
Response: A broad exemption for all paper products that have the potential for absorption of liquids is not identified as an excluded or exempt category in statute, and by its physical properties paper is absorptive. To ensure that materials that have the potential to be diverted for recyclability and compostability are maximized, as is the intention of the law, the Department describes certain covered materials that are considered excluded due to the unsafe/unsanitary nature of their disposal in guidance. Paper towels, especially those that have contact with food, would benefit from being composted. The Department has decided not to broadly exempt all paper intended for the absorption of liquids at this time. Please see guidance for additional information.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic. For producers requesting an exemption, please see Regulation .09 and Environmental Article §9-2508, Annotated Code.

69. Comment Topic: Exempt and Excluded Materials - Primary packaging used to contain hazardous or flammable products.
Commenter(s) Name and Affiliation: HCPA; CBA; AMERIPEN; David Keeling, Pressurized Cylinder Industry Association (PCIA)

Comment: HCPA requested "clarity on the Department's process for determining which materials would qualify for the exemption described in (2)(B)(16)(xi)" and discussed "substantial uncertainty about what products are and are not covered material despite the forthcoming registration deadline. HCPA recommends that the Department define and include a process for how the Department will determine which materials qualify for this exemption, including criteria the Department will consider". HCPA and CBA also recommended "that the Department add language consistent with California's packaging EPR program that that exempts 'plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.' These containers are subject to specific design requirements to ensure product safety under the U.S. Department of Transportation." AMERIPEN asked the following questions: "Will exemptions be tied to specific OSHA hazard classes or categories?", "Is United States Department of Transportation (DOT) regulation a prerequisite for exemption?", and "If a product is hazardous pursuant to Occupational Safety and Health Administration (OSHA) regulation but is not DOT-classified, would its packaging still qualify for the exemption?" and commented that "regarding the OSHA-related exemption, many workplace chemicals are concentrates, which already reduce packaging material use. These products are more likely to meet OSHA hazard classifications due to concentration levels. As a result, a sizable number of products could fall within the exemption's scope. A product-by-product written approval process, therefore, would create substantial administrative burden for both the Department and regulated entities. A more streamlined approach – such as qualification based on use of a safety data sheet

(SDS) with audit authority or clearly defined categorical eligibility – may better balance regulatory oversight with administrative practicality. AMERIPEN thus requests that the Department allows producers to claim the exemption by maintaining an applicable SDS with relevant information as a means of qualification subject to Department audit. AMERIPEN also requests that the Department be allowed to approve classes of products and to approve them proactively without submission of requests where sufficient evidence exists". PCIA commented that "due to the regulatory oversight and hazardous communication and management systems in place for pressurized cylinders, PCIA anticipates that its members' products qualify for the subject exemption. We request further guidance from the Department regarding its timeline and anticipated process to make exemption determinations, as our members need to understand their compliance obligations to allocate future resources and budget".
Response: At this time, the Department has determined that the criteria for this exemption is based on whether the primary packaging "[contains] hazardous or flammable products regulated under the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard". Additional standards (federal or otherwise) have not been identified as a basis for exemption at this time. Please review *Comment Topic: Exempt and Excluded Materials - Addition of Primary Packaging Language*. Further clarification related to this topic may be found in *Comment Topic: Definition Recommendation - "Waste Reduction"*.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

70. Comment Topic: Exempt and Excluded Materials - Exemption Renewals
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN commented that "the Department should add a provision to clarify in the rules that filing of an exemption renewal request can occur before expiration and it will not take effect until after expiration. Otherwise, based on the language of paragraph (E)(5)(II) of Environment Article § 9-2508, Annotated Code of Maryland, a producer would be forced to reapply for an exemption after their exemption lapses, leaving to uncertainty as to the treatment of the covered material in the meantime".
Response: This topic does not immediately impact registering producers or alternative collection programs.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

71. Comment Topic: Exempt and Excluded Materials - Storage, Transport, & Readily Recyclable Packaging
Commenter(s) Name and Affiliation: OPEI

Comment: OPEI recommended that "packaging that is kept for storing or to protect the product should not qualify as an obligated material (e.g. carrying case or storage box)".
Response: The Department notes that there is an existing exemption for "packaging used for the long–term protection or storage of a product that has a lifespan of not less than 5 years, as determined by the Department", and that the term "long-term packaging" is defined in Regulation .02. Materials that meet the criteria for this exemption based on these definitions are considered an exempt material

by the Department. Additional clarification can be found in *Comment Topic: Definitions - "Long-term packaging"*.

Comment: OPEI also recommended that "reusable transport packaging should not qualify as an obligated material".
Response: Reusable transport packaging that does not meet the definition of a "covered material" is considered exempt. However, reusable packaging, including reusable transport packaging, is not exempt on the basis that it is reusable. This is in alignment with the Department's evaluation that reusable covered materials are considered covered materials. For related responses to comments, please see *Comment Topic: Definitions - "Refill" and "Reuse"*.

Comment: OPEI additionally recommended that "materials that are readily recyclable should be exempted".
Response: The Department notes that readily recyclable materials are explicitly referred to as covered materials in Environment Article §9–2508(a)(1), Annotated Code of Maryland: "On or before July 1, 2027, the Department shall develop a statewide list of covered materials determined to be recyclable or compostable through curbside recycling programs". The statute clearly classifies recyclable materials as covered materials, and it would be impossible for the Department to provide the list established in §9–2508 if recyclable materials were not considered covered materials.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

72. Comment Topic: Exempt and Excluded Materials - Enzyme Technology
Commenter(s) Name and Affiliation: Horizon Ag-Products

Comment: Horizon Ag-Products asked if "there are exemptions for products such as bags produced with an enzyme that helps them break down faster".
Response: The Department has determined that there is no existing exemption related to bags produced with an enzyme that helps them break down faster.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has not expanded exempt covered materials in this regulation.

73. Comment Topic: Exempt and Excluded Materials - FDA-Regulated Dietary Supplements
Commenter(s) Name and Affiliation: Perkins Coie

Comment: Perkins Coie, on behalf of producers in various industries, recommended "that the Department exempt packaging for dietary supplements regulated by the federal Food and Drug Administration ("FDA") under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. sec. 301 et seq., as amended, or any related federal regulation. This would be consistent with other state EPR laws that exempt packaging for FDA regulated dietary supplements like Colorado Revised Statutes ("CRS") section 25-17-703(13)(b)(VII) or Revised Code of Washington ("RCW") 70A.208.020(19)(d)".
Response: For specific exemptions not already identified in law, the appropriate pathway to apply for an exemption is through the process outlined in Environment Article §9-2508(e)(2), Annotated Code of Maryland. Additionally, for specific situations where supplements serve a quasi medicinal role, statute has already included a targeted exemption in the law for fortified oral nutritional supplements to address the "special dietary needs directly related to the following conditions… cancer, chronic

kidney disease, diabetes, malnutrition, or failure to thrive". Therefore, the Department believes that it was not the legislative intent to exempt dietary supplements outright.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has not expanded exempt covered materials in this regulation.

.06 Producers.

74. Comment Topic: Producers - Minor Revisions
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN recommended "replacing 'report' with 'be reported by the producer' in subsections (B)(1) and (B)(2)", and additionally provided the following comment: "there appears to be an error in the beginning of subsections (B)(3) ("Required reporting and shall be…") and AMERIPEN asks the Department to correct this sentence".
Response: The Department acknowledges these grammatical adjustments.

Department determination: To adjust these non-substantive grammatical statements, the Department has decided to adopt the following language in Regulation .06(B):

(1) For producers with an IPP on file with the Department, any changes due to either termination, acquisition, or merger, shall ***be reported by the producer****~~report~~ on letterhead to the Department within 30 days of such activity.*

(2) For producers who are members of a PRO, any changes due to either termination, acquisition or merger, shall ***be reported by the producer****~~report~~ to their PRO as detailed in the approved plan.*

(3) Required reporting ~~and~~ shall be provided on ***a****~~the~~ pro-rated basis for the producer if terminated, acquired, or merged under the original producer on file.*

75. Comment Topic: Producers - Responsibility Across the Supply Chain
Commenter(s) Name and Affiliation: AHAM

Comment: AHAM provided the following comment: "Accountability for the costs associated with packaging introduced into the state should lie with the party that can provide verifiable data. For example, retailers are often responsible for installing appliances and hauling away the associated packaging. Appliance manufacturers do not have insight into the fate of that packaging while intermediaries between the manufacturer and the end consumer do. Each party has a role to play and should be accordingly responsible for producer fees. For example, in California's packaging EPR framework under California SB 54, the statute places comprehensive data requirements on producers. The reality is that data about packaging handling and disposition often resides with retailers, distributors, installers, and other intermediaries in the supply chain. Producers do not have access to or control over this information and that is creating implementation challenges for the program and serious compliance challenges for producers".
Response: The Department notes that the process for determining who is considered the producer is determined in statute.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

76. **Comment Topic: Producers - Restrictions on Fees - Reuse & Refill**
Commenter(s) Name and Affiliation: CAA

Comment: CAA provided the following comment: "CAA is concerned that the language in C.(2) may inadvertently restrict the use of deposits in reuse and refill systems, either by producers or other businesses (e.g., an additional fee that is included on a reusable milk bottle and refunded when returned). CAA recommends the language be amended to add an explicit clarification that deposit fees associated with reusable or refillable packaging are excluded from this provision".
Response: The language in Regulation .07(C)(2) does not address fees charged by producers.

Department determination: To clarify the intent of these restrictions, the Department has decided to adopt the following language in Regulation .07(C)(2):

> *(2) Restrictions. Annual registration fees* ***charged by a PRO to their member producers*** *collectively may not, across all member producers, exceed the cost of fees paid by their PRO to the Department for registration as defined in this chapter.*

77. **Comment Topic: Producers - Restrictions on Fees - Legal Concerns**
Commenter(s) Name and Affiliation: Rachel Bond, Keller and Heckman LLP

Comment: Keller and Heckman LLP, provided the following comment on behalf of a large company in the food industry with operations across the country including Maryland: "Restriction on Fees. A person shall not charge any kind of point-of-sale or point-of-collection fee to consumers to recoup its costs in meeting the obligations of or complying with this chapter. We respectfully urge Maryland's Department of the Environment ("MDE" or the "Department") to reconsider the prohibition described in this provision of its draft regulations, as it likely violates the free speech protections of the First Amendment based on recent appellate court precedent."
Response: The Department notes that provisions are identified in Environmental Article 9-2505(c)(ix) related to any consumer-facing fees.

