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Under section 32 of the *Clean Environment Act*, the Lieutenant-Governor in Council makes the following Regulation:

PART 1

INTERPRETATION

Citation

1 This Regulation may be cited as the *Designated Materials Regulation – Clean Environment Act*.

Definitions

2 The following definitions apply in this Regulation.

“Act” means the *Clean Environment Act. (Loi)*

“Board” means the stewardship board referred to in section 5. (*commission*)

“brand” any mark, word, name, symbol, design, device or graphical element, or a combination of them, including a registered or unregistered trade-mark, which identifies a product and distinguishes it from other products. (*marque*)

“brand holder” means a person who owns or licences a brand or who otherwise has rights to market a product under the brand. (*titulaire de marque*)

“consumer” means a person who uses a designated material for the person’s own purpose, and not for the purpose of resale. (*consommateur*)

“designated material waste” means designated material that is no longer required or can no longer be used for its original purpose. (*déchets de matière désignée*)

“marketplace facilitator” means a person who, either with or without remuneration,

(a) establishes or assists in the establishment of a retail market;

(b) collects payment from a consumer, directly or indirectly, on behalf of a retailer. (*facilitateur de marché*)

“producer” means a producer of a designated material referred to in section 4. (*producteur*)

“producer responsibility organization” means a non-profit organization designated by a producer to act as its agent with respect to the obligations imposed on a producer under the Act and this Regulation. (*organisation de responsabilité des producteurs*)

“registrant” means a person who holds a registration granted by the Board under subsection 16(2). (*titulaire d'immatriculation*)

“retailer” means a person who sells or offers for sale a designated material in the Province to a consumer. (*détaillant*)

“return facility” means a collection facility designated in an approved stewardship plan that accepts designated material waste from persons who wish to return it. (*point de récupération*)

“tire supplier” means a person who supplies tires within the meaning of section 3. (*fournisseur de pneus*)

Supply of tires

3(1) For the purposes of this Regulation, a person supplies a tire within the meaning of subsection 14(1) and Part 4 if the person transfers or offers to transfer any interest in a tire by any of the following means:

- (a) sale, whether conditional or otherwise;
- (b) exchange;
- (c) replacement;
- (d) barter;

- (e) lease or rental, whether with an option to purchase or otherwise; or
- (f) gift.

3(2) Despite subsection (1), a person shall not be deemed to supply a tire who transfers for the sole purpose of creating a security interest within the meaning of the *Personal Property Security Act* or the *Bank Act* (Canada).

Producers of other designated materials

4(1) For the purposes of this section, “permanent establishment” means a permanent establishment within the meaning of

- (a) in the case of a corporation, subsection 400(2) of the *Income Tax Regulation* (Canada), and
- (b) in the case of an individual, subsection 2600(2) of the *Income Tax Regulation* (Canada).

4(2) Producers of designated materials referred to in subsection 14(2) and Part 5 shall include the following persons:

- (a) the brand holder of a designated material, if the brand holder has a permanent establishment in Canada;
- (b) in the absence of a person referred to in paragraph (a), the importer of the designated materials into New Brunswick, if the importer has a permanent establishment in New Brunswick; or
- (c) in the absence of a person referred to in paragraph (a) or (b), the retailer of the designated material that provides the designated material to the consumer.

4(3) For the purposes of paragraph (2)(c), when a retailer sells designated materials by means of a physical or electronic marketplace that is owned, controlled or operated by a marketplace facilitator, the marketplace facilitator shall be deemed to be the retailer.

4(4) When a producer determined in accordance with subsection (2) is an enterprise operated in whole or in part under a franchise agreement, the producer shall be deemed to be the franchisor referred to in the agreement if the franchisee has a permanent establishment in the Province.

4(5) If the producer referred to in subsection (2), (3), or (4) is exempt from an obligation with respect to a designated material under Part 5, the responsibility of the producer with respect to that obligation shall be divided among all other producers of that designated material.

PART 2

RECYCLE NEW BRUNSWICK

Continuation of the Board

5 The stewardship board established by the Minister under section 22.1 of the Act and known as Recycle New Brunswick is continued.

Appointment of members

6(1) The Board shall consist of not less than five and not more than 12 members appointed by the Minister.

6(2) A member appointed to the Board shall be ordinarily resident in the Province.

6(3) The Minister may appoint a member to the Board for a term not exceeding three years and may reappoint the member for one additional term not exceeding three years.

6(4) The Minister may revoke the appointment of a member for cause.

6(5) The members shall appoint from among themselves a chair and a vice-chair of the Board.

6(6) The members may

- (a) revoke the appointment of a chair or vice-chair of the Board, and
- (b) reappoint a chair or vice-chair of the Board.

6(7) If one or more of the positions on the Board is vacant and, as a result, there are not sufficient members to constitute a quorum, the Minister may appoint a temporary member to any or all of the vacant positions.

