Maryland Department of the Environment

# COMPLIANCE GUIDE FOR REGULATIONS COMAR 26.04.14

## Packaging and Paper Products - Producer Responsibility

This compliance guide sets forth how producers of covered materials must comply with the Code of Maryland Regulations (COMAR) 26.04.14 Packaging and Paper Products - Producer Responsibility. This document is for informational purposes and **should not** be construed as legal advice. Affected establishments should consult the law (Environment Article, §§9-1702, 9-1707, 9-2501 through 9-2512, Annotated Code of Maryland), and the regulations, or consult legal counsel. This document is subject to change.

*This guidance document supports the initial round of regulations intended to facilitate the development of the Packaging and Paper Products - Producer Responsibility program in Maryland, adopted on May 5, published on May 15 and effective on May 25, 2026. Regulation development is ongoing. To participate in rulemaking associated with the current draft regulations and future regulation development, please send an email to mde.epr@maryland.gov and request addition to the Maryland Department of the Environment's extended producer responsibility email list to receive notifications.*

---

## Table of Contents


**Summary of the Regulations** 2
**Definition of Key Terms** 2
**Covered Materials** 10
**Categories of Covered Materials for Registration** 11
**Excluded and Exempt Materials** 12
**Producers** 18
**Registration Requirements** 20
**Alternative Collection Programs** 22
**Record Keeping, Reporting and Production of Records** 23
**Timeline** 24
**Enforcement** 25
**Advisory Council** 27
**Frequently Asked Questions** 29
**Appendix A - ? - Am I a Producer** App A 1-3

## Summary of the Regulations

In 2023, the Maryland legislature passed SB222, titled Statewide Recycling Needs Assessment and Producer Responsibility for Packaging Materials. This legislation approved a Producer Responsibility Organization (PRO) for covered materials, established a producer responsibility advisory council to provide advice and make recommendations to establish and implement a producer responsibility program in the state or covered materials and directed the Maryland Department of the Environment (MDE or the Department) to complete a statewide recycling needs assessment.

In 2025, Maryland passed SB901, titled Packaging and Paper Products - Producer Responsibility Plans (PPP - PRP) that established producer responsibility for covered materials, including packaging and paper products. The law requires producers, individually or as part of a PRO, to submit to the Department for review and approval a producer responsibility plan for covered materials. This law also provided for alternative collection programs, required producers and PROs to pay certain costs to the Department, and mandated the Department establish certain lists associated with packaging and paper products that may be covered.

In order to implement the PPP - PRP law, on May 5, 2026, the Secretary of the Environment adopted new regulations under COMAR 26.04.14 Packaging and Paper Products - Producer Responsibility. The new regulations became effective on May 25, 2026.

The regulations that became effective in May 2026 are not a complete set of regulations, as there is a specific need to ensure producers have to register by brand and by covered materials by July 1, 2026. Therefore, the Department focused on ensuring regulations that support the registration process.

The regulations that became effective in May 2026 clarify definitions, including covered materials, exempt and excluded packaging and paper products, covered services, covered entities, and the types of entities or individuals that meet the definition of producer. They establish categories of covered materials for registration, registration requirements, and minimum requirements for alternative collection programs. These regulations also detail recordkeeping, reporting and production of records associated with producers and PROs, clarify the timeline to implement this set of requirements, and provide information about Advisory Council membership.

The Department will establish additional regulations related to goals, ecomodulation and other fees, reimbursements associated with producer responsibility plans, and more in subsequent regulations.

## Definition of Key Terms

The following key terms are defined in the regulations and are used throughout this compliance guide:

**Advisory council** means producer responsibility advisory council established to provide advice and make recommendations regarding establishing and implementing a producer responsibility program in the State for covered materials, including advice on drafting, amending, and implementing producer responsibility plans.

**Alternative Collection Program** means the collection of a specific covered material category that is not generally collected through curbside services.

**Beverage Container** means a prepackaged beverage container:
- Made of any material including glass, plastic, metal, paper, or multimaterials;
- In any form, including a bottle, can, carton, or pouch; and
- The volume of which is not more than 5 liters.

*A 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.

**Bioplastic** means processed starches or other materials that would be considered a plastic-like or organic material that includes but is not limited to polylactic acid (PLA), polyhydroxyalkanoate (PHA), and polyhydroxybutyrate (PHB).

**Brand owner** means a person that owns or licenses a brand or that otherwise has rights to market a product under the brand whether or not the brand's trademark is registered.

**Bound book** means printed paper permanently assembled and protected by a cover that is affixed using adhesives or thread (e.g. a hardcover or paperback), excluding magazines.

**Composting** means the controlled aerobic biological decomposition of organic waste material in accordance with standards established by the Secretary under COMAR 26.04.11. (See Environment Article §9-1701, Annotated Code of Maryland).

**Composting facility** means a facility where composting takes place (see Environment Article §9-1701, Annotated Code of Maryland).
Composting facility does not include a facility that is required to obtain:
- A Natural Wood Waste Recycling Facility Permit under COMAR 26.04.09;
- A Sewage Sludge Utilization Permit under COMAR 26.04.06; or
- A Refuse Disposal Permit under COMAR 26.04.07.

**Compostable** or **Compostable products** means packaging or paper products that are containers, films, or food service items (e.g. bowls, plates, cups, or cutlery) composed of materials such as:
(a) Vegetable matter;
(b) Paper;
(c) Cardboard; and
(d) Compostable plastics that are, within the length of time and process employed at the composting facility at which they are used, capable of biological decomposition to a degree that they result in marketable compost meeting the standards established by the Secretary of Agriculture under Agriculture Article, §6-221, Annotated Code of Maryland.

**Covered entity** means a person or location that receives covered services for covered materials in accordance with Environment Article §§9-2501 through 9-2512, Annotated Code of Maryland, including:
- A single-family residence;
- A multi-family residence;
- A public or non-public kindergarten, elementary, or secondary school, and its campus;
- A childcare center as defined in §9.5-401 of the Education Article;

- A public building owned or operated by the state or a local government, including leased and rented properties that a state or local government operates;
- Parcels of land owned, operated, or leased by the State or a local government including parks, state and local highways, and areas associated with open space for the public as identified in local zoning;
- An industrial, commercial, or institutional building that separates paper products for recycling and those paper products do not meet the definition of packaging.

*Covered entities may exclude the portions of a building that are not owned, leased or rented by state and local governments, as approved by the Department.

**Covered materials** means packaging and paper products sold, offered for sale, imported, or distributed in the State. Covered materials do not include exempt or excluded materials as defined in COMAR 26.04.14.

**Covered material type** means a singular and specific type of covered material, such as paper plastic, metal glass, that:

- Can be categorized based on distinguishing chemical or physical properties, including properties that allow the material type to be aggregated into a discrete commodity category for purposes of reuse, recycling, or composting; and
- Is based on similar uses in the form of a product or package

**Covered services**:

(a) Means:
  (i) Collecting, transferring, transporting, sorting, processing (including the cleaning of covered materials to ensure recovery in the form of recycling, reuse or refill), recovering, preparing, or otherwise managing covered materials for purpose of waste reduction, reuse, recycling or composing; and
  (ii) Public education and outreach activities related to the activities described in (a)(i).

(b) Includes:
  (i) Litter cleanups where covered materials are collected, sorted, transported and processed for recycling; and
  (ii) Reuse and refill services.

(c) Does not include disposal of covered materials.

**De minimis producer** means a person that in their most recent fiscal year:

- Introduced less than 1 ton of covered material into the state; or
- Earned global gross revenues of less than $2,000,000.

**Environmental Impact** means the impact of a covered material on human health and the environment, beginning with the extraction and processing of the raw materials that compose the covered materials through the manufacturing, distribution, use, recovery for reuse, recycling or composting, and final disposal.