Department determination: Statute is clear and therefore the Department has determined it is redundant to include this language in regulations. The Department has decided to adopt the following language in Regulation .06C:

C. Restrictions.
(1)A producer may not sell or distribute any products that use covered materials in the State unless the producer is either registered with the PRO or has an approved IPP on file with the Department for every covered material sold or distributed into the State.
(2)Restriction on Fees. A person shall not charge any kind of point-of-sale or point-of-collection fee to consumers to recoup its costs in meeting the obligations of or complying with this chapter.

.07 Registration Requirements and Associated Fees.

78. **Comment Topic: Registration Requirements and Associated Fees - Mandate to report non-compliant producers**
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "AMERIPEN also recommends amending subsection (D)(2) as follows to make the policy more functional in reality":

If a PRO is aware of, or if anyone who works with or contracts with the PRO is aware and informs the PRO of, a producer that is likely subject to these regulations, that has failed to register or report data to the PRO, the PRO shall.

Response: The Department acknowledges that the PRO is a regulated entity while not everyone who works with the PRO may be an entity regulated under this law.

Department determination: The Department had decided to adopt Regulation .07(D)(2) as follows:

> *"If a PRO~~**, or anyone who works with or contracts with the PRO**~~ is aware of a producer that is likely subject to these regulations~~**,**~~ **and** that has failed to register or report data to the PRO, the PRO shall:"*

79. Comment Topic: Registration Requirements and Associated Fees - Delayed Registration and Reporting
Commenter(s) Name and Affiliation: AF&PA

Comment**:** AF&PA provided the following comment: "In subsection (D) the proposed regulations do not clarify remedies for the inequitable treatment of producers who have complied with program requirements. Because program fees will reflect actual costs, compliant producers will bear higher costs, putting them at a competitive disadvantage in the marketplace to noncompliant producers who avoid participation. Once noncompliant producers are brought in, there must be a mechanism to offset the additional financial burden borne by compliant producers".
Response: The Department has provided this provision in regulations as a mechanism associated with enforcement of non-compliance. It is intended that discussions for offsetting these imbalances will be discussed in the PRO plan which is not the intention of these regulations.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comment provided on this topic.

80. Comment Topic: Registration Requirements and Associated Fees - Minor Revisions
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Section (D) establishes provisions that address 'free ridership' that are generally supportable. However, as a technical note, AMERIPEN recommends replacing 'For those entities' with 'Entities' in subsection (D)(1)".
Response: The Department agrees with the grammatical amendment as suggested that in Regulation .07(D)(1)(b), "chapter" needs to be replaced with the corresponding reference to statute and regulations.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided to adopt the following language in Regulation .07(D)(1):

> *(1) "**Entities** ~~**For those entitites**~~who meet the definition of producer and failed to register according to §A of this regulation may be:*
> *(a) Provided a letter of corrective action by the Department that describes back payment and penalties for registration and reporting requirements; and*
> *(b) Subject to penalties and enforcement provisions described in this chapter."*

81. Comment Topic: Registration Requirements and Associated Fees - List of Brands
Commenter(s) Name and Affiliation: PCPC, AMERIPEN, HCPA

Comment: Regarding the list of brands of the producer identified in Regulation .07(A), PCPC commented that "the PRO can efficiently meet this obligation by supplying a link to the producer's public website where all associated brands are already listed. Likewise, producers can provide the same information directly to the PRO as part of their annual reporting under the Producer Responsibility Plan". AMERIPEN and HCPA provided similar comments.
Response: The Department has determined that having a list of producer brands to reference is important for enforcement. It would not be feasible for the Department to sort through each producer website for this necessary information. The Department will continue this discussion with the PRO and consider how this can be implemented in the program plans. With that being said, the law is clear. A list of brands of each producer must be included in the registration.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comment provided on this topic at this time.

82. Comment Topic: Registration Requirements and Associated Fees - Registration Fee
Commenter(s) Name and Affiliation: CAA, AMERIPEN, FPI, RMA

Comment: In Regulation .07(B)(4), CAA recommended "amending subsection (4) to include a reasonable notice period for fee invoices, ensuring the PRO can plan and budget effectively" and suggested the following language: "(4) Registration shall also include payment of necessary registration fees as described in this regulation. The amount required for such fees shall be provided by MDE to the PRO and any producers with approved IPPs at least 30 days prior to the due date for payment."
Response: The Department intends that budget management and planning will be addressed in discussions on producer plans. The registration requirements for the PRO to the Department are obligated in statute. The Department's invoices include a 30 day timeframe, or extended timeframe if provided in writing, so we believe a change to the regulations is unnecessary.

Comment: CAA additionally commented that "the annual registration text also confuses two concepts:
• Annual fees MDE will charge to the PRO or an independent producer plan to reimburse the Department for its oversight costs as explicitly outlined in the statute.
• Annual fees the PRO will charge to producers that would include numerous costs including program implementation and operation, including infrastructure investment, staffing, project management, outreach, and administration, as explicitly outlined in the statute.
Producers that are part of CAA would not pay a specific annual registration to MDE as this would be incorporated into their annual fees. CAA also stated that "the use of annual registration fees will create confusion because the PRO does not charge separate registration fees. The PRO is required to provide annual reports and has other limitations already outlined in statute that would preclude it from charging in excess of the fees it paid to the Department". CAA recommended removing Regulation .09(A)(2)(d) and Regulation .09(C)(2).
Response: The PRO must pay an annual registration fee to the Department per Environment Article §9–2505(a)(1)(iii). Any fees charged by the PRO to its participating producers for the purposes of fulfilling this obligation must meet the requirements outlined in Regulation .07 (as well as any other applicable criteria outlined in regulations or statute).

Comment: FPI provided the following comment: "some stakeholders have raised questions regarding the potential impact of administrative fees on producer obligations. Providing additional information

regarding how these fees are determined, including any applicable caps and the activities they are intended to cover, would support program fee transparency". The Restaurant Association of Maryland provided the following comment expressing "concern that the proposed fee structure, linking producer fees to MDE's fluctuating administrative costs, could create significant year-to-year variability. Predictable and transparent fees are essential for producers to plan and budget effectively. To improve clarity and reduce uncertainty, we recommend that the Department:
• Establish fee caps or maximum allowable annual increases;
• Provide multi-year cost projections to indicate expected long-term obligations;
• Clarify which administrative activities are allowable components of program fees.
Additionally, to promote transparency and support compliance planning, we request additional detail on how administrative fees will be determined—including any applicable caps and the specific activities they fund—and clarification of how these fees will affect overall producer obligations. Incorporating clear administrative caps and a description of covered expenses would provide meaningful predictability for producers and strengthen program accountability".
Response: The Department has provided language in the Registration Requirements section of guidance under "What is the annual fee for registration?" to create transparency. Fees must cover the activities listed in statute and regulation. Therefore, a cap prohibiting fees from covering these activities would conflict with statutory requirements. The Department acknowledges that there may be some variability in annual registration fees, as program implementation moves through various stages. Identified dates and deadlines related to Department activities can be found in statute and in Regulation .10.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comment provided on this topic.

83. Comment Topic: Registration Requirements and Associated Fees - Termination, Acquisition, & Mergers
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Subsection (C)(3) provides that '[f]ees may not be prorated due to termination, acquisition, or merger' Requiring payment of a full year's fee for less than a full year of activity could trigger overcollection, especially in the case of terminations. This may unfairly increase producer costs. AMERIPEN believes this language should be deleted, and, if the Department intends to ensure fees are fully collected despite changes in ownership, AMERIPEN suggests replacing it with the following: 'In the event of a change in ownership, including a merger or acquisition, remaining fees for covered material shall be collected in full from the responsible producer after the change in ownership'".
Response: Registration is collected annually and the identified producer at the time of registration is responsible for paying fees.

Department determination: Upon consideration of this comment and for the reason discussed above, the Department has decided not to revise regulatory language on the basis of the comment provided.

84. Comment Topic: Registration Requirements and Associated Fees - Weight-based Reporting & Confidentiality
Commenter(s) Name and Affiliation: GPI, AMERIPEN, FPI, HCPA and CAA

Comment: GPI recommended "asking for more data on producer product than merely the weight of the packaging. Weight or volume of product, value, and units may all yield valuable information on

identifying the largest producers. If the only data required is weight-based, it essentially leads to weight-based fees, which has the unintended consequence of rewarding brands that use plastic rather than glass. While weight may play a role in reimbursement of service providers, it is not necessarily the only measure that should be used to establish producer fees. This is not possible if the other packaging data is not sought or required in the first place".
Response: More clarity regarding fee structures, ecomodulation, and incentives may be provided in future regulations, guidance, and/or producer responsibility plans.

Comment: AMERIPEN commented that "the Act does not require reporting by weight in its analogous provisions. As such, the addition of this "by weight" reporting exceeds statutory authority, Moreover, it poses several logistical challenges because it asks for detailed reporting on a very compressed timeframe (i.e., a matter of months for the 2026 reporting) and for which material categories have not been established. Finally, it unnecessarily subjects producers to potential exposure of confidential business information. AMERIPEN therefore requests that references to "by weight" reporting be removed from this section". FPI provided the following comment: "Concerns relate first to the timing and accuracy of such reporting. Initial PRO registration is required at the same time producers are being onboarded, registering, and validating their data. Experience in other states has shown that early reporting often requires subsequent corrections and adjustments as producers become familiar with reporting methodologies, categories and state-specific requirements. Requiring finalized, producer-specific weight data at program launch increases the risk of inconsistent or estimated reporting". HCPA and CAA provided similar comments related to statutory authority and logistical challenges.
Response: To harmonize with other states and countries, and to recognize the tonnages of materials being sold or distributed into the State, the Department has determined this is a valuable factor to maintain for registration as a basic identifier.