6(8) The term of a temporary member expires not later than the day on which the position held by the temporary member is filled under subsection (1).

Powers of the Board

7(1) With respect to the purposes set out in subsection 22.1(1) of the Act and subject to the Act and this Regulation, the Board has the capacity, rights, powers and privileges of a natural person.

7(2) For the purposes of the Act and this Regulation, and without limiting the generality of subsection (1), the Board may

- (a) acquire, hold, own, lease, use, license or otherwise deal with real or personal property,
- (b) subject to the provisions of the Act or any other Act and to the provisions of regulations made under the Act or any other Act, finance any of its undertakings through fees and through any other means as may be approved by the Lieutenant-Governor in Council,
- (c) make and amend arrangements and enter into and amend agreements and contracts with
 - (i) the Government of Canada or the government of any province, or territory or other legislative authority,
 - (ii) a local government in the Province, or
 - (iii) any other person,
- (d) establish and administer, with respect to the manufacture, importation, distribution, sale, supply, offering for sale or supply, packaging, labelling, use, storage, collection, transportation, recycling, processing, disposal or other handling of a designated material,
 - (i) a management program, or
 - (ii) an oversight program,
- (e) operate storage, collection, transportation, recycling, processing or disposal facilities for a designated material,
- (f) employ persons, establish their conditions of employment and provide for and pay their compensation and reimbursement,

(g) engage the services of advisors and persons providing special, technical or professional knowledge or services and provide for and pay their compensation and reimbursement, and

(h) do any other things as may be incidental to or necessary for the carrying out of its purposes.

By-laws

8 The members of the Board shall make by-laws with respect to the following matters:

- (a) establishing its fiscal year;
- (b) regulating its administration and generally for the conduct of its business and affairs;
- (c) establishing the rules of procedure for its meetings, including establishing the number of members required to constitute a quorum, which number shall not be less than 50% of the total number of members appointed under subsection 6(1);
- (d) respecting the appointment of officers of the Board and providing for reimbursement of their expenses; and
- (e) subject to subsection 11(2), establishing rules for its members respecting conflicts of interest.

Budget

9(1) In each fiscal year, the Board shall prepare and approve a balanced annual operating budget for the next fiscal year.

9(2) Despite paragraph 7(2)(b), in any one fiscal year the Board may borrow for operating expenses a sum not exceeding 25% of its most recently approved annual operating budget without first obtaining the approval of the Lieutenant-Governor in Council.

9(3) The Board shall carry forward any surplus or deficit occurring at the end of a fiscal year into the next fiscal year.

9(4) Despite subsection (3), the Board may accrue surplus funds occurring at the end of any fiscal year in a reserve fund, which shall be used to fund the reduction or elimination of the fee payable under sections 33 and 47 in a manner compatible with the purposes of the Board.

Reimbursement of members

10(1) The following definitions apply in this section.

“board-assigned activity” means, when used in relation to an activity of a member of the Board, an activity by which the member represents the Board, investigates or researches a matter or carries out any other action assigned to the member as an individual or as a member of a group by a resolution of the Board as recorded in the minutes of the meeting of the Board. (*activité assignée*)

“Board meeting” means a meeting of the Board or subcommittee of the Board called in accordance with the by-laws. (*réunion de la commission*)

10(2) A member of the Board shall be reimbursed in accordance with the Travel Expenses Policy issued by the Treasury Board, as amended, for travel expenses incurred in the performance of an assigned activity or to attend a meeting of the Board.

10(3) A member, other than an employee under the *Civil Service Act*, is entitled to be paid an honorarium by the Board of \$175 per day for Board meetings attended by the member.

10(4) The Board shall not, directly or indirectly, pay any member any compensation or other consideration in relation to the member's activities as a member, other than the reimbursement for expenses permitted under subsection (2) and the honorarium permitted under subsection (3).

Other financial matters respecting members

11(1) The Board shall not give any financial assistance, directly or indirectly, to a member, an officer or an employee of the Board.

11(2) No person shall be employed by, contract with, act as an agent for or otherwise provide goods or services to the Board in exchange for any direct or indirect consideration

(a) while holding office as a member, or

(b) during the period of one year following the end of the person's term of office as a member, regardless of whether the person served the entire term.

Advisory committees

12 The Board may establish one or more committees to advise it on matters in relation to the development, amendment or implementation of

(a) a tire management program, or

(b) any other designated material stewardship plan.