**Exempt Material** material means a material, or any portion of a material that is:

- Primary packaging for infant formula, as defined in 21 U.S.C. § 321(z);
- Primary packaging for medical food, as defined in 21 U.S.C. § 360ee(b)(3);
- 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;
- 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;
- 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;
- 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;
- Primary packaging for products regulated by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act;
- Primary packaging used to contain liquefied petroleum gas and designed to be refilled;
- Newsprint subject to Environment Article § 9–1707, Annotated Code of Maryland;
- 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;
- 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;
- Primary packaging for products subject to the Paint Stewardship Program under Environment Article § 9–1733, Annotated Code of Maryland;
- 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
- 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.

**Individual Producer Responsibility Plan (IPP)** means a plan developed by a producer who chooses to assume responsibility to comply with the Producer Responsibility Plan individually instead of through a Producer Responsibility Organization (PRO).

**Local government** means a county or a municipality.

**Long-term packaging** means packaging fabricated from paper, plastic, metal, glass, or multimaterial that;
- Has a mechanism to reseal and encase the product and is not designed for single use closure; and
- The product within the long-term packaging has a lifespan of not less than 5 years as determined by the Department.

*Long-term packaging does not mean packaging for consumables, or products that diminish in quantity or degrade with use.
**Long-term packaging does not mean packaging that would diminish or degrade within 5 years.

**Multimaterial** means:
- Objects, processes or systems that incorporate two or more distinct and heterogeneous materials;
- Materials that are integrated within a single component, allowing for combinations of characteristics within a single part;
- Multiple layers that are not able to be separated by the consumer or mechanically separated; or
- Paper products that have integrated non-fiber components including embossed or impregnated materials.

*Multimaterial does not mean minor coatings, inks, or adhesives applied for printing, labeling, or surface protection, unless those components materially affect the recyclability or compostability of the product, as determined by the Department.

**Packaging** means a material, a substance, or an object that is used to protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product to the consumer for personal, noncommercial use and that is sold, offered for sale, imported, or distributed in the State. This includes:
- Primary, secondary, and tertiary packaging intended for the consumer market;
- Service packaging designed and intended to be filled at the point of sale, including: carry–out bags; bulk goods bags; take–out and home delivery food service packaging; and
- Beverage containers;
- Labels affixed to packaging or products

*Packaging does not include packaging sold as a product that is empty at the time of sale.

**Paper products** means products made primarily from wood pulp or other cellulosic fibers and includes paper products offered for sale, imported, or distributed in the State and sold or supplied for use within residential, industrial, commercial and institutional sectors. This definition of paper products does not include:
- Bound books;
- Products that are not accepted by materials recycling facilities or composting facilities because of the unsafe or unsanitary nature of the products; or
- Paper products that also meet the definition of packaging in this regulation.

**Person** means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

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

**Producer** means a person that is responsible for compliance with a producer responsibility plan under Title 9, Subtitle 25, of the Environment Article, Annotated Code of Maryland, in order of who is first obligated if the material is sold or distributed in the State, as qualified by:
- For packaging, producer includes:
  - (A) For items sold in or with packaging at a physical retail location in the State:
    - (1) The manufacturer of an item that is sold in or with packaging under the brand of the item manufacturer or is sold in packaging without brand identification;
    - (2) If there is no person described in (A)(1), the person that is licensed to manufacture and sell or offer for sale to consumers in the State an item with packaging under the brand or trademark of another manufacturer or person;

(3) If there is no person described in (A)(1) and (2), the brand owner of the item;
(4) If there is no person described in (A)(1) through (3) of this regulation within the United States, the person that imports the product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in the State; or
(5) If there is no person described in (A)(1) through (4) the person that first distributes the item in or into the State;

(B) For items sold or distributed in packaging in or into the State via e–commerce, remote sale, or online distribution:
(1) For packaging used directly to protect or contain the item, the producer of the packaging is a producer under (A)(1); and
(2) For packaging used to ship the item to a consumer, the producer of the packaging is the person that packages the item to be shipped to the consumer;

(C) For packaging that is not described in (A) and (B), the producer of the packaging is the person that first distributes the item in or into the State;

(D) For a producer identified in (A), (B), (C) that is a business operated wholly or in part as a franchise, the producer of the packaging is the franchisor if the franchisor has franchisees that have a commercial presence in the State.

- For paper products, Producer includes:

(E) For paper products that are magazines, catalogs, telephone directories, or similar publications, the producer is the publisher;

(F) For a paper product not described in item (E):
(1) If the paper product is sold under the manufacturer's own brand, the producer is the person that manufactures the paper product;
(2) If there is no person described in (F)(1), the producer is the person that is the owner or licensee of a brand or trademark under which the paper product is used in a commercial enterprise, sold, offered for sale, or distributed in the State, whether or not the trademark is registered in the State;
(3) If there is no person described in (F)(1) and (2), the producer is the brand owner of the paper product; or
(4) If there is no person described in (F)(1) through (3) within the United States, the producer is the person that imports the paper product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the paper product in the State; and

- Producer does not include:
  - A state, federal or state agency, a political subdivision, or other governmental unit;
  - A registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization;
  - A "de minimis producer";
  - A mill that uses any virgin wood fiber in the products it produces;
  - A paper mill that produces container board derived from 100% postconsumer recycled content and non-postconsumer recycled content;
  - An entity that owns or operates a restaurant, food cart, or similar establishment that:
    - Is headquartered in the State;
    - Primarily sells to members of the public food that is generally intended to be consumed immediately and without the need for further preparation, either on or off the premises; and
    - Is not a producer of food serviceware;
  - An entity that owns or operates a single retail sales establishment that:
    - Has no online sales; and
    - Is not supplied or operated as part of a franchise or a chain;

- An entity that:
  - Is licensed under Title 2 of the Alcoholic Beverages and Cannabis Article; and
  - Generated less than $10,000,000 in gross revenue during the immediately preceding calendar year; and
- A producer under (A) through (E) above that executed an agreement with another entity, under which the other entity has agreed to assume responsibility by written certification under a producer responsibility program for any packaging materials attributable to the first entity.

**Producer Responsibility Organization (PRO)** means a nonprofit organization that is:
- Exempt from taxation under §501(c)(3) of the Internal Revenue Code; and
- Created by a group of producers to implement a producer responsibility plan in accordance with the Environment Article §9-2505, Annotated Code of Maryland; and
- Is approved by the Department to implement an approved Producer Responsibility Plan on behalf of producers of covered materials.

*At this time, the only approved PRO in Maryland is Circular Action Alliance (CAA)

**Producer Responsibility Plan** means a covered materials producer responsibility plan submitted to the Department by an individual producer through an IPP, or submitted by a PRO as defined in the Environment Article § 9-2505, Annotated Code of Maryland.

**Recycling** means the process of collecting, sorting, cleansing, treating, and constituting materials that would otherwise be 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.
Recycling does not include:
- Landfilling;
- Combustion;
- Incineration;
- Energy generation;
- Fuel production; or
- Alternative daily cover or other forms of use or disposal within the footprint of a landfill.

**Recycled covered material** means covered material that is sent to a responsible end market.

**Recycling rate** means the amount of recyclable covered material, in aggregate or by individual covered material type, recycled in a calendar year divided by the total amount of recyclable covered materials sold or distributed into the State by the relevant unit of measurement.

**Refill** means the continued use of a covered material by a consumer through a system that is:
- Intentionally designed and marketed for repeated filling of a covered material to reduce demand for new production of the covered material;
- Supported by adequate logistics and infrastructure to provide convenient access for consumers; and
- Compliant with applicable federal, State, and local statutes, rules, ordinances, and other laws governing health and safety.

**Responsible end market** means a material market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that:
- Benefits the environment; and
- Minimizes risks to public health and worker health and safety.

**Return rate** means the amount of reusable covered material, in aggregate or by individual covered materials type, collected for reuse by a producer or service provider in a calendar year, divided by the total amount of reusable covered materials sold or distributed into the State by the relevant unit of measurement.

**Reusable** means being capable of reuse.

**Reuse** means the return of a covered material to the marketplace and the continued use of the covered material by a producer or service provider when the covered material is:
- Intentionally designed and marketed to be used multiple times for its original intended purpose without a change in form;
- Designed for durability and maintenance to extend its useful life and reduce demand for new production of the covered material;
- Supported by adequate logistics and infrastructure at a retail location, by a service provider, or on behalf of or by a producer, that provides convenient access for consumers; and
- Compliant with applicable federal, State, and local statutes, rules, ordinances, and other laws governing health and safety.