Comment: AMERIPEN provided the following comment: "Subparagraph (A)(1)(b)(ii) requires producers pursuing an IPP to include in their registration form a 'list of covered materials of the producer, by category[…], by weight distributed into the State during the previous calendar year.' This may pose an issue for these producers because it would require them to report sales data in a manner that is not anonymized or aggregated. Therefore, AMERIPEN recommends adding a sentence to this subparagraph stating that 'The list shall be treated as confidential business information'. FPI, HCPA, MRA, and CAA provided similar comments.
Response: The Department notes that Regulation .09(F) states that "financial, production, or sales data reported to the Department by a producer or PRO shall be kept confidential by the Department…".

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comment provided on this topic.

.08 Alternative Collection Program.

85. Comment Topic: Alternative Collection Program - Convenience Standards
Commenter(s) Name and Affiliation: GPI, FPA, FPI, AMERIPEN, Sierra Club

Comment: GPI recommended "reducing the minimum weight collection and management requirement, currently drafted at 50 percent of the weight of covered material sold or distributed in Maryland for the previous calendar year. These programs take time to develop, and such an initial high coverage would discourage programs from taking shape. We recommend no higher than 25 percent of covered material by weight to begin, with future coverage requirements developed over time". FPA provided the following comment: "We are concerned that maintaining a 50 percent collection and management requirement could inadvertently undermine existing film collection programs at a time when growth and expansion are needed. We encourage the Department to reconsider or modify this threshold to reflect practical feasibility and the state's own baseline data. Additionally, to reinforce the value of these programs in advancing recycling solutions for non curbside materials, we encourage the Department not to condition fee reductions on meeting ACS thresholds that may not be realistically achievable". FPI provided similar comments.

Comment: AMERIPEN provided the following comments: "subsection (E)(3) establishes convenience standards for ACPs. Paragraph (a) requires 'year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each of the 23 counties and Baltimore City.' This is far too prescriptive, given that some forms of packaging may be used seasonally and/or regionally. Paragraph (b) requires at least 50% of the weight of covered material produced in Maryland in the prior year to be collected and managed, but there is no guarantee that an ACP's targeted material will be regularly disposed of within one year. Paragraph (c) requires at least 90% of Maryland residents to be within 15 miles of a collection site and paragraph (e) requires an additional collection site for every 50,000 residents, but both ignore the disparate needs and product usage of rural and urban communities. Subdivision (d) requires collection sites to be provided 'year round,' without defining what 'year round' means and without acknowledging that some covered material may be used more seasonally. AMERIPEN recommends against establishing these one-size-fits-all standards and instead proposes deferring the appropriate service levels to those established in an approved ACP plan, as approved by the Department. If the Department does not remove these prescriptive standards, AMERIPEN urges that, at a minimum, subsection (3) be added to allow the Department to waive any of the convenience standards in subsection (2) as it deems appropriate". FPI provided the following similar comment: "the requirement that 90 percent of residents have year-round access to a collection site within 15 miles presents practical challenges, especially in rural areas of Maryland". FPI recommended "a phased approach with lower initial thresholds, along with flexibility to adjust geographic standards based on population density, would better reflect on-the-ground realities. In this regard, the provision allowing the Department to approve alternative convenience standards may be used to support workable, material-specific collection approaches".

Comment: GPI commented that "As proposed in the regulation, GPI agrees that approved ACPs should be able to provide and meet year-round, convenient, statewide collection requirements. This includes signage and appropriate information to residents that recyclable collection is available for products and packaging covered within the ACP.

Comment: The Sierra Club provided the following comment: "These standards were not set in statute and seem to us to be inconvenient. The regulations aim to recover only 50% of the weight of the covered material to be collected, which is a low bar. We recommend that the convenience standard be set to capture at least 75% of the weight of covered materials sold or distributed in the State can be recovered". Just Zero provided the same recommendation. Additional detail can be found in Just Zero's submitted comments.

Response: Convenience standards provided in this regulation were modeled after Maryland Paint Stewardship law (Environmental Article §9-1733[8]) convenience standards and were selected to increase harmonization across interacting extended producer responsibility laws in the State. This law does not prevent producers from setting up smaller-scale programs to collect and recycle materials, and the Department has offered an opportunity for alternative convenience standard in Regulation .08 E(3)(f). However, smaller efforts that do not meet convenience standards may not be eligible for reduced fees, as these efforts may not meet the criteria to be considered an "Alternative Collection

[8] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-1733&enactments=false

Program" under the law. Alternative Collection Programs that intend to scale up may not be allowed to participate in incentives until the program meets convenience standards.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic at this time.

86. Comment Topic: Alternative Collection Program - Existing vs New Program Improvement
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Section (C) requires an alternative collection program (ACP) to 'improve and provide a dedicated collection program for the applicable covered material.' Requiring an ACP to improve an existing program is counterproductive because it effectively prohibits new ACPs from being established, as a nonexistent program cannot be improved. AMERIPEN recommends amending this paragraph as follows: 'An alternative collection program shall provide a new dedicated collection program for the applicable covered material or improve an existing one, and may only be established for the purpose of recycling, composting, or reuse'".
Response: The Department notes that the language referenced is in statute, and cannot be changed as suggested. Guidance associated with this law and regulation is provided that explains the Department's policy on this topic.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

87. Comment Topic: Alternative Collection Program - Minor consideration
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "As a technical note, AMERIPEN notes that the phrase 'be provided' in subsection (E)(5) may be superfluous and should be deleted".
Response: The Department has determined that the phrase "be provided" in Regulation .09(G) (to which the Department believes AMERIPEN is referring as there is no Regulation .09(E)(5)) does not conflict with the intention of the statute or the objective identified in statute.

Department decision: The Department has decided not to make an adjustment to the Regulation based on the recommendation provided.

88. Comment Topic: Alternative Collection Program - Cost Responsibility
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN recommended "adding language that ensures producers participating in a given ACP pay to cover the entire cost of that ACP so that its costs do not shift to nonparticipating producers". AMERIPEN also provided the following comment: "Subsection (H)(1) provides that ACPs 'are eligible for reduced fees associated with producer responsibility plans when they meet the minimum requirements outlined in this regulation.' It is unclear what level of discount is envisioned, but it would make sense if it were equivalent to the costs to the PRO avoided because of the ACP. AMERIPEN recommends adding language to that effect or else clarifying the intent of the reduced fees in this provision".

Response: The Department has determined that in Regulation .08(C), "provide" means provide, entirely. Respecting discounts or reduced fees, the Department will review this topic as plans are submitted and the program evolves.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

89. Comment Topic: Alternative Collection Program - Reuse
Commenter(s) Name and Affiliation: AMERIPEN, CAA

Comment: AMERIPEN provided the following comment: "Subsection (E)(1) requires self-certification that the final destination of an ACP is for recycling. However, this excludes composting and reuse as viable management pathways, contradicting SB 901 and this rule section. AMERIPEN recommends adding those pathways by amending the subsection as follows: 'Self-certification that the final destination is for recycling, composting, or reuse and is going to a responsible end market, as defined in this chapter. […]'".
Response: The Department notes that the definition of recycling includes '.collecting, sorting, cleansing, treating, and constituting materials otherwise be disposed of and returning them to or maintaining them with the economic mainstream in the form of recovered material or new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace…" and that the product generated from compost or reuse is within the definition and adding them would be duplicative.
Comment: CAA recommended that "MDE remove the entire alternative collection programs section from the regulations and instead use this as an opportunity to solicit initial comment on the proposed alternative collection program governance structure. The concept requires significant further refinement, which can only be achieved through structured consultation with the producers who may seek to implement such programs. We are specifically concerned about barriers these requirements might create for reusable packaging".
Response: Statute allows a PRO, producer or group of producers, to develop and operate an alternative collection program starting July 1, 2026. These regulations support this upcoming deadline. Plans are required to be submitted to the Department for review and consideration for approval.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

90. Comment Topic: Alternative Collection Program - Review and Approval Criteria
Commenter(s) Name and Affiliation: Maryland Chamber of Commerce, McCormick, MD-DE-DC Beverage Association, NWRA-MD

Comment: Maryland Chamber of Commerce provided the following comment: "without appropriate review and approval criteria, alternative collection programs could undermine the economies of scale created through a centralized Producer Responsibility Organization" and recommended "[providing] a clear review and approval process for alternative collection programs to ensure they demonstrate measurable improvements relative to the PRO system".
Comment: McCormick and the MD-DE-DC Beverage Association recommended "that the current draft regulations be revised to include language granting MDE review and approval authority over individual proposals for alternative collection. This authority would allow MDE to determine that a

particular individual collection proposal would be in fact an 'improvement' over the PRO collection program. This approval threshold would serve as a regulatory check in the process and prevent individuals from being unnecessarily excepted from the PRO infrastructure. Underlying this need for more proscribed procedures in vetting "improved" programs is the concern that a less-regulated approach would encourage producers to turn away from the established PRO, diluting the strength and cost-sharing advantages of a single PRO."

Comment: NWRA-MD provided the following comment: "The Draft Regulations allow MDE to impose additional ACP requirements during review without clearly defining those expectations. NWRA-MD suggests providing the scope of these additional requirements in the regulation so that compliance obligations are known in advance".

Response: As described in Regulation .08, the Department must review and approve of all alternative collection programs. Minimum alternative collection program requirements are established to ensure that alternative collection programs are creating substantive and effective programs. Additionally, targets, and other details related to alternative collection program implementation may be required as part of the application process, in guidance, or in producer responsibility plans. Regarding NWRA-MD's comment, leaving some flexibility for additional requirements allows the Department to seek clarification that may be specific to certain aspects of the program such as, but not limited to, material type, considerations of similar infrastructure, etc.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

91. Comment Topic: Alternative vs "Primary" Collection Programs

Commenter(s) Name and Affiliation: Rhody Holthaus, Anne Arundel County Department of Public Works

Comment: Anne Arundel County Department of Public Works commented that "[u]nder the proposed regulations is section .08 Alternative Collection Program, but there is no mention of a "primary" collection program for the myriad types of materials referenced in .03 Covered Materials" and expressed concern "that the proposed regulations presume that the primary collection responsibility for all covered packaging items falls on county and municipal governments and their programs". Topics discussed included expansion of service offerings, that "MRF capacity, both in Maryland and the Baltimore metropolitan region, may not accommodate the increase in supply that new regulations hope to generate", that "competition for limited MRF capacity may have other consequences, such as higher processing fees for counties, municipalities, and others", that "demand for recovered commodities is a function of economic growth, industrial production, and manufacturing", and that "insufficient demand leads to lower market values for recovered commodities which impacts both MRF owners and their customers like Anne Arundel County who share in the value of recovered materials". More detailed comments and information can be found in Anne Arundel County Department of Public Works' submitted comments.