Annual report

13(1) Before September 1 of each year, the Board shall submit to the Minister an annual report which shall include the following information and documents:

- (a) with respect to the tire stewardship program,
 - (i) the number of tires supplied by all tire supplier registrants,
 - (ii) the amount of fees remitted to the Board, including the amount of interest on outstanding fees and the amount of penalties,
 - (iii) the number of scrap tires collected,
 - (iv) the number of scrap tires processed,
 - (v) the cost of the collection and processing of scrap tires,
 - (vi) the results of any inspections conducted under this Regulation,
 - (vii) a description of all compliance activities,
 - (viii) a description of other related activities of the Board, and
 - (ix) a description of emerging trends in the field of scrap tire management;
- (b) with respect to any other designated material stewardship programs,
 - (i) the amount of fees remitted to the Board, including the amount of interest on outstanding fees and the amount of penalties,
 - (ii) the results of any inspections conducted under this Regulation,

- (iii) a description of all compliance activities, and
- (iv) a description of other related activities of the Board;
- (c) a summary of each annual report submitted by a producer;
- (d) a copy of the Board's audited financial statement for the previous fiscal year; and
- (e) any other information required by the Minister.

13(2) The Minister shall submit the Board's annual report to the Legislature each year.

13(3) The Board shall maintain all of the annual reports submitted to the Minister under subsection (1), and shall make copies of them available to the public on its website.

PART 3

PROHIBITIONS AND REGISTRATION

Prohibitions

14(1) No person shall supply a new tire as defined in section 25 to another person in the Province unless the person holds or acts under the authority of a tire supplier registration that is not suspended or cancelled.

14(2) No person shall sell, offer for sale or distribute a designated material referred to in Part 5 to a person in the Province unless the person holds or acts under the authority of a producer registration that is not suspended or cancelled.

Exemptions

15 The Board may, in the manner it considers appropriate, exempt a tire supplier or a class of tire suppliers from the requirement to register with the Board if the Board is satisfied that another tire supplier registrant shall, in accordance with this Regulation,

- (a) report the supply of tires by an exempted supplier or class of suppliers, and
- (b) remit the fees normally payable by the supplier in relation to those tires.

Application for registration

16(1) An application for registration shall be on a form provided by the Board and shall contain the following information:

- (a) the name of the applicant;
- (b) whether the applicant is applying for registration as a tire supplier or producer, and in the case of a producer, the designated material concerned;
- (c) the location of the head office of the applicant and its main place of business within the Province;
- (d) the name, address and telephone number of the person to whom any correspondence or inquiries should be directed; and
- (e) if an applicant is a producer, the name, address and telephone number of any producer responsibility organization acting as an agent on behalf of the producer for the purposes of this Regulation.

16(2) If satisfied that an applicant is in compliance with the Act and this Regulation, the Board may grant, as the case may be,

- (a) a tire supplier registration, or
- (b) a producer registration for one of the designated materials in Part 5.

Notice of change of information

17 A registrant shall notify the Board within 10 days of any change to the information provided in accordance with subsection 16(1).

Refusal of application for registration

18 The Board may refuse an application for registration in the following circumstances:

- (a) the Board is satisfied that the applicant has violated a provision of the Act, the *Clean Water Act*, the *Clean Air Act* or any regulation or statutory instrument under those Acts, or a provision relating to the management or handling of a designated material in any other Act of the Legislature, any Act of the Parliament of Canada or any regulation or statutory instrument under those Acts;
- (b) the applicant has not provided security in accordance with the requirements of the Board;
- (c) the applicant's stewardship plan for a designated material has not been approved by the Board; or
- (d) a registration previously held by the applicant under this Regulation has been cancelled during the previous five years.

Procedure on refusal

19(1) If the Board proposes to refuse an application for registration, it shall serve the applicant with a notice of refusal which shall include the following information:

- (a) the reasons for refusal; and
- (b) information on the objection process under subsection (2).

19(2) An applicant who wishes to object to the refusal shall deliver representations in writing to the Board no later than 20 days after being served with the notice of refusal.

19(3) On receiving written representations referred to in subsection (2), the Board shall, within 40 days, consider the representations and serve the applicant with written notice of its decision to

- (a) refuse the application for registration, or
- (b) grant the registration.

19(4) If the applicant does not submit any written representations within the time limit specified in subsection (2), the Board may refuse the application for registration.

Suspension or cancellation

20(1) The Board may suspend a registration in the following circumstances:

- (a) the Board is satisfied that the registrant or another person acting under authority of the registration has violated a provision of the Act, the *Clean Water Act*, the *Clean Air Act* or any regulation or statutory instrument under those Acts, or a provision relating to the management or handling of a designated material in any other Act of the Legislature, any

Act of the Parliament of Canada or any regulation or statutory instrument under those Acts;

(b) the registrant has not provided or has not maintained security in accordance with the requirements of the Board; and

(c) the registrant's stewardship plan for a designated material has not been approved by the Board.

20(2) The Board may cancel a registration in any of the following circumstances:

(a) the circumstances set out in subsection (1);

(b) the registrant has ceased to carry on business as a tire supplier or producer, as the case may be; or

(c) the registrant has applied to surrender the registration.