**Reuse rate** means the share of units of a reusable covered material sold or distributed into the State in a calendar year that are demonstrated and deemed reusable in accordance with an approved producer responsibility plan.

**Service provider** means an entity that provides covered services for covered materials. Service provider includes:
- A local government that provides, contracts for, or otherwise arranges with another party to provide covered services for covered materials within its jurisdiction regardless of whether the local government provided, contracted for, or otherwise arranged for similar services before the approval of the applicable producer responsibility plan.
- A private entity that is not contracted with a local government that provides covered services for covered materials, such as through a subscription model.

**Secondary packaging** means any packaging intended to bundle, sell in bulk, brand, or display the product or that is not primary packaging or tertiary packaging.

**Small format** means covered materials with two or more sides measuring two inches or less; or, a diameter of two inches or less at its widest point.

**Tertiary packaging** means packaging intended to protect or facilitate the delivery of the product during transportation.

# Covered Materials

## What are the Covered Materials Subject to the Regulations?

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.

### Packaging

Packaging is "a material, a substance, or an object that is used to protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product to the consumer for personal, noncommercial use and that is sold, offered for sale, imported, or distributed in the State". As described in COMAR 26.04.14, it includes:

- Primary, secondary, and tertiary packaging intended for the consumer market.
- Components and elements that are supplemental, auxiliary, or subordinate and integrated into packaging, including those components and elements that are directly attached to a product and are part of the packaging design functionally or aesthetically, facilitate the packaging function, or facilitate the delivery including through identification of the product. This includes materials used to affix packaging components to one another.
- Service packaging designed and intended to be filled at the point of sale, including:
  - Carry-out bags (e.g., grocery store bags, retail bags, produce bags, etc.)
  - Bulk good bags; and
  - Take-out and home delivery food service packaging, including takeout bags and some food serviceware
- Any other food serviceware that does not function as service packaging designed and intended to be filled at the point of sale.
- Beverage containers
- Labels affixed to packaging or products
- Materials used to fill in space between a product and other packaging components, or between packaging components. *For some industries, this may be referred to as void fill.*
- Compostable packaging, as defined in COMAR 26.04.14, or:
  - Packaging that meets labeling requirements in §§9-2102 and 9-2104 of the Environment Article, Annotated Code of Maryland; or
  - Meets labeling requirements for ASTM D8410-22; or
  - 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;
- Multimaterial packaging
- Packaging for reuse or refill
- Packaging that is at any point intended to reach a consumer for personal, non-commercial use

### Paper products

Paper products are "products made primarily from wood pulp or other cellulosic fibers", and include:

- Paper products offered for sale, imported, or distributed in the State and sold or supplied for use within the residential, industrial, commercial, and institutional sectors
- Multimaterial products that are a majority paper by volume
- Food serviceware that meets the definition of a paper product

Do covered materials include packaging and paper products that are both for personal, noncommercial use and for industrial, commercial, and institutional use?

Packaging, including paper packaging, is ONLY a covered material if it is sold or supplied with the product to the consumer for personal, non-commercial use (i.e not solely for internal use by an industrial, commercial, or institutional entity).

Paper products (not including paper packaging) that are distributed for both personal, non-commercial use and for use by industrial, commercial, or institutional entity are covered materials as long as they are not:

- Exempt or excluded
- Packaging (including paper packaging)

For example, reams of paper that are sold to a business and are solely for use by that business (i.e. for internal paperwork) are covered materials. Paper sold at a retail store to a consumer for personal, non-commercial use is also a covered material.

| | Packaging (including paper packaging) | Paper products |
|---|---|---|
| For personal, non-commercial use | Covered | Covered |
| For industrial, commercial, or institutional use | Not covered † | Covered |

† *Exemption #11 under the packaging section of "Excluded and exempt materials" in this document states:*
*"To qualify for this exemption, packaging, including paper packaging, must meet ALL of the following requirements:*

1. *It must meet the definition of packaging;*
2. *It must be distributed to an industrial, commercial, or institutional business or entity; and*
3. *It must not be introduced to a person other than the industrial, commercial, or institutional business entity that first received the product."*

## Categories of Covered Materials for Registration

The categories of covered materials for registration are provided to organize and standardize data submitted by producers and PROs for registration. All covered materials must be identified either by the PRO or by an individual producer who will be submitting an IPP rather than joining a PRO on an approved registration form.

How to find an appropriate category for my covered material for registration

All covered materials must be accurately captured in one of the categories of covered materials for registration. The categories, outlined in COMAR 26.04.14, are designed to be considered in the order they are presented, linearly. Ensure the material is reported in the most specific category that is appropriate for your material. After selecting the broad category (i.e. paper, metal, rigid plastic, etc), the sub-categories should be considered in order; for example, if a covered material does not fit into category a, move on to category b, and so on.

Some categories are designed to capture materials that do not fit into any of the prior categories listed. For covered materials reported in these categories (identified with a * in regulations), a description of the specific covered material being reported must be provided and submitted with registration.

*Example: The packaging covered material is stainless steel strapping used for shipping. It does not fit into categories (a) or (b); i.e. it is not a steel aerosol container or non-aerosol steel container. Therefore, it would be reported for registration within category (c): "*Other forms of steel not identified in items (a) or (b) of this item". A description of the specific covered material that is reported in category (c) would then need to be provided (i.e. "stainless steel shipping strapping").*

If the packaging and paper product meets the definition of multimaterial, the following criteria should be considered in order and used to determine which category it should be reported under for registration:

- Aseptic and gable top cartons have assigned categories under "PAPER"
- If the covered material has a laminate or is coated, the categories of covered materials for registration should be referenced and considered in order (linearly) to correctly categorize the covered material.
- 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.

*Should you have questions on the specific category, consider reaching out to a Producer Responsibility Organization approved in the State of Maryland and/or seeking legal counsel.

While multimaterial components may be reported separately for registration in some cases, as outlined above, the producer is considered the producer of the packaging or paper product as a whole (with all component parts assembled).

## Excluded and Exempt Materials

There are several exemptions and exclusions that are identified in COMAR 26.04.14. Materials that meet these exemptions and exclusions are not considered covered materials.

Packaging

The following identified exemptions and exclusions are for packaging, including paper packaging

*#1: Primary packaging for infant formula, as defined in 21 U.S.C. §321(Z):*

> "The term 'infant formula' means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk." *21 U.S.C. §321(Z)*

*#2: Primary packaging for medical food, as defined in 21 U.S.C. §360EE(B)(3):*

> "The term 'medical food' means a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation." *21 U.S.C. §360EE(B)(3)*

*#3: 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 the following conditions as defined by the International Classification of Diseases, tenth revision:*

- Cancer
- Chronic kidney disease
- Diabetes
- Malnutrition
- Failure to thrive

*#4: 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.*

- Drugs regulated by the FDA include prescription drugs (both brand-name and generic) and non-prescription (over-the-counter) drugs. Not included in this exemption are dietary supplements, which are regulated as food products. (Source: FDA)
- Medical devices regulated by the FDA include simple items like tongue depressors and bedpans, complex technologies such as heart pacemakers, dental devices, and surgical implants and prosthetics (Source: FDA).

*#5: 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.*

While medical equipment is not a term defined by the FDA, equipment regulated by the FDA include, but are not limited to, electronic products that give off radiation such as x-ray equipment and ultrasonic therapy equipment (Source: FDA).