Response: The Department notes that reimbursements for service providers are one element covered by the program. However, two of the central elements of the law's framework are "making producers financially responsible for investing in the needed infrastructure…", and "stimulating responsible end markets for covered materials" (Environment Article §9–2502, Annotated Code of Maryland). The Department also notes that not all covered materials are required to be collected/managed by service providers. Which materials are considered statewide as recyclable and compostable through curbside recycling programs and associated service provider responsibilities may be further clarified by the list established in Environment Article §9–2508, Annotated Code of Maryland and any governing regulations supporting that list.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.09 Record Keeping, Reporting and Production of Records.

92. Comment Topic: Record Keeping, Reporting and Production of Records - Advance Notice for New Obligations
Commenter(s) Name and Affiliation: RAM, FPI

Comment: The Restaurant Association of Maryland provided the following comment: "we encourage the establishment of a transparent process that includes advance notice and an opportunity for stakeholder input before any new obligations take effect. Providing reasonable notice will support predictability and allow producers to plan and allocate resources appropriately". FPI provided similar comments.
Response: Regulation .09 provides the Department the authority to seek additional information for clarification or certain aspects that may have been left out of a producer plan, and is meant to offer some flexibility in determination of an effective and transparent program.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

93. Comment Topic: Record Keeping, Reporting and Production of Records - Exempt Materials
Commenter(s) Name and Affiliation: Maryland Chamber of Commerce, CTA, OPEI

Comment: Maryland Chamber of Commerce commented that "while the Department has authority to implement the EPR statute, the enabling legislation does not authorize the Department to impose additional reporting, recordkeeping, or approval requirements for materials that are statutorily exempt from the program. Requiring producers to document and seek approval for exemptions creates unnecessary administrative burdens and effectively regulates materials that the General Assembly explicitly excluded from the program" and recommended "[revising] this provision to clarify that producers are not required to submit documentation for Department approval when claiming statutory exemptions, and that reporting requirements apply only to covered materials subject to the program".
Comment: CTA recommended that "the Department either: (a) eliminate the reporting requirement in Section 9D(4) as beyond the scope of the Department's regulatory authority with respect to exempt producers; or (b) narrow the requirement to a single, one-time attestation confirming the basis for exemption, rather than imposing recurring reporting obligations that function as a de facto compliance burden on entities the legislature chose to exempt".
Response: The Department is provided explicit authority for approval and the obligation for information to be publicly available as described in statute (see Environmental Article §9-2508(e)[9]).

Comment: OPEI provided the following comment: "if every de minimis producer had to go through validation, the department could easily become overwhelmed and burdened with documentation. A notification that documentation is subject to an audit would suffice in alerting that certain documents will require retention. If the intention is to apply this requirement to exempted materials, such as

[9] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-2508&enactments=false

supplements, we recommend to allow highly simplified reporting, such as multi-producer-group submissions, that utilizes average values".
Response: Regulation .09(D)(4) is imperative to ensure the Department can prevent free-ridership and ensure producers are compliant. Self-attesting assessments act as a mechanism of transparency for this program. Producers, for certain covered materials who have demonstrated that they are exempt are not obligated under this law to, for that covered material, to: pay fees, report annually, etc. . The Department recommends reviewing the guidance document supporting this law and regulation for any additional information on this topic.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

94. Comment Topic: Record Keeping, Reporting and Production of Records - Prorated Data
Commenter(s) Name and Affiliation: AF&PA, HCPA, OPEI, AMERIPEN

Comment: AF&PA provided the following comment: "we support the use of prorated national data if state-specific data is not available or feasible".
Comment: HCPA provided the following comment: "HCPA thanks the Department for allowing for the use of prorated national sales data if state-specific data is not available or feasible to generate. As this provision is contingent upon approval by the Department, and the first producer reporting requirements will kick in shortly, HCPA encourages the Department to clearly identify circumstances under which producers are able to use prorated national data so that producers are prepared to report in time and the Department is not swamped with thousands of requests to use prorated data".
Comment: OPEI commented that "explicitly allowing for prorated national data is welcomed as many producers struggle to track final destinations of packaging material. The allowance of prorated data is a critical simplification. However, we recommend removing the department requirement for approval, include additional clarity that any reports are subject to an audit, and include additional methods of how data can be prorated (i.e., dollar sales, population, total sales quantity, number of shipments, or etc.)".
Comment: AMERIPEN provided the following comment: "Subsections (D)(2) and (D)(3) allow producers to report their supply on a prorated national basis if state-specific data is unavailable or infeasible to generate, subject to Department approval. Allowing data to be reported on this basis is supportable, given the complexity and novelty of tracking packaging supply data in a state-by-state manner. However, requiring Department approval to do so is inadvisable and, in fact, not a practice used in other EPR states. It will create excessive burdens for the Department and producers, particularly smaller ones that do not have the resources to obtain state level data should their request be denied. AMERIPEN recommends deleting 'upon approval from the Department.' Alternatively, AMERIPEN recommends expanding the Department's authority to approve data estimation more broadly by providing the Department the discretion to grant approval for all producers proactively rather than considering approval for each one individually; this can be achieved by adding the following sentence to both subsections: 'The Department may elect to approve use of prorated national data for all producers or for categories of producers.'"
Response: The Department recommends reviewing the guidance document associated with this law and regulation for additional information on this topic.

Comment: AMERIPEN also provided the following minor edit: "as a technical note, AMERIPEN recommends replacing 'producer' with 'producer that is a member of a PRO' to comport with subsection (D)(3).

Response: The Department has evaluated this response and considers this recommendation a non-substantive and supportive request.

Department determination: Upon consideration of these comments, the Department has decided to adopt Regulation .09(D)(2) as follows:

> *"(2) A producer* ***that is a member of a PRO*** *must report the data necessary to meet its reporting obligations to the PRO. A producer may use prorated national data if state-specific data is not available or feasible to generate upon approval from the Department."*

95. Comment Topic: Record Keeping, Reporting and Production of Records - Retention & Delivery of Records
Commenter(s) Name and Affiliation: AF&PA, Maryland Chamber of Commerce, CBA, PCPC, FPA, HCPA, AMERIPEN, McCormick, MD-DE-DC Beverage Association, FPI, RAM, and CAA

Comment: AF&PA, Maryland Chamber of Commerce, CBA, PCPC, FPA, HCPA, AMERIPEN, McCormick, MD-DE-DC Beverage Association, FPI, RAM, and CAA provided similar comments recommending that the Department reduce the period over which documents and records must be maintained from ten years (as proposed in Regulation .09(B)) to five years.
Response: In consideration to the comments provided, and in alignment with permitting requirements for facilities that may act as service providers to this law or other producer responsibility laws active in the State, the Department has amended this regulation to maintain consistency in Department managed programs.

Comment: AF&PA, Maryland Chamber of Commerce, CBA, PCPC, McCormick, MD-DE-DC Beverage Association, and CAA recommended 30 days to produce requested records, rather than 10. FPI and the RAM recommended "providing flexibility in document production timelines".
Response: In consideration to the comments provided, and in alignment with permitting requirements for facilities that may act as service providers to this law, the Department has amended this regulation to maintain consistency in Department managed programs.

Department determination: The Department has decided to adopt Regulation .09(B) and .09(C) as follows:

> *B. All documents and records necessary to ensure compliance must be maintained for a* ***minimum*** *period of* ***5~~10~~*** *years.*
> *C. Availability for Department Review.*
> *(1) Documents and records must be available within* ***15~~10~~*** *business days or the specified timeline provided by the Department, whichever is later.*

96. Comment Topic: Record Keeping, Reporting and Production of Records - Reuse
Commenter(s) Name and Affiliation: Upstream

Comment: Upstream provided the following comment: "Strong reporting is essential for building public trust and driving continuous improvements in program outcomes. SB 0901 requires MDE in coordination with the PRO to set reuse rate and return rate targets in the program plan and achieve these targets within five years of plan approval. Within section .09 Record Keeping, Reporting and Production of Records, D (1) outlines which metrics producers must include in documents and records provided to the Department but fails to include reuse rates, return rates, and waste reduction rates. Requiring reporting of reuse rates, return rates and waste reduction rates is pivotal for tracking reusables and refillables in the state. Please amend the draft proposed regulations to include reuse

rates and return rates as well as progress toward waste reduction targets as required metrics for reporting".
Response: The Department notes that Regulation .09(D)(1) includes the following language "and any other materials necessary for the Department to determine compliance", which captures additional required targets or rates that were not addressed in the preceding list. As this change does not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs, the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.10 Timeline.

97. Comment Topic: Timeline - Approved Program Plan
Commenter(s) Name and Affiliation: AF&PA, GPI

Comment: AF&PA provided the following comment: "The timeline for a PRO to have an approved program plan is unclear, making it uncertain if the October 29, 2028, prohibition on the sale, distribution, or import of covered materials is achievable". GPI recommended "establishing a couple other benchmarks for critical timing issues in the regulation, such as..when the PRO needs to submit a PRO operating plan in order to have it approved by July 1, 2028".
Response: The Department recognizes that additional dates will need to be clarified. These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

98. Comment Topic: Timeline - Service Provider Registration
Commenter(s) Name and Affiliation: AF&PA, GPI

Comment: AF&PA provided the following comment: "It is also unclear when service providers must register. This is concerning given the disconnect between the timeline for service providers and the fee structure proposed in the enacting legislation." GPI recommended "establishing a couple other benchmarks for critical timing issues in the regulation, such as a date for which the service providers should register…"
Response: The Department recognizes that additional dates will need to be clarified. These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

99. Comment Topic: Timeline - Transition from Producer Responsibility Organization (PRO) to Individual Producer Responsibility Plan (IPP)
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Section (C) sets 'July 1, 2028 or by a later date identified by the Department' as a deadline for producers that intend to pursue an IPP. However, this does not address situations after that date in which a producer initially belonging to a PRO decides it wants to leave the PRO and pursue an IPP. AMERIPEN recommends adding a sentence stating: 'After that date, a producer that wishes to pursue compliance through an IPP in a given calendar year must submit its IPP to the Department by July 1 in the preceding calendar year'".
Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration. Should a producer seek to separate itself with an IPP in future years, the date of July 1 would be the requirement for submission for compliance.