20(3) If the Board proposes to suspend or cancel a registration, it shall serve the registrant with a notice which shall include

(a) the Board's reasons for the suspension or cancellation, and

(b) information on the objection process under subsection (4).

20(4) A registrant who wishes to object to the suspension or cancellation shall deliver representations in writing to the Board no later than 20 days after being served with the notice of suspension or cancellation.

20(5) On receiving written representations referred to in subsection (2), the Board shall, within 40 days, consider the representations and serve the registrant with written notice of its decision to

- (a) suspend or cancel the registration, as the case may be, or
- (b) decline to suspend or cancel the registration.

20(6) If a registrant does not deliver written representations within 20 days after being served with a notice under subsection (4), the Board may suspend or cancel the registration.

20(7) Any person whose registration has been suspended or cancelled shall immediately cease to supply new tires, or to sell, offer for sale or distribute designated materials, as the case may be.

20(8) The Board may reinstate a suspended registration if the Board is satisfied that the registrant will comply with the requirements of the Act and this Regulation and has rectified, to the extent possible, the circumstances that led to the suspension.

Registration may not be transferred

21 A registration is not transferable.

Security

22(1) For the purposes of ensuring compliance with the Act and this Regulation, the Board may require any of the following persons to provide security to the Board at any time:

- (a) an applicant for registration;
- (b) a registrant; or

(c) a person seeking the reinstatement of a suspended registration.

22(2) The amount of security required shall not exceed the following:

(a) in respect of a registration of a tire supplier, the amount of the fees that the Board reasonably estimates would be remitted by the supplier under section 33 during a two-month period; and

(b) in respect of a registration of a producer, the amount of the fees that the Board reasonably estimates would be remitted by the producer under section 47 during a six-month period.

22(3) The Board shall serve written notice on a person required to provide security, and the notice shall include the following information:

(a) the form and amount of the security required;

(b) the nature of the proof of the security required;

(c) the time within which the security is to be provided; and

(d) the time period during which the security is to be maintained.

22(4) A person served with a written notice shall, within the time specified in the notice, provide security and maintain it in accordance with the notice.

Forfeiture of security

23(1) If a person who is required to remit fees under this Regulation fails or refuses to remit the fees, any security provided by the person shall be forfeited 14 days after the remittance is due.

23(2) The Board shall use any money recovered on the forfeiture of a security, after deducting any costs in relation to the forfeiture, to meet the purposes of the Board as established under the Act in relation to

- (a) the management of tires, if the money is recovered from a tire supplier under section 33, and
- (b) the management of designated materials referred to in Part 5, if the money is recovered from a producer under section 47.

Hearing by Board

24 Nothing in this Regulation requires the Board to hold an oral hearing before making a decision.

PART 4

DESIGNATED MATERIALS – TIRES

Definitions

25 The following definitions apply in this Part.

“new tire” means a tire supplied separately or with a machine or device but does not include a retreaded tire or a used tire. (*pneu neuf*)

“scrap tire” means a tire that is no longer suitable for its original intended purpose because of wear, damage, defect or any other reason. (*pneu usé*)

“tire” means a tire that is air-filled or designed to be air-filled, other than a tire that is used or intended to be used on a cycle, a wheelbarrow or another machine or device that is propelled solely by human or animal power. (*pneu*)

“tire processor” means a person engaged in the business of recycling scrap tires. (*exploitant de pneus*)

Tires as designated material

26 Tires are a designated material for the purposes of section 22.1 of the Act.

Deeming provision

27(1) Every tire supplier who uses or consumes in the Province a new tire that the supplier has acquired shall be deemed to have supplied the tire to another person within the meaning of subsection 3(1).

27(2) A tire shall be deemed to be new from the time of its manufacture until immediately after it is first supplied by a tire supplier anywhere.

Importation of scrap tires

28(1) No person shall import a scrap tire into the Province unless the person has first obtained the written permission of the Board to do so.

28(2) The Board may provide written permission under subsection (1) only if it is satisfied that the importation of the scrap tire will not have a negative financial impact on the management plan for tires operated by the Board under this Regulation.

28(3) A person who imports a scrap tire shall do so in accordance with the directions of the Board as set out in the written permission, and in accordance with any other applicable Act or regulation.

Tire management plan

29(1) A tire management plan approved by the Minister and adopted by the Board under New Brunswick Regulation 2008-54 under the Act that is in effect immediately before the commencement of this section remains in effect until it expires.

29(2) Not less than 90 days before the expiration of a tire management plan, the Board shall adopt a new tire management plan, in the form and containing the information required by the Minister, for implementation of the Board's responsibilities under the Act and this Regulation and submit it to the Minister for review and approval.

29(3) The Minister shall make a decision as soon as practicable after receiving a tire management plan referred to in subsection (2).