*#6: 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 the U.S. Department of Agriculture under the Federal Virus–Serum–Toxin Act.*

*#7: Primary packaging for products regulated by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.*

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the EPA to regulate the distribution, sale, production, and use of pesticides and pesticide devices in the United States. With certain exceptions, all pesticides distributed or sold in the United States must be registered (licensed) by the EPA. (Source: EPA)

*#8: Primary packaging used to contain liquefied petroleum gas and designed to be refilled.*

Department of Transportation 49CFR178.51 describes DOT 4BA cylinder design. This a cylinder, either spherical or cylindrical design, with a water capacity of 1,000 pounds or less and a service pressure range of 225 to 500 psig. Closures made by the spinning process are not authorized. Source: Code of Federal Regulations

Unless the packaging identifies that it may be transported by DOT standards and meets the design specifications for refill, it is not exempt.

*#9: 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.*

| *To qualify for this exemption, a producer or the PRO must submit a request in writing to the Department and must receive approval from the Department.* |
|---|

Products are regulated under the 2012 Federal Occupational Safety and Health Administration Hazard Communication Standard. Guidance for the Federal Occupational Safety and Health Administration Hazard Communication Standard can be found here: Guidance for Hazard Determination

If primary packaging used to contain hazardous or flammable products regulated under the 2012 Federal Occupational Safety and Health Administration Hazard Communication Standard can be reduced (less material being used to produce each unit of

packaging/less packaging used), reused, or recycled (not being sent for final disposal in a refuse disposal system), it likely would not qualify for this exemption.

*#10: Primary packaging for products subject to the Paint Stewardship Program under subtitle 17, Part V of the Environment Article (Environment Article §9–1733 and §9–1734, Annotated Code of Maryland).*

*#11: Material that a producer distributes to another producer that is subsequently used to contain a product, and the product is distributed to a commercial business or entity and packaging material that is not introduced to a person other than the commercial or business entity that first received the product.*

To qualify for this exemption, packaging, including paper packaging, must meet ALL of the following requirements:

- It must meet the definition of packaging;
- It must be distributed to an industrial, commercial, or institutional business or entity; and
- It must not be introduced to a person other than the industrial, commercial, or institutional business entity that first received the product.

For example, a cardboard box used to deliver reams of paper to a commercial office would not be covered. (However, note that the reams of paper inside would be covered as a paper product.)

*#12: Primary 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.*

Examples that the Department has considered as long-term storage include those items such as shown in this example below of a canvas tote used to store a drill and both the stuff sack and storage bag for a sleeping bag (*Figure 1*).

Packaging for things that diminish as they are used, like candles *(Figure 1)*, crayons, and food or beverages, does not meet the requirements for this exemption. Additionally, packaging does not meet the requirements for this exemption if within five years its associated product fully degrades in quality with consistent use, like sandpaper *(Figure 1)* or time-sensitive chemicals that degrade within five years and are not identified under another exemption. The packaging itself must also not degrade within five years.

| | |
|---|---|
| **Durable bag for storing a drill**<br>✓<br> <br><br>Image source: DeWalt | **Sleeping bag stuff sack**<br>✓<br> <br>Image source: Patagonia |
| **Candle holder**<br>✗<br> <br><br>Image Source: Bath & Body Works | **Sandpaper packaging**<br>✗<br> <br><br>Image source: 3M |

*Figure 1: Long Term Exemption Exclusion Examples.* This table identifies packaging that qualifies for this exemption marked by a green checkmark (✔) and packaging that does not qualify for this exemption marked by a red 'X'.

*#13: Beverage containers covered under a legislatively mandated beverage container deposit return program in the State, if applicable.*

This exemption applies only if a beverage container deposit return program is legislatively mandated in the State. Producers who are interested in operating an alternative collection program that involves a voluntary deposit return program may submit a request to operate as an alternative collection program.

Note: the Department recognizes there are existing businesses that currently operate a deposit return program for beverage containers (i.e., milk, kombucha, etc.). As those businesses are not legislatively mandated to operate their program by the State, those are not eligible for exemption at this time. However, they may be eligible to operate as an alternative collection program, if all requirements are met.

*#14: Packaging that is designed to be ingested.*

This includes but is not limited to rice paper wrapping (e.g. rice paper candy wrapping), Baltimore Lemon Stick peppermint straws, edible coffee cups, and edible utensils.

*#15: Packaging that is sold as a product that is empty at the time of sale.*

For example, a stack of plastic plates that are sold at a store to consumers without food or other materials (empty) would be considered the product, not packaging. (This does not exempt the packaging that surrounds the packet of plates.) However, plastic plates that are used to distribute food to consumers are considered a covered material, as they are food serviceware.

Paper Products

The following identified exemptions and exclusions are for paper products, not including paper packaging.

*#1: Newsprint subject to Environment Article § 9–1707, Annotated Code of Maryland*

Per the definition: “Newsprint” means paper of the type generally used in the publication of newspapers or commercial advertising inserts printed by the publisher that are made primarily from mechanical woodpulps combined with some chemical woodpulp. “Newsprint” includes paper made from old newspapers that have been deinked, using the recycled pulp in lieu of virgin pulp.

*#2: 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.*

*#3: Bound books.*

The term “bound books” is defined in COMAR 26.04.14.02 as follows:

“Bound book” means printed paper permanently assembled and protected by a cover, such as a hardcover or paperback and affixed using adhesives or thread. “Bound book” excludes magazines.

The Department generally does not consider paper products such as: zines, pamphlets, and brochures a “bound book”, as long as they do not meet the definition of a bound book.

*#4: Products that are not accepted by materials recycling facilities or composting facilities because of the unsafe or unsanitary nature of the products.*

During the rulemaking process, the Department was presented to consider certain broad categories that are applicable under this exemption. Producers are still required to submit to the Department the Exempt Producer Determination Request on a form provided by the Department for this exemption. Certain categories the Department identifies as meeting the exemption include those that are predominantly intended to be used in unsanitary conditions such as Diapers, Toilet Paper, and Facial Tissues.

## Producers

The definition of producer in COMAR 26.04.14.02 describes who is identified as a producer of packaging and paper products. If you are determining whether you are a producer, note that covered materials that meet the definition of both packaging and a paper product are considered packaging (i.e. paper packaging is considered packaging). Appendix A provides a flowchart that can be used when making this determination.

Producer Responsibility Plans

Producers must either join an approved Producer Responsibility Organization (PRO) who will submit a producer responsibility plan on behalf of its member producers, or must have an approved Individual Producer Responsibility Plan (IPP) on file with the Department. Producers may also have both an approved IPP by the Department for a specific covered material and join the PRO Producer Responsibility Plan for any other covered material not included in their IPP.

➔ If joining an approved producer responsibility organization, the PRO will assist the producers with meeting fee and reporting requirements. The PRO will be responsible for compiling reports, program plan requirements, assessing appropriate producer fees and delivering the reports plans and fees to the appropriate party. If they are joining a PRO, a producer must:

1. Register with the PRO and pay associated fees to the PRO
2. Provide information required for the producer responsibility plan
3. Provide information required for annual reporting and registration

➔ If functioning as an individual producer, the producer must:

1. Submit an Individual Producer Responsibility Plan
2. Register with the Department and pay fees associated with registration to the Department
3. Provide information required for annual reporting

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.

Termination, Acquisition, and Mergers

If a producer was to terminate, be acquired, or merge with another producer or entity, they have specific responsibilities which include:

- If the producer has an approved IPP: notifying the Department on letterhead within 30 days of either termination, acquisition or merger.
- If the producer is a part of a PRO: notifying the PRO as detailed in their approved plan.

Any reporting shall be provided on a pro-rated basis under the original producer on file.

Exempt Producer Status

If, at any time an exempt entity's status changes (for example if the business grows and the de minimis producer exemption no longer applies, or an executed agreement with another entity assuming responsibility has expired, etc.), the producer would no longer be considered exempt and must comply with obligations described in statute, regulations, and guidance.

Exempt or Excluded Producer Determination Request

If you believe you meet one of the following exemptions/exclusions defined in COMAR and provided below, you are required to submit an Exempt or Excluded Producer Determination Request to the Department. This form can also be found on the Department's Producer Responsibility webpage.

- COMAR 26.04.14.02(B)(16)(k)
- COMAR 26.04.14.02(B)(16)(n)
- COMAR 26.04.14.02(B)(20)(a)(ii)
- COMAR 26.04.14.02(B)(25)(p)

A producer may request for consideration that the Department classify one or more types of packaging as an exempt material in accordance with Environment Article §9-2508. Use the form to begin this process.