Department determination: The Department has decided to adopt Regulation .10 A (2) as follows:

> *(2) Beginning July 1, 2026, and each year thereafter, producers who do not intend to join* ***or maintain membership with*** *an approved PRO shall file a registration form with the Department and pay an annual registration fee, as outlined within this chapter.*

100. Comment Topic: Timeline - Lead time & Enforcement Provision - non-enforcement period
Commenter(s) Name and Affiliation: CBA, AHAM, GPI, MRA, RAM

Comment: CBA, AHAM, GPI, MRA, and RAM provided similar comments expressing concern with the July 1st 2026 registration deadline, and requests were made for a non-enforcement period.
Response: The Department notes that this deadline is in statute.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.11 Enforcement Provision.

101. Comment Topic: Enforcement Provision - Penalties
Commenter(s) Name and Affiliation: OPEI, AMERIPEN

Comment: OPEI provided the following comment: "The upstream impacts of penalties against a PRO should be clearly identified. Producers who fulfill their obligations should be shielded from PRO associated penalties, especially if the PRO violates any part of the regulation. The scaling of such penalties should be considered. The implementation of flat penalties could disproportionately impact smaller producers, for example, those that may mischaracterize their exemption under the de minimis". OPEI also commented that "In the event that a PRO fails to meet their obligations, the producer shall have protective rights until their PRO issues are resolved or a contract with another PRO is established".AMERIPEN commented that "Subsection (B)(2) establishes preconditions before a penalty may be imposed on a producer or PRO. It is crucial the rules also specify that the Department must consider a penalty's fiscal impact and cost benefit ratio when deliberating whether to impose it. AMERIPEN therefore recommends adding a subsection (B)(5) stating that: 'The Department may waive a penalty for a performance goal reported as missed in an annual report if the Department determines the penalty would inhibit achievement of statutory goals'".

Response: The Department notes, penalty requirements are defined in statute, and any clarification aligns with established requirements in existing Department programs.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

.12 Producer Responsibility Advisory Council.

102. Comment Topic: Producer Responsibility Advisory Council - Appointments
Commenter(s) Name and Affiliation: AF&PA

Comment: AF&PA provided the following comment: "The Council consists of no more than 25 and no fewer than 15 members, representing a broad range of stakeholders. The second sentence, allowing the number of members to change with Secretary approval and 30 days' public notice, is ambiguous. It is unclear whether this refers to the Secretary's ability to appoint members (as granted in the enacting legislation) or to amend the membership limits outside the stated 15–25 range. The Secretary's authority should be limited to appointments within these statutory limits".
Response: This additional qualifier is a provision to ensure that the Department can maintain a level of evenness within the structure of the advisory council amongst designated entities. Should there require an addendum to the membership, the Department is guaranteed the ability to extend without a revision to regulation but through a channel of transparency.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

103. Comment Topic: Advisory Council - Conflicts of Interest
Commenter(s) Name and Affiliation: Sierra Club

Comment: The Sierra Club provided the following comment: "the Advisory Council makes recommendations concerning the adequacy of plans and annual reports of the producers, which opens the possibility of conflicts of interest on the Advisory Council. Several of the other states' Advisory Councils or Boards (e.g., MN, WA) exclude the following persons from serving on the Advisory group: State lawmakers; registered lobbyists; or employees of a producer required to join the PRO. They also require that members disclose actual or perceived conflicts of interest. Neither SB 901 nor the regulations address this issue. We recommend that MDE develop guidelines in the regulations regarding potential conflicts of interest among Advisory Council members and how they can be resolved".
Response: Conflicts of interest are disclosed through the advisory council application process and specifically reference the Maryland Ethics Law (General Provisions Article, Title 5). No producer is required to join a PRO, and there is no exclusion for participating producers to join the advisory council given that producers from the consumer goods sector and retail and small businesses are all stakeholders specifically identified in Environment Article §9–2503(c)(1).

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

104. Comment Topic: Advisory Council - Membership/Representation
Commenter(s) Name and Affiliation: ReMA, CTA, AAI, OPEI, BPI, Sierra Club, TFM, National Aquarium, Veteran Compost, Upstream

Comment: Recommendations were made to add specific advisory council member seats or members in the following categories (more details can be found in each entity's comments):
- an end market representative (ReMA)
- complex durable goods (AAI, CTA). CTA also recommended "[including] a definition of 'durable good' in the regulations to provide a clear and consistent basis for this seat".
- minimum number of producer representatives (specifically identified "broad representation" and "producers outside the consumable goods sector" (OPEI)
- specification that the organics recycling processors seat is held by composters or processors that already accept and recover compostable packaging covered by the program (BPI)
- plastic recyclers (Sierra Club)
- composting (Sierra Club, TFM, the National Aquarium)
- compost collectors and processors (Veteran Compost)
- Reuse / someone with knowledge of returnable reusable packaging (TFM, the National Aquarium, Sierra Club, Upstream)

TFM and the National Aquarium recommended that "representatives could be drawn from reuse-related Maryland businesses, advocacy organizations, or trade associations with a state or national presence".
Response: Advisory council seats are not specifically defined in regulations beyond what was established in statute in order to maintain flexibility for including interested parties that provide a greater balance of perspectives. Regulation .12 C indicates these groups are "at a minimum" thus non restrictive and flexible to extend to suggested groups as identified above.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

105. Comment Topic: Producer Responsibility Advisory Council - Number of Members
Commenter(s) Name and Affiliation: AMERIPEN

Comment: AMERIPEN provided the following comment: "Section (B) provides that the Advisory Council membership must be between 15 and 25 members. AMERIPEN appreciates and supports entities like the Advisory Council providing oversight and recommendations based on balanced membership. However, Maryland's advisory body is already larger than other states', and expansion to as many as 25 members risks making proceedings too difficult to manage and consensus too difficult to attain. AMERIPEN therefore recommends limiting its membership to no more than the current level of 21 members, and further lowering it to 18 members by not allowing for new appointments while the Advisory Council has 18 or more members", and CAA commented that "experience in other jurisdictions has highlighted that an effective advisory council requires a manageable size for deliberation and consensus. In other U.S. states with EPR laws, currently Advisory Council headcounts range from 15 to 21, averaging 18 members. This average is a manageable size that allows the Board to maintain focus and facilitate meaningful dialogue. An Advisory Council of 25 members may be difficult to ensure adequate and meaningful dialogue between all the members".
Response: The Department's decision to allow for a range from 15-25 members allows for greater flexibility in the stakeholders perspectives included. The number of members appointed within the

given range is ultimately determined by the Secretary. Ultimately, the number of seats appointed is determined by the Secretary, and may be adjusted based on the needs of the advisory council.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

106. Comment Topic: Producer Responsibility Advisory Council - Voting & Minority Considerations
Commenter(s) Name and Affiliation: Sierra Club, TFM, National Aquarium

Comment: The Sierra Club, TFM, and the National Aquarium provided comments recommending that "one or more advisory board members who do not endorse the recommendation may submit a separate written recommendation to the department reflecting the minority opinion or opinions", "in instances when the Council is unable to reach a unanimous decision, the Council recommendations may include non-majority viewpoints or additional options that were considered", and "in instances when there is not unanimity in a vote, the transmittal of Council recommendations may include additional options that were considered as well as minority or dissenting opinions. This ensures that, as the program is developed and implemented, there is a record and some reasoning to reference without having to restart the discussion in the Advisory Council; it ultimately will enhance efficiency as well as transparency in operations".
Response: The Department regularly distributes written and visual materials shared by advisory council members and presenters with the advisory council and with the public both through its email list and on its webpage. While official decisions provided by the advisory council are typically based on majority vote, the Department will accept written information from any advisory council member, subject to public disclosure.

Department determination: Upon consideration of these comments and for the reason discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

Guidance

107. Comment Topic: Guidance - Other Comments
Commenter(s) Name and Affiliation: AMERIPEN, CAA

Comment: AMERIPEN provided the following comment: "On pages 26 and 27, the Guide states, '[t]here must be an evenness of representatives between material industry groups, materials management groups, environmental advocacy groups and the general public.' However, neither the statute nor the proposed regulations require 'evenness' or something similar. Rather, the regulations would require any additions to the Advisory Council to 'increase the evenness of representation.' This is a material distinction. AMERIPEN recommends the Guide at this part be revised to reflect the actual language of the proposed regulations."
Response: The guide serves as the Department's interpretation of both law and regulation.

Comment: CAA provided the following comment: "It is too early to issue detailed guidance at this preliminary stage of program development, and it may create confusion. The program plan development process will generate significant additional analysis that will provide a fuller picture of Maryland's EPR system and compliance requirements. CAA recommends MDE issue final guidance closer to the plan implementation date, ensuring the guidance is informed by the latest market conditions, technology, and Maryland-specific infrastructure assessments. This extended timeline would also enable CAA and interested parties to incorporate key learnings from implementing EPR in other states, allowing Maryland to benefit from real-world outcomes and avoid replicating issues experienced elsewhere. As the PRO, we are required and specifically designed and resourced to develop, issue, and update producer guidance responsively as part of our core operational mandate. We will develop detailed guidance for the Maryland program plan and have staff to support producers and service providers. We recommend that MDE withdraw the draft guidance and collaborate with the PRO to issue appropriate materials once the regulatory framework is established".

Response: For regulations that are adopted in support of a newly enacted law, it is beneficial to all parties who may be subject to the law and regulation for a supporting guidance document that aids interpretation of formal legal and regulatory languages. While not mandated, the Office of Recycling has provided similar text in recent years to support program implementation with spelled out interpretations and Department policy.For any guidance supplemental regarding producer responsibility plans, the Department considers this topic ongoing and open for continued discussion.