29(4) The Minister may approve a tire management plan for a period not exceeding five years.

29(5) The Board may adopt an amendment to an approved tire management plan, and the Minister may approve the amendment.

Implementation of tire management plan

30 The Board shall ensure that an original or amended tire management plan approved by the Minister is implemented in accordance with its intent.

Inspection by public of tire management plan

31(1) The Minister shall keep all original and all amendments to tire management plans that are approved by the Minister under section 29 and shall make copies of them available

for inspection by the public at the head office of the Department of Environment and Local Government in Fredericton during normal business hours.

31(2) The Board shall keep copies of all original and all amendments to tire management plans that are approved by the Minister under section 29 and shall make them available for inspection by the public at its head office during normal business hours.

Reporting and record keeping

32(1) Within 30 days after the last day of a calendar month, a tire supplier registrant shall report to the Board, on a form provided by the Board, the total number of tires supplied by the registrant in that month from each location operated by the registrant and any other information in relation to the supply of tires that the Board requires.

32(2) On the request of a tire supplier registrant, the Board may authorize the registrant to make the report required under subsection (1) for a different period of time and at a different frequency than required under subsection (1).

32(3) A tire supplier registrant shall ensure that their registration number appears on the invoice and sales receipt related to the supply of a tire and, if the person to whom a tire has been supplied is another tire supplier registrant, that the other registrant's registration number also appears on those documents.

32(4) Every tire supplier registrant shall maintain records in accordance with the directions of the Board in relation to the tires that the registrant has supplied, and shall keep the record of each transaction for a period of seven years after the date of its occurrence.

32(5) No person shall falsify, render misleading or unlawfully alter or destroy any of the reports or records required to be made or maintained under this section.

Fees

33(1) Subject to subsections (3), (4) and (7), the Board may require a tire supplier to remit to the Board a fee fixed by the Board for each tire supplied by the tire supplier in the Province.

33(2) Subsection (1) does not apply to a tire supplier exempted under section 15.

33(3) The Board shall not require remittance of a fee in relation to the following tires:

- (a) the supply of retreaded or used tires, except for tires with respect to a vehicle referred to in subsection (5);
- (b) the supply of tires with a rim size of less than 20.32 cm (8.00 in); and
- (c) tires shipped directly outside the Province.

33(4) The fee fixed by the Board

- (a) for tires with a rim size of 20.32 cm (8.00 in) or more but not exceeding 43.18 cm (17.00 in), shall not exceed \$4.50, exclusive of all applicable taxes,
- (b) for tires with a rim size exceeding 43.18 cm (17.00 in) but not exceeding 62.23 cm (24.50 in), shall not exceed \$13.50, exclusive of all applicable taxes, and
- (c) despite paragraphs (a) and (b), for tires of motor-driven cycles and motorcycles as defined in the *Motor Vehicle Act*, shall not exceed \$3, exclusive of all applicable taxes.

33(5) If a vehicle, as defined in the *Motor Vehicle Act*, is purchased outside the Province, on the first registration of that vehicle in the Province, the person registering the vehicle

shall remit to the Board the fees, if any, referred to in subsection (4) in relation to the tires on that vehicle.

33(6) A person referred to in subsection (5) shall remit fees at the times and in the manner directed by the Board.

33(7) No tire supplier shall ask for or receive from any person a sum intended to represent a fee under this section in relation to the supply of a replacement tire if no consideration is given for the replacement tire and the replacement is made because the original tire was defective.

Remittance of fees, imposition of interest and penalties

34(1) A tire supplier shall remit fees at the times and in the manner directed by the Board.

34(2) If the Board is satisfied that a tire supplier has not fully reported the number of tires supplied in accordance with subsection 32(1), has not remitted fees fully in accordance with subsection (1) or has otherwise reported or remitted fees in a manner that is in violation of this Regulation, the Board may serve written notice on the tire supplier requiring payment of the following amounts:

- (a) the full amount of the outstanding fees;
- (b) interest on the amount of the outstanding fees calculated monthly at a rate not exceeding 2% per month; and
- (c) a penalty in an amount established by the Board, which shall not exceed the amount of the outstanding fees.

34(3) A written notice under subsection (2) shall include the time and manner in which the payments required under that subsection are to be made.

34(4) A tire supplier served with a written notice under subsection (2) shall pay the amounts set out in the notice in accordance with the notice.

34(5) All fees, interest and penalties that are not paid to the Board in accordance with a written notice constitute a debt due to the Board.

34(6) The Board may, under the signature of the proper officer, issue a certificate setting out the name of a tire supplier who has not paid fees, interest or penalties in accordance with a written notice and certifying the total amounts of the fees, interest or penalties remaining unpaid and the certificate, without proof of the appointment, authority or signature of the person purporting to have signed it, is admissible in evidence and is, in the absence of evidence to the contrary, proof of the amount of the fees, interest and penalties remaining unpaid.