For requests provided in accordance with Environment Article §9-2508, the Department will provide their determination after the Advisory Council reviews and provides comment on the request.

Additional Information Available in this Guidance Document

Throughout this guidance document are descriptions of producer obligations including: registration, reporting, record maintenance, and timeline requirements. Additionally information regarding an Alternative Collection Program is found in a separate section of this document.

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. If a producer has no approved plan on file they may not sell, offer for sale, distribute, or import for sale or distribution covered materials for use in the State **OCTOBER 29, 2028**

## Registration Requirements

If a producer distributes covered materials into Maryland, they must register by July 1, 2026. Registration in subsequent years shall be made by no later than June 30 annually.

What if I register with a PRO?

If a producer is a member of a Producer Responsibility Organization, they must submit all requirements associated with registration to the PRO by a date that the PRO has designated.

What if I am not a member of a PRO?

If a producer opts not to be a member of a Producer Responsibility Organization, they are required to submit all required materials for registration directly to the Department on a form provided or approved by the Department under coverage through an approved IPP.

What information is required to be submitted for registration by producers?

At a minimum, producers must provide the following:

- a list of brands
- a list of covered materials by the categories of covered materials for registration provided in this regulation by weight distributed into the State during the previous calendar year
- the name, address and contact information for a person responsible for ensuring compliance with this law and regulation
- an annual registration fee

What does the annual registration fee paid to the Department support?

The annual fee encompasses a reimbursement to the Department for their activity with this law.

It includes the Department's costs of record keeping, developing and updating lists associated with statewide covered materials to be recycled or compostable through curbside recycling programs, developing and implementing regulations to carry out the law, and may be used to establish criteria to provide benefits to the environment and minimize public health and worker health and safety and validate responsible end markets. Department activities that may be covered by the annual registration fee include but are not limited to: Advisory Council meetings, stakeholder meetings, internal meetings where the Department is exclusively discussing concerns or evaluating program design and regulation, conferences where EPR is a topic or that are related to program design and regulation, the cost of registering any EPR trade groups, and membership fees for councils and organizations where EPR is a prevalent topic as well as time spent preparing any notes associated with or followup responses to these meetings or Advisory Council meetings. The Department's attendance or participation in meetings (e.g., internal, stakeholder, advisory council), joining trade groups, participation in council memberships and attending conferences where EPR is discussed related to packaging or paper products is in support of regulation development or alignment with program execution.

For the initial registration fee due by July 1, 2026, the fee amount associated with developing and implementing regulations includes costs incurred by the Department as of

June 1, 2025 through June 30, 2026 and estimated costs for activities during July 1, 2026 through June 30, 2027. For annual registration fees due beginning July 1, 2027 and thereafter, the fee amount associated with developing and implementing regulations will be based on anticipated costs determined by the Department for their upcoming fiscal year.

*Note: when seeing 'fiscal year' in this document, if it is describing the State of Maryland's fiscal year it refers to July 1 through June 30. Other fiscal years may refer to a producer or the Producer Responsibility Organization and those may vary from the State's.*

Are there any restrictions associated with Maryland's registration fees?
The PRO may not charge its member producers registration fees, collectively, more than the amount it is required to pay to the Department for registration in Maryland.
Additionally, fees may not be prorated due to termination, acquisition or merger of a PRO or producer.

How do I submit my registration?

- If I'm a PRO?
  For approved PRO, annually you must register with the Department, electronically, either on a form provided or approved by the Department by no later than June 30th annually.
- If I'm a producer participating under an Individual Producer Responsibility Plan?
  Producers who are individually responsible for their producer responsibility plan must submit registration materials, electronically, on a form provided by or approved by the Department by no later than June 30th annually.

What happens to a producer who is new to the market or who failed to register in the timeframe required?

- By July 1, 2026 and in subsequent years through July 1, 2028: Before distributing their product in the State, producers who are new to the market must register with an approved PRO if they are joining a PRO, or they must register with the Department if they are submitting an IPP.
- On or after July 1, 2028: Before distributing their product into the State, producers who are new to the market shall either register with a PRO that has an approved producer responsibility plan on file with the Department or submit an IPP to the Department for approval and register with the Department. Prior to distribution the Department must approve the IPP and registration documents.
- For those who fail to register in accordance with the timeline, the Department will provide notice of corrective action. Corrective action will describe back payment for registration and reporting requirements. Failure to complete corrective actions may subject producer(s) to penalties and enforcement provisions.
- If a producer responsibility organization becomes aware of an entity who is likely a producer who has failed to register, the PRO shall notify the Department of this entity and provide their contact information to the Department.

## Alternative Collection Programs

What is an alternative collection program?

An alternative collection program collects and manages a specific type or types of covered material sold, offered for sale, or distributed for sale in or into the State by a producer or group of producers. It is developed and operated by a PRO, producer, or a group of producers. It may be awarded reduced fees if it meets the following criteria:

**Criteria for Approval of Alternative Collection Systems**

- Self-certification that the final destination is for recycling and is going to a responsible end market, as defined in COMAR 26.04.14. Self-certification must be reported for the previous calendar year to the Department or a producer responsibility organization annually.
- Meeting the following convenience standards:
  - Provide year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each of the 23 counties and Baltimore City
  - At least 50-percent of the weight of the covered material sold or distributed in Maryland in the previous calendar year must be collected and managed according to the requirements of this regulation.
  - Geographically, at least 90% of the residents of the State shall have a collection site within a 15-mile radius; and those collection sites shall be provided year round.
  - Unless otherwise approved by the Department one additional collection site shall be established for every 50,000 residents.
  - Note: there may be instances where the Department approves an alternative convenience standard (see COMAR 26.04.14.08)
- Provide compensation for alternative collection program siting for any program operations with contractual approval between all parties. Program operation includes training, education and educational materials specific to that site, transportation, equipment, and reporting. For example, if an alternative collection program is setting up dropoff stations at a retail location, they must pay for the training needed by employees to be able to provide accurate information to the public, signage at that dropoff location, any additional educational materials, the pickup of those materials (transportation), bins or other equipment needed to collect the material, and any reporting that is done by the retailer to the alternative collection program about material collected or transported. This would be outlined in a mutually agreed upon and signed contract between the retailer and the alternative collection program.
- Provide program coordination that includes education and outreach, signage and messaging, collection, transportation, and reporting.
- Provide a list of collection sites that may include special events, private sites, curbside, mail back and backhauling provided to the Department.
- Other requirements as identified by the Department during review of the alternative collection program application.

Are there registration costs associated with an alternative collection program?
Standard registration fees are not impacted by a producer's decision to join or form an alternative collection program. Producers participating in an alternative collection program, like all other producers, must pay registration fees through the process outlined in Registration Requirements according to the kind of producer responsibility plan they are seeking approval for, whether that is:

- Joining a PRO with an approved producer responsibility plan; or
- Obtaining approval for an IPP.

Additionally, at the time an application for an alternative collection program is submitted to the Department, a producer or the PRO shall submit an amount sufficient to cover any estimated costs to the Department associated with approving and analyzing the program in the upcoming fiscal year. A prorated amount will be provided to the applicant (either an individual *or* the PRO) by the Department.

When can an alternative collection program be formed?
An alternative collection program can be formed on or after July 1, 2026.

## Record Keeping, Reporting and Production of Records

All books and records necessary to ensure compliance must be maintained for a minimum period of 5 years in accordance with State and Federal Laws. This applies to producers, any approved PRO, and any person administering an IPP approved by the Department.

At any given time, documents and records must be available within 15 business days or a specified timeline provided by the Department for Department review. This may include records related to the calculation and payment of producer responsibility dues, recycling rates, collection rates, post consumer-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.

To ensure compliance, a producer must make all information available related to the calculation of payments for PRO dues and the rates associated with recycling, collection and post-consumer-recycled content. There may be additional information the Department requests to evaluate compliance.