Department determination: Upon consideration of these comments and for the reason discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

Other Considerations

108. Comment Topic: Public Comment Period
Commenter(s) Name and Affiliation: AF&PA, BPI

Comment: AF&PA provided the following comment: "These regulations are wide-reaching and there is a need for meaningful stakeholder input from both the Advisory Council and the public. At multiple Advisory Council meetings following the passage of SB 901, members requested clarity on the timeline for these draft regulations, but agency staff could not give any indication. At the December 2 meeting, just two weeks prior to the release of this draft, agency staff specifically stated that they could not speak on the draft, any comment period that might be given, or the timeline for its eventual release. This lack of transparency inhibits thorough engagement and places every stakeholder – including MDE, tasked with facilitation and implementation – at a disadvantage. The limited time for response and a deadline set during the holiday period limits meaningful feedback on the proposed text, and there is no indication of how stakeholder feedback will be used. This continues a troubling pattern, as MDE previously required the Advisory Council in December 2024 to provide legislative recommendations on EPR in advance of the January legislative session without the benefit of the statutorily required needs assessment under SB 222 (2023), which was not completed until February 2025".

Comment: BPI commented that "the period for comment on the proposed regulations, due December 27, does not give our organization or our members sufficient time to properly review and provide comments. In our initial review, BPI has identified some areas of concern with the language in proposed regulation, as well as the associated guidance document, and requests an extension of the deadline to provide thoughtful comments and feedback. Should you not be able to provide an extension, we request confirmation of a subsequent comment period for all parties in the near future".

Response: The Department notes that these comments were received pursuant to a 15-day public comment period in accordance with Chapter 212, Acts of 2019 as an opportunity for small businesses, nonprofit organizations and other interest parties to review and comment on a draft proposal to adopt new regulations. The Department recommends those entities that would benefit from notifications associated with this state provision to sign up on MDE's listserv[10] for Chapter 212, Acts of 2019 accordingly. Subsequent opportunity for comments was provided during a 30 day public comment period when the proposed regulations were published within the Maryland Register. Additionally, significant engagement with the Advisory Council was provided in the development of these regulations and all archived meetings may be found on the archival website and YouTube[11]. Draft language on the definitions and covered materials list were provided to Advisory Council members ahead of the public comment period and feedback was solicited. Advisory Council discussions leading up to these comment periods were largely focused on feedback related to the topics in regulation. Additionally, the Department presented an overview of the sequence of events involved in regulation development. All of this went above and beyond the requirements of the Department regarding engagement with the Advisory Council who are largely intended to provide feedback for program plans, per Environmental Article 9-2503[12] not regulations. Specific internal timelines are dependent on many factors including internal review times, and the approval process involved with an external agency, on whose approval the timeline for regulation development depends.

Department determination: Upon consideration of these comments and for the reason discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

109. Comment Topic: Goals & Metrics
Commenter(s) Name and Affiliation: AHAM, AAI,

Comment:AHAM provided the following comment: "Packaging EPR programs should be evaluated based on measurable environmental outcomes, including improved recovery rates, increased recycled content use, reduced contamination, and enhanced material circularity. Performance metrics must reflect actual system improvements rather than the total volume of producer fees collected. Regular review and recalibration mechanisms should adjust fee structures in response to changing material markets and infrastructure developments. Outcome-focused measurement aligns environmental objectives with operational efficiency and sustained industry participation". AAI commented that "In the proposed producer plan, one of the PRO's goals is to reduce greenhouse gas emissions. Although not included in the regulations, we urge MDE to provide more clarity around its goals and processes for this aspect of the plan. Right now it is unclear what the details of this plan are, what metrics will be used and who will track those metrics, who will set the targets and who will track and measure the targets, will this be emissions for the entire recycling infrastructure or will it be related to the specific embedded packaging emissions of the various producers and their covered products. These questions need to be addressed and elaborated on with input from the impacted stakeholders before any program plans are implemented".
Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic at this time.

[10] https://mde.maryland.gov/programs/regulations/HB1124/Pages/index.aspx
[11] https://mde.maryland.gov/programs/land/WasteManagement/Pages/Archived-Meetings-Producer-Responsibility.aspx
[12] https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gen&section=9-2503&enactments=false

110. Comment Topic: Harmonization
Commenter(s) Name and Affiliation: CTA, FPA, Kemira, and AHAM

Comment: Topics related to harmonization with other states were discussed in comments submitted by CTA, FPA, Kemira, and AHAM. CTA recommended the Department review opportunities for harmonization with Colorado, Oregon, and Maine. FPA specifically recommended the Department look at opportunities for harmonization regarding "REM certification frameworks and covered material determinations". Kemira recommended harmonizing "where feasible—with definitions, material categories, and reporting approaches used in other U.S. EPR programs, including Colorado, Oregon, and California". AHAM recommended "harmonized definitions, consistent reporting categories, and reciprocity mechanisms that reduce administrative complexity".
Response: The Department has taken significant measures to consider opportunities for harmonization, including cross comparisons of language used by other states and discussions with other states regarding various topics. Opportunities for harmonization have been identified and taken advantage where appropriate across other topics discussed such as definitions, material categories, and reporting approaches. For example, Maryland's material category list was compared to reporting category lists in Colorado, Oregon, and California. Definitions were compared to language used by other states in cases where appropriate. In some cases, such as with the definition of "Compostable" or "compostable products", Maryland took other considerations into account such as existing definitions and interacting regulatory landscapes. Language included in Regulation .09 related to reporting was based off of Colorado's Regulation 18.2.5 Recordkeeping, Reporting, and Production of Records. Harmonization with other states is not limited to the above examples. The Department recognizes the benefit of harmonization when reasonable and has also taken into account opportunities to provide additional clarity, alignment with Maryland's statute, existing infrastructure, and other conditions specific to the State. Some of the comments provided focused on topics such as REMs, eco-modulation, recyclability determinations, and fee structures which the Department considers these topics open for discussion ongoing .

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic at this time.

111. Comment Topic: Minor Considerations
Commenter(s) Name and Affiliation: TRP

Comment: TRP provided the following recommendations:
"• 26.04.14.02(14) 'De minimus producers' - In the December version of these draft regulations, this was written as 'De minimis producers' While this is an etymological decision in which both are accurate spelling depending on the context, we suggest using 'de minimis' to align with other EPR regulations and reduce confusion.
• 26.04.14.02(25)(l) and 26.04.14.09(D)(1) vs. 26.04.14.09(C)(2) 'Postconsumer' vs. 'post consumer' - The first two sections utilize the spelling 'postconsumer' while the latter utilizes 'post consumer; We suggest they be standardized.
• 26.04.14.04(6)(g) 'Metal' – We believe there to be a typo in subsection (6)(g), which currently reads as '[..] not identified in §§B(4)(d) —(f) of this regulation'. We believe it should say '[..] not identified in §B(6)(d)--(f) of this regulation'.
• 26.04.14.09(D)(1) Missing verb - We believe this phrase, which reads as 'A producer must make all documents and records related to the calculation and payment of producer responsibility dues, recycling rates, collection rates, postconsumer-recycled-content rates, and any other materials

necessary for the Department to determine compliance.' may be missing the verb 'available', such that it would read 'A producer must make available all documents [..]'".
Response: The Department has identified certain typographical and grammatical errors.

Department decision: The Department has decided to adopt the following language to address these minor errors:

- Regulation .02(B)
  - *(14) "De ~~minimius~~ **minimis** producer~~s~~" means a person that in their most recent fiscal year:*
- Regulation .04(B)(6)
  - *(g) Other forms of aluminum not identified in §B(~~4~~**6**)(d)—(f) of this regulation;*
- Regulation .09(C)(2)
  - *Documents may include records related to the calculation and payment of producer responsibility dues, recycling rates, collection rates, **postconsumer** recycled content rates, and any other materials necessary for the Department to determine compliance with an approved plan and the requirements of Environment Article, §9-2505, Annotated Code of Maryland.*
- Regulation .09(D)(1)
  - *A producer must make available all documents and records related to the calculation and payment of producer responsibility dues, recycling rates, collection rates, postconsumer recycled content rates, and any other materials necessary for the Department to determine compliance.*

112. Comment Topic: Concerns related to litigation in other states / PRO Oversight
Commenter(s) Name and Affiliation: AHAM

Comment: AHAM provided the following comment: "Packaging EPR programs governing durable goods should ensure meaningful producer participation in the governance, advisory functions, and operational oversight of the PRO by a governmental regulator that includes meaningful opportunities for producers to appeal PRO decisions. Because manufacturers finance the system and possess technical expertise regarding packaging design, distribution channels, and material recovery pathways, they must play an active role in advising on program design, fee methodology, eco-modulation criteria, and implementation guidance. The PRO should operate with clear governance structures, established by regulation or statute, that include durable goods representation and provide regular opportunities for public stakeholder input as the program evolves. Regulation or statute should also allow for multiple PROs, giving producers the option to choose among PROs that are competing for participants. In addition, the PRO must maintain transparent compliance guidance, publish clear methodologies for fee calculations and reporting, and respond in a timely and consistent manner to producer inquiries. This includes mapping costs to specific industries and the packaging that those specific industries use. As discussed more fully in Section X, Maryland should also await the outcome of NAW v. Oregon before moving forward because that case addresses numerous issues related to the transparency of the fee-setting process and the extent of the PRO's authority."
Response: An additional producer responsibility organization may be established on or after July 1, 2033, per Environment Article §9–2505(a)(2). However, producers are not required to join a PRO; all producers have the option to submit IPPs. The Department is unable to postpone development of regulations, as July 1, 2026 is the deadline for both producer registration and the date by which alternative collection programs may be developed and operated. PRO decisions are typically established within a producer responsibility plan, which is subject to Department approval, ensuring Department oversight. The Department has identified, at a minimum, the following avenues for producer participation in Maryland's rulemaking process: established advisory council membership

positions, public participation opportunities at the end of each advisory council meeting, informal feedback and formal public comment submissions associated with regulation development. The Advisory Council, which includes at least one representative in each of the following categories - "Producers from the consumer goods sector" and "Retail and small businesses" as well as "Material–oriented trade groups" - shall "shall: (1) On request by a producer or producer responsibility organization, provide advice regarding the drafting or amending of a producer responsibility plan required under § 9–2505 of this subtitle; (2) Receive and review the producer responsibility plans submitted in accordance with § 9–2505 of this subtitle; (3) Receive and review annual reports submitted in accordance with § 9–2509 of this subtitle; (4) Make recommendations to the Department regarding producer responsibility plan approval; (5) Make recommendations to the Department and producer responsibility organizations regarding producer responsibility plan implementation; and (6) Provide written recommendations regarding the producer responsibility plan, including any update or revision to an approved plan, to a producer responsibility organization before the producer responsibility organization submits the plan to the Department.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