Use of fees, interest and penalties

35 The Board shall use the fees, interest and penalties remitted or paid to it under this Part solely to meet its purposes as established under the Act and this Regulation and for no other purpose.

PART 5

OTHER DESIGNATED MATERIALS

Division 1

General

Application

36 This Division applies to each of the designated materials in Divisions 2 to 9.

Designation of a producer responsibility organization

37 For the purpose of representing them with respect to the obligations imposed under this Regulation in relation to a designated material,

- (a) a producer may designate a producer responsibility organization, and
- (b) more than one producer may designate the same producer responsibility organization.

Submission of designated material stewardship plan

38(1) A producer shall, with its application for registration under this Regulation, submit a designated material stewardship plan for approval of the Board.

38(2) A designated material stewardship plan shall apply to the manufacture, storage, collection, transportation, recycling, disposal or other handling of designated materials that are imported, sold, offered for sale or distributed within the Province.

Contents of designated material stewardship plan

39 A designated material stewardship plan shall provide for the following:

- (a) the storage, collection, transportation, recycling, processing, disposal and other handling of a designated material waste, including the designated material waste of other producers;
- (b) a description of categories of material to be used for performance measures and targets, and annual reports;
- (c) information on the province-wide collection system, including return facilities, by category of material, to be used by the consumer;
- (d) the location of storage, recycling, processing, disposal and other handling facilities for designated materials;
- (e) the service delivery to remote or rural areas;
- (f) the geographic areas to be used for the purposes of the annual report;
- (g) a description of the manner in which existing collection and processing systems have been taken into account to maximize waste diversion in the province;
- (h) a management plan for designated material waste, by category of material, according to the following order of preference:
 - (i) reuse;
 - (ii) recycling or composting;
 - (iii) recovery of energy; and
 - (iv) disposal in accordance with the Act;

- (i) a description of the efforts being made by the producer to redesign designated materials to improve reusability and recyclability;
- (j) information on current and future research and development activities in the Province related to the management of designated materials;
- (k) a communications plan for informing consumers of the designated materials stewardship plan, including
 - (i) information concerning reasonable and free access to a manner of collection, and
 - (ii) a plan for education and awareness;
- (l) a management plan for designated material waste, by category of material, which shall provide for the application of environmental standards and human health and safety which shall meet or exceed the applicable law;
- (m) a plan for the elimination or reduction of the environmental impacts of designated material waste, by category of material;
- (n) a description of greenhouse gas emissions resulting from the implementation of the designated material stewardship plan and opportunities to reduce environmental impact;
- (o) a dispute resolution process to deal with disputes between a producer and a service provider; and
- (p) any other matter under Divisions 2 to 9.

Approval or imposition of stewardship plan

40(1) When a stewardship plan has been submitted to the Board, the Board shall, as soon as practicable,

- (a) approve the plan for a period of time not to exceed five years, or
- (b) reject the plan with written reasons.

40(2) If the Board rejects a stewardship plan, it may

- (a) require the producer to comply with a stewardship plan prepared and approved by the Board, or
- (b) require the producer to resubmit a stewardship plan within the period of time specified by the Board.

40(3) The Board may refuse to register or may suspend the registration of a producer if the producer does not submit a stewardship plan within the period of time specified under paragraph (2)(b).

40(4) A plan referred to in paragraph (2)(a) expires on the date set by the Board, but the period of time for which the plan is to be effective shall not exceed five years.

40(5) If the Board rejects a stewardship plan submitted by a producer and does not require the producer to take any measure set out in subsection (2), the Board shall refuse to register the producer or shall suspend or cancel the registration of the producer, as the case may be.

Renewal of stewardship plan

41(1) No less than 90 days before the expiry date of a designated materials stewardship plan approved or imposed by the Board, a producer shall submit a new stewardship plan to the Board for review and approval.

41(2) Sections 39 to 40 apply with the necessary modifications to a plan submitted under this section.

Amendment of stewardship plan

42(1) The Board may amend an approved or imposed stewardship plan

- (a) to correct a clerical error, or
- (b) to reflect a change in the name or address of a producer.

42(2) A producer may apply to have its stewardship plan amended and sections 39 and 40 apply, with the necessary modifications, to the proposed amendments.

Implementation of stewardship plan

43(1) Each producer shall implement and comply with a stewardship plan within 180 days of its approval or imposition under section 40.

43(2) In the case of a stewardship plan renewed under section 41 or amended under section 42, each producer shall implement and comply with the stewardship plan immediately following the date of approval of the renewal or amendment.

Performance measures and targets

44(1) Each producer that is subject to a stewardship plan shall submit to the Board for approval one or more performance measures and targets, by category of material, used to assess the effectiveness of the plan.