Producers must also report the necessary information to meet plan obligations in a PRO plan to their PRO and the Department has the ability to review data submitted. If a producer has an approved IPP, all necessary information shall be submitted to the Department. In both cases, if producer state-specific data is not available or feasible to generate, a producer may use prorated national data upon approval from the Department.

Due to the fiscal impacts of this law, the Department may request, at any time, an audit of financial records of a PRO or a producer with an approved IPP. This evaluation must be completed by an independent financial auditor as designated by the Department. This evaluation must ensure available funds are sufficient to cover the costs of the approved

plan. The PRO, or the producer, depending on what type of fiscal assessment is required, must provide to the Department at least three bids form an independent financial auditor for the Department to choose from. Audits will be financed by the producer or PRO depending on whose finances are being assessed.

Financial, production and sales data reported will be kept confidential and may not be subject to personal inspection nor public information requests. If a producer is a member of a PRO, the PRO must maintain the same confidentiality and disclosure, except to the Department if requested.

If the Department determines there are other reporting requirements considered necessary, they will be provided to the producer or a PRO and will need to be addressed during the approval process or in a plan revision.

Exemptions
Producers who believe they meet the criteria for an exemption must be able to provide evidence and demonstrate that they are exempt. Supporting documents and records evidencing the exemption must be made available to the Department and the PRO upon request.

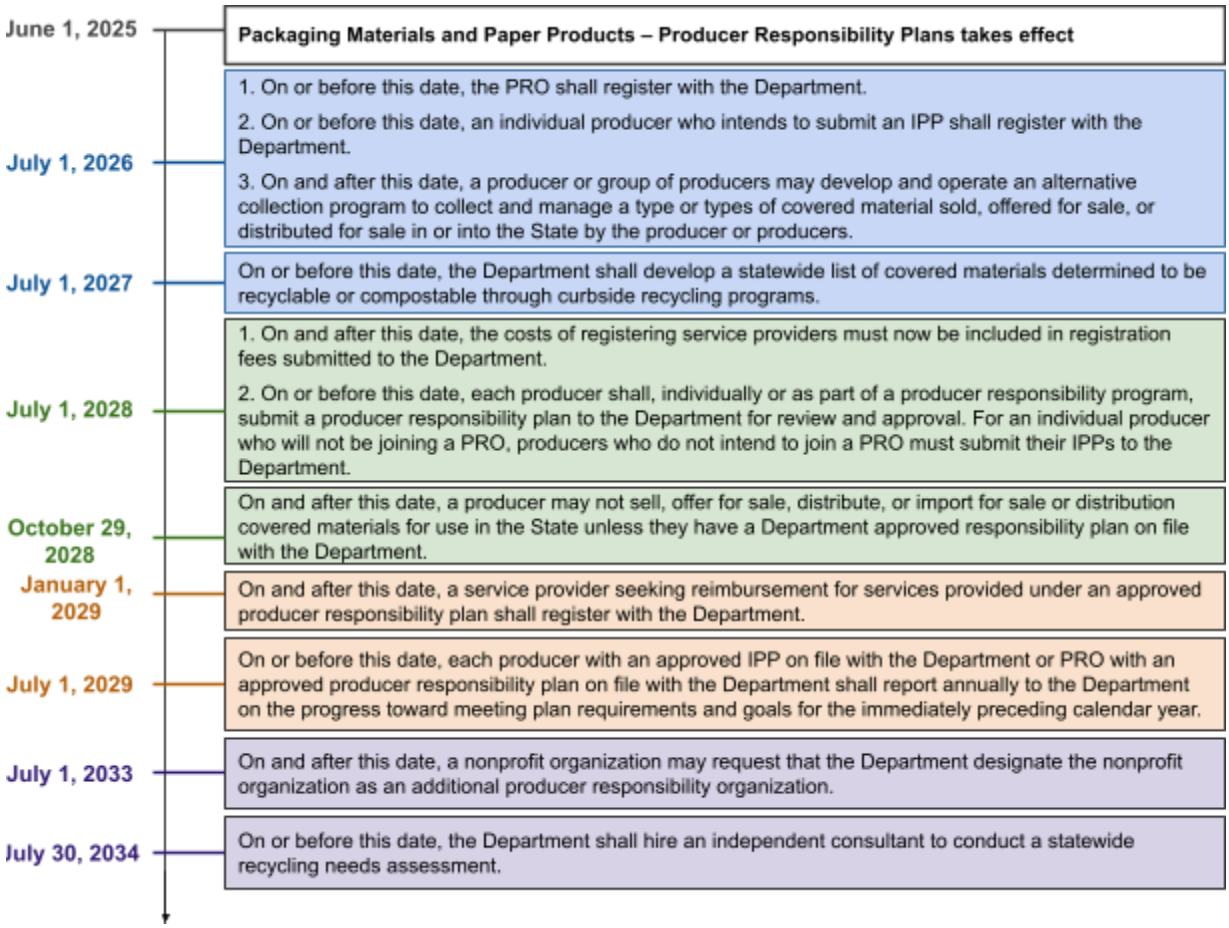
## Timeline

Three dates are clarified in associated regulations:

1. Annual Registration: July 1, 2026.
   *For a PRO*: Beginning on this date and each year thereafter, the PRO approved under section §9-2502(a) of the Environment Article shall file a registration form with the Department and pay an annual registration fee, as outlined within the Environment Article and regulations. Member producers will likely need to provide information required for PRO registration to the PRO at an earlier date determined by the PRO.
   *For an individual producer who will not be joining a PRO:* Beginning July 1, 2026, and each year thereafter, producers who do not intend to join an approved PRO shall file a registration form with the Department and pay an annual registration fee, as outlined within this chapter.
2. IPP Deadline: July 1, 2028
   *For an individual producer who will not be joining a PRO:* By July 1, 2028 or by a later date identified by the Department, producers who do not intend to join a PRO must submit their IPPs to the Department.
3. Non-Compliance Ban: October 29, 2028
   *For all producers:* Beginning October 29, 2028 or by a later date identified by the Department, a producer may not sell, offer for sale, distribute, or import for sale or distribution covered materials for use in the State unless they have an approved responsibility plan on file with the Department for each covered material sold or distributed into the State for which they are considered a producer.

Note: The PRO is responsible for meeting the dates identified in statute and regulation. To ensure these dates are met, the PRO will likely set earlier internal dates for its member producers to submit information.

Below is a timeline of key dates described in regulations and the Environment Article. The dates in the timeline below only mark the first time each activity occurs; many activities occur regularly on an annual basis or another recurring period of time. More detail about the specific requirements associated with each date can be found throughout this guidance document, as well as in regulations and the Environment Article:




## Enforcement

The Department may take enforcement actions for failure to comply with the requirements of the law and regulation and any orders issued under Environment Article §9-2505.

Penalties that a producer or PRO must pay to the Department are defined in Environment Article §9-2505 and are based on first violation, second, third and subsequent. Penalties may not be imposed unless the Department first issues a written notice of violation and if the violation is not corrected within 60 days after receipt of the notice. For every day that a violation continues after the 60-day period, that constitutes a separate violation.

All penalties collected are to be paid into the State Recycling Trust Fund as defined in Environment Article §9-1707.

## Advisory Council

In 2023 Environment Article §9-2503 was established, which defined the purpose of an Advisory Council (Council). Environment Article §9-2503 was modified in 2025 and COMAR 26.04.14.12 further clarifies membership and voting for the Council.

Council Stakeholders

The Council may range in size from 15 to 25 members representing a broad range of interested stakeholders. In the event that the Secretary of the Department requires a change in this number, they will provide information about this change via public notice.

Stakeholders for the Council must include, at a minimum, representatives from

- Local government agencies responsible for recycling programs
- Recyclables and compostable materials collectors from both the public and private sectors
- Recycling processors from both the public and private sectors
- Organics recycling processors
- Producers from the consumer goods sector
- Retail and small businesses
- Material–oriented trade groups
- Representatives of at least two nonprofit organizations in the State with missions related to reducing waste
- Representative of an environmental advocacy organization
- Representative of an advocacy organization that advocates on behalf of overburdened or underserved communities, as defined in Environment Article §1–701
- Members of the public who reside in the State
- A representative of a PRO approved by the Department (**non-voting**)
- The Department (**non-voting**)

This list is a minimum list and is non-exhaustive. This can include other such sectors that are applicable and may fill the described stakeholder description (e.g., reuse service providers).