113. Comment Topic: Producer Fees & Ecomodulation
Commenter(s) Name and Affiliation: MRA, AHAM

Comment: MRA provided the following comment: "The regulations as drafted do not outline the process by which producer fees will be determined, and particularly do not define the eco-modulation approach which was included in SB901 as passed. While we understand that fees will ultimately be determined based on a variety of factors including market share and recyclability of materials, it is difficult to comment on this area without any projection of fee structure".
Comment: AHAM recommended that "Producer fees should be based on the net cost of managing covered materials, accounting for existing recovery rates and the commodity value of recyclable materials such as corrugated cardboard and metals. Durable goods packaging often has established resale value and recovery markets, and these offsets must be deducted before calculating producer obligations. Fee structures should avoid cross-subsidization whereby highly recyclable, commercially recovered materials subsidize difficult-to-recycle packaging types used in other sectors. Cost allocation methodologies must be transparent, data-driven, and tied directly to measurable system expenses. The objective should be proportional responsibility aligned with actual waste management burdens rather than broad redistribution of municipal waste budgets".
Comment: AHAM also recommended that "Eco-modulated fee structures must be grounded in scientifically supported, real-world recyclability criteria that reflect existing infrastructure. Durable goods packaging serves a critical protective function, preventing damage to high-value products and reducing the emissions associated with damaged products, returns, and replacements. Programs must, therefore, avoid penalizing materials necessary to meet transportation safety, product protection, and regulatory compliance requirements. Eco-modulation frameworks should balance recyclability improvements with performance standards that ensure consumer safety and shipping integrity. Incentives should promote measurable environmental improvement without encouraging under-packaging that would increase product loss or system inefficiency, resulting in unintended consequences that increase environmental harm. The PRO should also be required, via statute or regulation, to disclose material management costs to make sure that eco-modulation is set up properly. This means that baselines must be fairly and transparently calculated, across industries, as opposed to comparison with an individual company's baseline."

Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic at this time.

114. Comment Topic: Program Implementation - Compostable Plastics (Contamination)
Commenter(s) Name and Affiliation: WM, NWRA-MD

Comment: WM recommended that "MDE should implement measures to reduce contamination of compostable plastics in recycling streams. An everyday consumer may not be able to quickly differentiate between compostable plastics and recyclable plastics. If compostable plastics end up at WM recycling facilities, the company treats this as contamination, as too much compostable plastics in plastic bales reduce their value to end-use processors. Given the threat compostable plastics pose to effective recycling, WM and other service providers should be permitted to charge contamination fees to disincentivize the mingling of compostable plastics in recycling waste streams. Alternatively, if MDE wants to support compostables, it should do so only through a separate, organics-specific program, not commingled recycling". NWRA-MD provided the following similar comment: "NWRA-MD encourages MDE to include language in the Draft Regulations to reduce contamination of compostable plastics in the recycling stream. When compostable plastics end up at our recycling facilities, they are treated as contamination. Too much compostable plastic in plastic bales for end-market sales reduces their overall value to end-use processors. We encourage measures that will allow service providers to charge contamination fees to disincentivize the mingling of compostable plastic in recycling waste streams. Alternatively, if MDE desires to support compostable plastic through the EPR program, it should do so only through a separate, organics-specific program, not commingled recycling".
Response: The Department notes that statute identifies measures that shall be taken to address contamination in sections such as Environment Article §9–2505(c)(1)(xvi)(4)(A), Annotated Code of Maryland. These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic at this time.

115. Comment Topic: Program Implementation - Multifamily
Commenter(s) Name and Affiliation: WM, NWRA-MD

Comment: WM provided the following comment: "WM understands that including multifamily residences such as large apartment buildings as covered entities under the EPR system is a priority for MDE. That being said, coordinating the collection and effectively mitigating contamination concerns is a significant challenge in EPR systems throughout North America. In fact, the Ontario, Canada EPR program ultimately deferred collection at multifamily residences, schools, and long-term care facilities for a five-year period. Multifamily unit service more closely resembles commercial collection (e.g., front-load, multi-yard containers, complex contamination issues). In WM's experience, EPR programs that attempt to include multifamily residential programs as covered entities at the start of the program have not effectively implemented this transition. Maryland's EPR program should avoid these same challenges by delaying implementation of multifamily residences recycling to ensure effective program implementation".

Comment:NWRA-MD provided the following comment: "NWRA-MD understands and acknowledges that multi-family buildings are intended to be included in the EPR implementation. However, multi-family buildings present different and more challenging compliance considerations. Multi-family recycling collection more closely resembles commercial collection operations, including front-loading, multi-yard containers, and complex contamination issues. NWRA-MD's experience is that EPR at multi-family residential buildings is significantly more complex and more difficult to implement. In recognition of this difficulty, Ontario, Canada's EPR program ultimately deferred collection at multi-family residences, schools, and long-term care facilities for a period of five years. We recommend that Maryland's EPR program avoid confronting these challenges at the onset of implementation and consider a similar delay. That way, collection and recycling in multi-family buildings would remain at the status quo for a period while EPR is implemented for all other residential collection, and then phased in once EPR is operating smoothly in the single-family residential scenario. That will allow time to properly plan for effective EPR-compliant collection at multi family buildings".

Response: The Department notes that in statute, the definition of a covered entity explicitly states 'multi-family housing'. The mechanisms for inclusion as a covered service and the obligations to the program will be further clarified with producer responsibility plans. These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs..

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

116. Comment Topic: Program Plan - Responsible End Markets
Commenter(s) Name and Affiliation: PCPC, CAA

Comment: PCPC provided the following comment: "To strengthen the effectiveness of the program, the Department should explicitly require PROs to evaluate and validate Responsible End Markets (REMs) as part of the program plan. The draft regulations already focus on clarifying covered materials, producer obligations, and recycling system performance metrics, but ensuring that collected materials are processed through verifiable end markets is essential to achieving the program's statutory goals. Maryland's own statewide needs assessment shows the importance of improving recycling outcomes across material types and closing gaps in system performance. To support harmonization across state EPR programs and reduce administrative burden, Maryland should align REM validation criteria with the National Responsible End Market Standard currently in development. The criteria is designed to provide a consistent, auditable foundation for verifying end-market legitimacy and environmental compliance nationwide".

Comment: CAA provided the following comment: "MDE is required by statute to adopt regulations to establish, or require a producer responsibility plan to establish, a process for validating responsible end markets (REMs) (Environment Article § 9-2511(b)). CAA recommends MDE include text in the draft regulations assigning this responsibility to the producer responsibility plan. This approach will ensure full statutory compliance and limit the need to adopt future regulations. Additionally, CAA has established a standard development committee that is working on a national REMs verification standard. This process will create common criteria that end markets are verified against, across jurisdictions. This national approach reflects that end market verification is a component of multiple state EPR programs, and that many end markets process material that crosses state and national borders. A national standard will address REM verification in a harmonized, comprehensive manner,

providing a robust way to manage and grow end market development and verification in Maryland and other states. The committee includes stakeholders from across industry, government, academia and non-governmental organizations".
Response:These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

117. Comment Topic: Renewable Materials
Commenter(s) Name and Affiliation: ACC

Comment: ACC provided the following comment: "More broadly, the draft regulations present an opportunity to recognize renewable bio-based and bio attributed materials as a complementary tool for achieving the program's objectives. Incorporating renewable content into packaging can help increase use of renewable content, decrease reliance on fossil feedstocks, and strengthen supply chain resilience. This is particularly relevant for certain packaging categories, such as food-contact applications, where meeting program requirements may be technically or practically constrained. In these cases, renewable materials can provide an additional pathway while maintaining product performance and safety. Providing clarity on how renewable content may be considered within the program, including in the context of postconsumer recycled content requirements, can support investment and innovation while maintaining the program's focus on environmental outcomes".
Response:These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

118. Comment Topic: The List Established under Environment Article § 9–2508, Annotated Code of Maryland
Commenter(s) Name and Affiliation: PakTech, AMERIPEN

Comment: Regarding the list established in Environment Article § 9–2508, Annotated Code of Maryland, PakTech requested that their "fully recyclable rHDPE handles are included in that list".
Comment: AMERIPEN requested "that the Department's development of the list of materials that are recyclable or compostable at curbside due by July 1, 2027, use a transparent scoring system like the process that the Circular Action Alliance used in Colorado. This process was very clear and comprehensive, affording the public and stakeholders direct insight into decision-making and the opportunity to provide feedback and refinement. To ensure regular consideration of new conditions in the recycling and composting markets, AMERIPEN recommends adding a provision into the rules stating that, 'The Department shall review and consider updating the list developed pursuant to subsection (A)(1) of Environment Article § 9-2508, Annotated Code of Maryland, at least annually.' To prevent undue delays in implementing amendments to the list, AMERIPEN recommends adding a provision in the rules stating that, 'The Department shall provide the list amended pursuant to

subsection (D)(1) of Environment Article § 9-2508, Annotated Code of Maryland, to the PRO no later than 10 working days from finalization.'"

Comment: WM requested "that MDE establish clear and predictable transition requirements for any changes to the statewide list of covered materials. Sudden additions or removals can disrupt collection routes, Materials Recovery Facility operations, contract obligations, and public education efforts. Abrupt shifts in accepted materials also can lead to increased contamination risk and operational inefficiencies. To avoid these outcomes, WM recommends that MDE require at least a 9-to-12- month transition period for any list change and provide a safe harbor for existing contracts that cannot be immediately modified".

Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

119. Comment Topic: Wood Materials

Commenter(s) Name and Affiliation: AHAM

Comment: AHAM provided the following comment: "California's draft EPR regulations establish requirements governing eligibility for being labeled "compostable," including conformance with specified ASTM standards. However, the regulation does not clearly address how these requirements apply to natural, untreated materials such as heat-treated wood used in packaging applications. Many appliance manufacturers utilize heat-treated wood components (e.g., bases or supports) that comply with International Standards for Phytosanitary Measures No. 15 (ISPM 15). ISPM 15 heat treatment involves thermal processing to eliminate pests and does not introduce chemical additives or synthetic materials. The resulting wood material remains untreated, solid wood. The proposed regulation does not specify:

• Whether natural wood materials are presumed compostable by virtue of being untreated organic matter;
• Whether ASTM compostability testing is required for solid wood components;
• Whether the compostability standards referenced in this section are intended to apply only to plastic or polymer-based materials;
• Whether compliance is evaluated at the material level or at the finished packaging system level where wood is combined with other materials; or
• What documentation producers must maintain to substantiate the status of such materials.

Absent clarification, producers face uncertainty regarding whether heat-treated wood components must undergo ASTM compostability testing designed primarily for plastics, or whether such materials fall outside the intended scope of this section".

Response: The Department recommends review of the *Comment Topic: Categories of Covered Materials for Registration - Organics*. To be considered compostable, all materials must meet the definition of "compostable". The same ASTM standards for plastics should not be applied to wood. The definition of "producer" should be used to determine the responsible producer. However, the Department notes that the definition of producer applies to producers of packaging or paper products as is stated in Regulation .02(B)(25)(a)(i)-(ii) (i): "For packaging, §§B(25)(b), (c), (d), and (g) of this regulation; and (ii) For paper products, §B(25)(e) and (f) of this regulation". Therefore, typically the producer is the producer of the material that meets the definition of "packaging" and/or a "paper product".

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on this topic.

120. Comment Topic: Other matters not covered in proposed rules
Commenter(s) Name and Affiliation: GPI, AF&PA, OPEI, NWRA-MD, AHAM

Comment: GPI commented that "there are an array of other matters that are not covered in this initial set of proposed regulations that will bear a great influence on the success of the program and the cost of producer fees by material type that should be addressed, including: eco-modulation, service provider performance metrics, contamination and quality standards. In addition, there are concepts in the legislation supporting circular materials, environmental benefits to the state that should be discussed in regulations".
Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Comment: AF&PA commented that "there are still many elements of the enacting legislation that are not addressed in this draft regulation. These include:
• Clarity between a "waste producer" and a "resident."
• Clarity on the "optimal level of service" for covered material.
• Clarity on what the "other requirements" established by the Department may be.
• Generalities such as "other factors," "general quality," "sufficient engagement," and " any other criteria" need to be defined.
• Clarity on which market indices will be referenced.
• Clarity around the scope of waste characterization (statewide versus local).
• Clarity on how many producers are needed to qualify as a "group" to establish a PRO".
Response: These recommendations do not impact immediately upcoming deadlines which these regulations are necessary to inform, such as initial registration and alternative collection programs; the Department considers this topic open for discussion ongoing.

Comment: Outdoor Power Equipment Institute recommended "[outlining] transparency requirements for the PRO".."The PRO's Program Plan should be released for public comment with adequate review time such as a minimum of 60 days. The approved PRO should be required to publish a detailed explanation for their fee-setting methodology. Final fee rates should be published with adequate lead time for producers to incorporate them into their budget. Our recommendation is a minimum of at least 12 months in advance."
Response: There is no requirement for producer responsibility plans to go through a public comment period or public review. However, there is the following requirement specific to the fee structure: "Before establishing the fee structure for participating producers under paragraph (1)(iii) of this subsection, the producer responsibility organization shall: 1. Publish a proposed fee on its website; and 2. Allow 90 calendar days for public comment" (Environment Article §9–2505(e)(3)(i), Annotated Code of Maryland) Topics related to producer responsibility plans and fee setting may be clarified further in future regulations, guidance, and/or producer responsibility plans. Additionally, the Advisory Council is obligated to provide feedback on proposed plans in accordance with Environmental Article §9-2503. Advisory Council meetings have the opportunity for public feedback at the end of every open meeting.

Comment: OPEI recommended the following (more detail can be found in comments submitted by OPEI):
• EPR programs must provide accessible collection of obligated products on a regular, convenient, and a no collection fee basis.
• Education and consumer outreach must be of any program priority.
• Industry appropriate and consistent approach to determining total EPR contributions based on quality and quantity of materials.
• Collection targets should not be dictated by certain dates but set economically and technically feasible performance goals.
• Responsible reporting incentives for producers in either price cuts or rebates.
• Clearly define any product and material qualifications, size of the market, and the location of where PROs can collect obligated products.
• Empower regulators with the ability to adapt with market changes through the amendments of deadlines, protection against bad actors, and products regulated. Ability to use graduated actions for bad actors.
• Clearly defined monitoring system to ensure PROs and producers are reporting accurately without the use of audits.
• Easily accessible conflict resolution mechanisms that are clearly communicated.
• Any PROs shall adhere to plain language classification standards including and not limited to product pricing.
• Include emergency response exceptions to adapt to external conditions that may impact normal recycling operations.
Response: Some of these recommendations reflect suggested change to statutory language. If there is a specific request associated with language that should be included in the PRO producer responsibility plan or specific exemptive requirements, The Department recommends OPEI to submit to the Department for specific evaluation for their covered materials.

Comment: OPEI commented that “EPR legislation must provide opportunities for environmental handling fee (EHF) - Fees help eliminate most “free rider” concerns” and that “EHF funds should be administered by a third-party to fund collection and recycling”.
Response: The Department notes the following statutory requirement in §9–2505(c)(1)(ix): “Explain how the program will be paid for by the producer responsibility organization through fees from producers, without any new or additional consumer–facing fee to members of the public, businesses, service providers, the State or any political subdivisions, or any other person who is not a producer, unless the fee is: 1. A deposit made in connection with a product’s refill, reuse, or recycling that can be redeemed by a consumer; or 2. A charge for service by a service provider, regardless of whether the service provider is registered”. These regulations do not include reference to a handling fee and bearing the statutorily obligated description provided above referring to fees, the Department cannot support this suggestion.

Comment: OPEI recommended that “the producer should be well defined to clearly indicate the responsible organization (e.g. local manufacturer, distributor, importer, etc.)”.
Response: The definition of “producer” in Regulation .02 should be considered when making this determination and the Department has provided supportive guidance on this law and regulation to aid in clarity.

Comment: OPEI recommended “facilitation of a competitive marketplace for Producer Responsibility Organizations who are the ultimate waste hauler, and the opportunity for industry and private entities to become Producer Responsibility Organizations (PRO)” and “clear guidelines and qualifications on how to become and operate a Producer Responsibility Organization”.

Response: Statute already defines the state's requirements on defining a "Producer responsibility organization" means a nonprofit organization that is: (1) Exempt from taxation under § 501(c)(3) of the Internal Revenue Code; and (2) Created by a group of producers to implement a producer responsibility plan in accordance with this subtitle" (Environment Article §9–2501(q), Annotated Code of Maryland). The Department notes that producer responsibility organizations are defined as nonprofits in Maryland statute.

Comment: OPEI made the following recommendations: "minimize any product carve outs", "cover products that are sold or offered for sale that include retail, wholesale, business-to-business, and online sales".
Response: Exempt and excluded covered materials are defined in statute and further refined in regulation.

Comment: OPEI recommended "open public communication and dialogue where PROs and obligated producers have the ability to discuss market issues or evolvement with regulators".
Response: The Department notes that there are existing avenues for public engagement including opportunities for public comment at the end of each advisory council meeting and opportunities for stakeholders to submit public-facing written comments.

Comment: Recognition that products can easily flow across state/province borders to allow ease of recycling.
Response:These regulations do not seek to limit interstate commerce. Recycling is defined in statute and is not limited to in-state recycling.

Comment: "NWRA-MD encourages MDE to release the remaining proposed regulations as soon as possible to ensure adequate time for stakeholder review. Although the current proposal focuses on producer registration for the July 1, 2026, deadline, the statute imposes a broader set of complex obligations on many defined terms". Additional details can be found in NWRA-MD's submitted comments.
Response: The Department is working concurrently to develop supporting regulations while this initial round of rules were being proposed and evaluated. The Department recommends all interested parties to participate in any upcoming advisory council meetings related to upcoming regulation topics and add notice by requesting inclusion on the email list at mde.epr@maryland.gov.

Comment: AHAM recommended that the Department "refine [alternative collection program] guidance to ensure requirements are both rigorous and workable, including how commercial-recovery pathways can meet or be deemed equivalent to convenience standards designed around consumer access. This aspect remains unspecified and should be addressed early.
Response: The Department will review all alternative collection plan applications, and based on feedback will address with updated guidance, as necessary.

Comment: AHAM commented that Maryland must avoid direct or indirect bans of EPS and flexible plastics. More details can be found in AHAM's submitted comments.
Response: This comment is not directly related to the Packaging and Paper Products - Producer Responsibility Plans Act. However, the Department notes that Maryland has an existing statewide polystyrene food service products ban (see Environmental Article §§9–2201 through 9-2207).

Comment: AHAM provided the following comments that "[highlight] areas where a lack of clarity from state regulators and/or PROs led to confusion among AHAM members in certain states. Other states are allowing for two types of estimation tools in their EPR program: sales estimation tools for

products entering a state (usually based on state population) and an Average Bill of Materials (ABOM) estimation for the amount and type of packaging used for a particular product type. The former is used by manufacturers that employ multi-tiered distribution models while companies use the latter in the event that they are unable to collect specific packaging data by given compliance dates. For portable and floor care appliances, AHAM supports the permanent use of sales estimation tools for all home appliances, as it is impossible to calculate state-by-state sales in a multi-tiered distribution model where producers lose control of their products without knowing where they go. Additionally, packaging estimation tools for spare parts are likely a necessary permanent component for Maryland's packaging EPR program due to the variability of bundled shipments for repairers or consumers. These shipments are not associated with Bills of Materials; each shipment can be unique for a service parts business. AHAM also supports ABOM estimation tools for portable and floor care appliances, especially in the short-term, and will follow up with additional comments regarding the medium- and long-term.
Response: The Department will evaluate these tools further, and if approved, the Department will update the language in guidance.

Department determination: Upon consideration of these comments and for the reasons discussed above, the Department has decided not to revise regulatory language on the basis of the comments provided on these topics.