44(2) In the case of an amendment to a plan referred to in section 42, the Board may require submission of new performance measures and targets.

44(3) The performance measures and targets shall be submitted within the following periods of time:

- (a) for a producer's first plan, within two years following implementation referred to in section 43,
- (b) for a renewed plan, at the time the plan is submitted under section 41, or
- (c) for an amended plan for which the Board requires new performance measures and targets, within the period of time specified by the Board.

44(4) As soon as practicable after the performance measures and targets have been submitted to the Board under subsection (3), the Board shall

- (a) approve the performance measures and targets, by category of material, or
- (b) reject the performance measures and targets, by category of material, with reasons.

44(5) If the Board rejects the performance measures and targets submitted by a producer, the Board may

- (a) impose its own performance measures and targets by category of material, or

(b) require the producer to resubmit performance measures and targets, by category of material, within the period of time specified by the Board.

44(6) The Board may suspend or cancel the registration of a producer that does not submit performance measures and targets within the period of time specified under subsection (3) or paragraph (5)(b).

44(7) The producer shall implement the performance measures and meet the targets, by category of material, that were approved or imposed by the Board under paragraph (4)(a) or (5)(a).

Annual report and other information

45(1) On or before May 31 in each year, a producer shall provide the Board with an annual report detailing the effectiveness of the designated material stewardship plan during the previous calendar year including, but not limited to, the following:

- (a) the total amount of designated material waste, by category of material,
 - (i) collected within the Province, and
 - (ii) collected within the geographical areas specified in the stewardship plan;
- (b) a description of collection methods used and the location of return facilities, if any;
- (c) the amount of designated material waste, by category of material, that was reused, recycled, composted, recovered for the purposes of energy, stored, processed, disposed of or otherwise handled;

- (d) a description of the types of processes utilized to reuse, recycle, compost, recover energy from, store, process, dispose of or otherwise handle designated material waste, by category of material;
- (e) the location of any storage, processing or handling facilities for designated material waste;
- (f) a description of the efforts to redesign designated materials to improve reusability and recyclability, by category of material;
- (g) the types of consumer information, educational materials and strategies adopted by the producer;
- (h) an assessment of the performance of the stewardship plan in relation to the performance measures and targets approved by the Board;
- (i) the annual financial statements, as prepared by an independent auditor, of the revenues received and the expenditures incurred by the designated materials stewardship plan;
- (j) any other information requested by the Board that relates to the stewardship plan.

45(2) Subject to subsection (3), at the same time a producer submits its annual report, it shall provide to the Board a statement in writing as to the total amount of designated material, by category of material, distributed by it during the previous calendar year or during a period of time approved by the Board.

45(3) If a report referred to in subsection (1) or a statement referred to in subsection (2) is submitted by a producer responsibility organization referred to in section 37 the report or statement and distribution information shall include only the aggregate information of all of the producers represented by the producer responsibility organization.

45(4) The information provided under subsection (2) to the Board by a producer who is not represented by a producer responsibility organization referred to in section 37 shall be treated as confidential.

Effectiveness of the plan, measures and targets

46 At the request of the Board, the producer shall provide the Board, within six months, with an assessment prepared by an independent auditor, of the effectiveness of the designated material stewardship plan in implementing the performance measures and meeting the targets, with recommendations for improvements to the plan.

Administrative fees payable by producers

47(1) The Board may charge a producer fees established by the Board to cover the Board's annual administrative costs in carrying out its duties under the Act and this Regulation in relation to a designated material.

47(2) The annual administrative costs of the Board include office, operational and inspection expenses and the cost of salaries, benefits and expenses of members and employees of the Board that are attributable to the Board's duties referred to in subsection (1).

47(3) The annual administrative costs of the Board incurred or to be incurred by it, together with any sum needed to make up any deficiency in the assessment for the preceding year, shall be borne equally by each producer.

47(4) The Board shall assess up to one-half of the amount established in subsection (1) no later than the first day of the fiscal year in respect of which the costs are incurred and assess the remaining amount after the first day of the ninth month of that fiscal year.

Remittance of administrative fees, imposition of interest and penalties

48(1) A producer shall remit fees referred to in section 47 at the times and in the manner directed by the Board.

48(2) If the Board is satisfied that a producer has not remitted fees in accordance with subsection (1), the Board may serve written notice on the producer requiring payment of the following amounts:

- (a) the full amount of the fees that are outstanding;
- (b) interest on the amount of the outstanding fees calculated monthly at a rate not exceeding 2% per month; and
- (c) a penalty in an amount established by the Board, which shall not exceed the amount of the outstanding fees.

48(3) A written notice under subsection (2) shall include the time and manner in which the payments required under that subsection are to be made.

48(4) A producer served with a written notice under subsection (2) shall pay the amounts set out in the notice in accordance with the notice.