Membership

A member is considered an individual person selected by a stakeholder to represent their material industry group, materials management group, environmental advocacy group or a PRO. Membership also refers to an individual person who is a member of the public but does not represent one of these stakeholder groups.

The Secretary is responsible for making appointments to the advisory council. Within the proposed range of 15 to 25 members, the Secretary may make appointments without

providing public notice. If the Secretary makes an appointment that falls outside of the specified range, the Department must provide a public notice of 30 days.

Appointments to the Council are for four years, excluding the Department and the PRO unless there are multiple approved PROs in the state. If there are multiple approved PROs, there may only be one PRO member representative appointed for each PRO.

If, at any point, the person who is a member, vacates due to resignation from their stakeholder group, death, or departure from elective office, the vacancy may be filled by a new representative of that same organization upon Department approval. That person's term though only may be fulfilled from the original members four year period.
*Example*:

- Member A is the original member, and their term begins June 1, 2026 concluding May 31, 2030
- Member A leaves Industry Cor Org on June 22, 2027
- A request to fill Member A position is filed to the Department June 15, 2027. <u>If approved</u> Member A1 fills in Member A role until May 31, 2030.
- Member A1 leaves Industry Cor Org October 4, 2029
- A request to fill Member A1 position is filed to the Department October 1, 2029. <u>If approved</u> Member A2 fills in Member A role until May 31, 2030.

Members may be appointed additional terms at the discretion of the Department for up to an additional two years, however, they may not serve a contiguous six years of service. If a member departs their organization, the Department may allow the member to fulfill a different stakeholder role if there is one vacant and aligns with the qualifications of said person. The Department may terminate any person's membership if they: no longer meet the requirements under which they are elected or appointed, fail to or are unable to participate in committee work, or have violated any state, federal, or local laws or regulations.

<u>Participation</u>
Members must attend at least ⅔ of the regular meetings annually. A member may designate an alternate member-advisor to attend a meeting on behalf of the member if the Department is notified 24 hours prior to regular meetings; however, those alternate member-advisors may not attend in place of the appointed member for more than ⅓ of the annual meetings.

In order for the Council to establish a quorum, a majority of voting members of the Council members must be present to constitute an official meeting and establish a quorum to vote. Neither the Department nor the representative of an approved PRO may count as voting members of the quorum count. If a majority of voting members are not present, the Council may still convene but are unable to vote on recommendations. When voting, members may either vote Yay, Nay or Abstain. If a Council member is present at the meeting but does not cast a vote, it is assumed that members vote to abstain.

Application and Criteria for Membership

In order to be considered to be a member of the Council, an application must be submitted to the Department

- In a request via appointment nomineer questionnaire; and,
- A letter sent to mde.epr@maryland.gov including:
  - Resume
  - Request to fill a one of the specific stakeholder groups listed above
  - Any additional information that may be requested in response.

Applicants will then be reviewed by the Department.

In order for a person to become a member of the Council, they must represent a stakeholder sector not already represented, or an uneven representation of a sector on the Council. There must be an evenness of representatives between material industry groups, materials management groups, environmental advocacy groups and the general public. The Department may establish additional requirements for criteria of membership to the Council, and final approvals and additions to the Council are at the discretion of the Department.

---

## Frequently Asked Questions

Definitions

1. What does the Department define as “food serviceware”?
   - There is no statutorily defined nor rule defining “food serviceware” however the Department recognizes that food serviceware is associated with **the delivery of food** designed to be filled at the point of sale, such as bags, to-go containers, dinnerware, utensils, and straws. This list can include items such as, but not limited to:
     - Plates, bowls, cups, mugs, and other products used to contain food or beverages
     - Cup and other container lids for foods and beverages
     - Hot cup sleeves
     - Wrappers for takeout food items, including foils
     - Utensils (knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers)
     - Straws
     - Condiment packages
     - Napkins
     - Trays, for example drink cup carrier trays

2. I own/operate a restaurant in Maryland, and I provide or distribute food serviceware, does this law apply to me? This question has a few follow ups that would also need to be considered, including the following separate list below - these are not intended to be a logical list.
   - Is this restaurant solely operated in Maryland?

- Are you a franchise that has a headquarters outside of Maryland with locations inside of the state?
- Is there an agreement executed with another entity that has assumed responsibility for the food serviceware?
- Do you distribute or provide food serviceware?
- Are you licensed under Title 2 of the Alcoholic Beverages and Cannabis Article?
- Do you have $10M in global gross revenue or more during the immediately preceding calendar year?
- Do you otherwise meet the definition of a "producer" and does the material you produce otherwise meet the definition of a "covered material" (i.e. are there any other exemptions that apply?)

Depending on your answer to this variety of questions, the restaurant may be a producer. Please contact the Producer Responsibility Organization or seek legal advice.

3. I think my business meets the definition of de minimus. What does the Department consider as 'global gross revenue'?
   - Maryland Tax Article, §7.5-101 defines annual gross revenue as income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles.

4. Why don't these regulations provide a written description for "compostable packaging" but instead reference other definitions in Code of Maryland Regulation (COMAR) and the Environmental Article?
   - The management of compost operations, including certifications for operators and the product itself, are already regulated in the Environmental and Agricultural Articles and in COMAR 26.04 and 15.18.
   - Existing definitions are referenced in order to promote alignment and cohesion across existing statutes and regulations, and to avoid conflict and prevent unintended consequences for those operating or involved in this industry.

5. If paper products are unsanitary for a material recovery facility or an alternative collection facility to accept, but they can be composted, are they considered a 'paper product'?
   - Yes, they may still be considered a paper product if a composting facility accepts them. Examples of unsanitary paper products not accepted at a material recovery or alternative collection facility that could be accepted by a compost facility would include manure covered paper, paper that is too wet for acceptance at a materials recycling facility (MRF), food coated paper, etc. If the paper product endangers the health of persons at a composting facility it would not be considered a covered material (i.e., diapers).

6. Do paper products include wood?

- A raw wood product such as landscape mulch created from ground yard materials, a staircase spindle, or a wooden jewelry box are not considered a paper product. The definition of “paper products” specifies that paper products are “made primarily from wood pulp or other cellulosic fibers”.

7. What does the Department consider bioplastics to include?
   - Bioplastics include materials made from renewable sources (such as plant or algae-based bioplastics) and are meant to replicate characteristics of plastics and are not manufactured from non-renewable resources such as fossil fuel. The definition of bioplastics is in COMAR 26.04.14.02B(4).

8. What does the letter “ICI” stand for?
   - ICI, in industry standards, represents ‘industrial, commercial, and institutional’. They are used in a variety of reporting and/or representations for types of wastes. Examples of entities that fall into this category would include those such as manufacturing, retail and universities.

9. In the definition of ‘exempt materials’ some exemptions indicate only *primary* packaging, what is the Department referring to here?
   - In cases where the Department has placed ‘primary’ in front of the word packaging in the exempt materials category, the Department recognizes those were intentionally exempted by the legislature; however, secondary and tertiary packaging associated with that specific exemption is not exempted.
   - Example: Primary packaging for infant formula, as defined in 21 U.S.C. § 321(z). An example is given on the next page.

Image source: Enfamil

*In the image above, the box is considered secondary packaging as it is not directly in contact with the product of the infant formula; however, the bottle is the primary packaging as it is in direct contact with the product and therefore is exempt under definition COMAR 26.04.14.02B(16).

Covered Materials

10. Are materials that are sold empty but are designed to be used by a consumer for personal, non-commercial use to protect, contain, transport, serve, or facilitate the delivery of a product (e.g. freezer storage bags sold in bulk at a grocery store or a water bottle sold empty) considered "packaging"?
    - The Department has determined that if the material is **empty at time of sale/distribution** and is intended for **non-commercial personal use**, it is *not* identified as packaging. For example, a box of Ziploc© sandwich bags are not individually considered packaging if intended to be used by the consumer at their household; however, the packaging the ziplocks were sold in bulk to the consumer would be considered packaging. See illustration below.

Image source: Target

11. Are disposable bags with an associated bag fee a covered material?
    - Yes, packaging materials with corrective taxes placed on them (e.g. a fee placed on grocery store single use bags) and that are filled or used as packaging at the time of sale are considered packaging. Service packaging is designed and intended to be filled at the point of sale, including carry–out bags, bulk goods bags, and take–out and home delivery food service packaging.

12. Some packaging is made of paper. Is this packaging considered packaging or a paper product?
    - Material that meets the definition of "packaging" and made of paper is considered packaging and is not considered a paper product. This is stated in COMAR 26.04.14.02B(22)(c):

        (c) "Paper products" does not include:

        (i) Bound books;

        (ii) Products that are not accepted by materials recycling facilities or composting facilities because of the unsafe or unsanitary nature of the products; or

        (iii) Paper products that also meet the definition of packaging in this regulation."

- Materials that are empty at the time of sale are not considered packaging (as stated in COMAR 26.04.14.02B(21)(c)). If such materials meet the definition of a "paper product", they are considered a paper product.

13. Are labels considered packaging or paper products?
    - Shipping labels, labels with universal product codes (UPCs), and labels with stock keeping units (SKUs) are considered packaging as they "facilitate the delivery of" products. Additionally labels that "sell in bulk, brand, 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.

14. Are plastic debit cards, credit cards, and gift cards with or without chips covered materials?
    - Plastic debit cards, credit cards, and gift cards with or without chips do not meet the definition of "packaging" or "paper products"; therefore, they are not considered a covered material.

15. Items sold, offered for sale, or distributed are available for purchase by retail consumers and commercial accounts. How do I distinguish which are "covered materials"?
    - Covered materials that are packaging are a material, a substance, or an object that is used to protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product to the consumer for personal, noncommercial use and that is sold, **offered for sale**, imported, or distributed in the State.
    - If items are available for retail, they are all considered a covered material "sold in or with packaging at a physical retail location in the State," even if some are purchased through commercial accounts as they are "offered for sale" to consumers.

Categories of Covered Materials for Registration

16. How should my covered material be categorized if it is a paper product that is also certified compostable?
    - If my paper packaging is intended to be used as food serviceware and is appropriately and intentionally labeled as compostable according to the standards outlined in COMAR 26.04.14, it should be reported under "Certified Compostable Organics". It should NOT be reported under "Wood and Other Organics" nor "Paper".

17. How should my covered material be categorized if it fits into multiple categories?
    - If you have a material that fits into multiple categories, follow the list of covered materials linearly. If in doubt, place a material in the most specific appropriate category and discuss with the PRO and the producers legal counsel.

18. What does a 'majority' component mean?
    - This is the component that makes up the majority of the packaging or paper product by volume. For example, if the packaging is 30% plastic, 25% metal, and 45% paper by volume, the majority component would be paper. Note that *this only applies to multimaterial packaging* in which the components are not designed to be separated by the consumer. Additionally, note that some multimaterials should be reported into specific categories rather than categorized based on their majority component. Follow the categories of covered materials linearly to make an appropriate determination regarding what category covered materials should be reported into for registration.
    - When considering the volume of a material, MDE has identified the following standards that are approved for use in identifying appropriate volume to weight conversion factors: US EPA and New Hampshire Department of Environmental Services. If there is material that is not addressed in these Department approved standards that a producer would like to be considered, please contact the Department at MDE.EPR@maryland.gov with this request and consideration.

19. Are covered materials required to be labeled for registration?
    - Certain materials require a specific label to ensure they meet applicable criteria. One such example is certified compostable food serviceware that requires specific labeling in order to register under that category. Other materials may not need to be labeled for registration. For example, resin Identification Codes (RICs) are not required for registration.

      Example: A plastic detergent bottle is made of PET with a colorant and there is no resin identification code (RIC). In this case, the covered material would need to be reported under "*Rigid Plastic, PET, Pigmented or colorant-containing bottles, jugs, and jars*" at the time of registration, even though it is not labeled with a RIC.

20. Is packaging for products that are installed by a technician a covered material?
    - There is no mandated Statewide or Federal standard requiring that all packaging associated with products that are installed by a technician must be managed by the technician or another entity other than the consumer. The definition of a covered material should be referenced when determining whether the material meets the definition of packaging, including that it is sold or supplied with the product to the consumer for personal, noncommercial use. If it meets the definition of packaging, the material is considered a covered material.

<u>Exempt and Excluded</u>

21. Are over-the-counter prescription bottles exempt?
    - The bottle itself would be exempt if the bottle is in direct contact with the prescription product; however, any secondary or tertiary packaging associated with it would not be exempt. Note, this only applies if the prescription product is regulated by the FDA as a drug, as described in the definition of a producer. If it is <u>not</u> regulated by the

FDA, then the packaging in direct contact with the product would be considered a covered material and would not be exempt.

22. Some companies have deposit return programs set up for their business (i.e. milk bottles that can be returned to a grocery store or other location for a reimbursement once consumed). Are these materials exempt?
    - Only materials covered under a legislatively mandated deposit return system would be considered exempt. Companies that have an existing deposit return system in place may qualify as an alternative collection program, with approval from the Department.

23. All materials degrade with use to some degree; what qualifies as “long-term packaging”?
    - The Department recognized that slight degradation is inevitable, even for exceptionally long-lasting products. This language applies to packaging for products that typically diminish in quantity or degrade beyond the ability to be used further within 5 years of regular use. For example, standard sandpaper, when regularly used, quickly loses its usefulness and must be replaced. Something like a power tool, which is intended to be used repeatedly for personal use throughout a significant portion of an adult’s lifetime (more than 5 years), degrades slowly and minimally and typically lasts more than 5 years, even when used regularly.

24. Is there a difference between exempt and excluded materials?
    - Neither exempt nor excluded materials are covered materials under this law.

<u>Alternative Collection Program</u>

25. If I decide to join or create an alternative collection program, am I still required to join an approved PRO or submit an IPP?
    - Yes, All producer(s) of covered materials must be a registered member of an approved PRO or must have an approved IPP.
        - An alternative collection system may be formed by an individual producer
        - An alternative collection system may be provided by a group of producers.
    - A group of producers who are members of an alternative collection program may not collectively submit an IPP for this program.
    - A group of producers forming an alternative collection system must be registered members of a PRO, or must have an independent IPP for each producer, or a combination of both with a Department approved plan on file.

26. If I decide to join or create an alternative collection program, do I need to pay any fees to the Department?
    - You will still need to pay fees associated with registration, fees associated with Department review of the proposed alternative collection program, and any other fees identified in regulation. Registration fees and fees associated with Department review of the alternative collection program will not be reduced. However, other fees

may be reduced, if the requirements outlined in regulations are met and if approval is granted by the Department.

27. If a producer joins an alternative collection program, but is also a producer of other covered materials not covered by the alternative collection program, do they need to take any additional action?
    - All producers, including those who participate in an alternative collection program but are also producers of covered materials that are not covered under an alternative collection program, must join a PRO or submit an IPP for all covered materials and register all covered materials.

28. Can an alternative collection program be formed to collect and manage multiple types of covered material?
    - Yes, an alternative collection program may manage multiple types of covered material

29. Can an alternative collection program establish a new program?
    - Yes. Environment Article §9–2505, Annotated Code of Maryland states that “a producer or group of producers may develop and operate an alternative collection program”. The term “develop” implies that a program can be new. .

30. When can I submit my alternative collection program to the Department and/or the PRO for consideration?
    - COMAR 26.04.14.08 defines the process for the Alternative Collection Program, including necessary fees provided to the Department for review. Alternative Collection Programs may begin to be established after July 1, 2026.

---