48(5) All fees, interest and penalties that are not paid to the Board in accordance with a written notice constitute a debt due to the Board.

48(6) Under the signature of the proper officer, the Board may issue a certificate setting out the name of a producer who has not paid fees, interest or penalties in accordance with a written notice and certifying the total amounts of the fees, interest or penalties remaining unpaid and the certificate, without proof of the appointment, authority or signature of the person

purporting to have signed it, is admissible in evidence and is, in the absence of evidence to the contrary, proof of the amount of the fees, interest and penalties remaining unpaid.

Use of administrative fees, interest and penalties

49 The fees, interest and penalties remitted or paid to the Board under this Part in relation to a designated material shall be used only for its purposes in relation to that designated material as established under the Act and this Regulation and for no other purpose.

Passing on of costs

50(1) Subject to subsection (2), a producer or a retailer on behalf of a producer may recover from the consumer the costs associated with implementing or operating a designated materials stewardship plan, including the administrative fees referred to in section 47.

50(2) A producer or retailer who recovers costs under subsection (1) shall integrate those costs in the sale price of a designated material or a product containing or including a designated material, which costs shall appear in its total advertised sales price and on the receipt of sale.

50(3) A producer or retailer is not prohibited from informing the public that the price of a designated material includes costs recovered under subsection (1) and communicating those costs to the public.

Division 2

Paint

Definition of “paint”

51 For the purposes of this Division, “paint” means

- (a) a tinted or untinted latex, oil or solvent-based architectural coating used for commercial or household purposes, including stain, and includes the coating's container, or
- (b) a coloured or clear paint or stain sold in an aerosol container and includes the paint's or stain's container, but does not include coatings intended for marine antifouling, industrial or automotive applications.

Paint as designated material

52 Paint is a designated material for the purposes of section 22.1 of the Act.

Division 3 Oil and Glycol

Definitions

53 The following definitions apply in this Division.

“glycol” means ethylene or propylene glycol used or intended for use as coolant for a vehicle or for commercial use, but does not include the following:

- (a) plumbing antifreeze;
- (b) windshield washer antifreeze;
- (c) lock de-icer and antifreeze; and
- (d) gasoline and diesel fuel antifreeze. (*glycol*)

“glycol container” means a container with a capacity of 250 l or less manufactured for the purpose of holding glycol. (*réceptif à glycol*)

“oil” means

- (a) petroleum or synthetic derived crankcase oil, engine oil and gear oil, and hydraulic fluid, transmission fluid and heat transfer fluid, and
- (b) fluid used for lubricating purposes in machinery or equipment. (*huile*)

“oil container” means a container with a capacity of 250 l or less manufactured for the purpose of holding oil and includes

- (a) aerosol containers used to contain products used as cleaner for automotive parts, and
- (b) containers used to contain diesel exhaust fluid. (*réceptif à huile*)

“oil filter” means

- (a) a spin-on style or element style fluid filter that is used in hydraulic, transmission or internal combustion engine applications, and
- (b) an oil filter, a diesel fuel filter, a storage tank fuel filter and a household furnace oil filter other than a gasoline filter. (*filtre à huile*)

Oil and glycol as designated materials

54 Oil, oil filters, oil containers, glycol and glycol containers are designated materials for the purposes of section 22.1 of the Act.

Division 4
Electronic Products

Definition of “electronic product”

55 For the purposes of this Division, “electronic product” means a product intended for consumer, industrial or commercial use and

(a) includes

- (i) a television,
- (ii) a desktop, laptop and notebook computer and the computer’s central processing unit, keyboard, mouse and cable,
- (iii) a computer monitor,
- (iv) a computer desktop printer and a desktop printer with scanning or fax capabilities,
- (v) a desktop scanner,
- (vi) an audio and video playback and recording system,
- (vii) a telephone,
- (viii) a cellular phone and other wireless communication devices,
- (ix) a fax machine,
- (x) a personal digital assistant and other similar handheld devices not capable of connecting to the Internet,
- (xi) a digital camera,

- (xii) an analog or digital video camera,
 - (xiii) an external storage drive and modem,
 - (xiv) an electronic reader,
 - (xv) a video game device or peripheral,
 - (xvi) a global positioning and navigation system,
 - (xvii) a counter top microwave oven,
 - (xviii) a floor-standing printer, copier or any floor-standing unit that combines printing, copying, scanning, and other functions,
 - (xix) a floor and carpet care appliance,
 - (xx) a garment care appliance,
 - (xxi) a counter top cooking appliance,
 - (xxii) a device used for cutting food and opening or sealing containers or packages,
 - (xxiii) a device used for time measurement,
 - (xxiv) a personal care appliance,
 - (xxv) a scale, and
 - (xxvi) a portable air treatment unit, excluding air conditioners, and
- (b) does not include factory-installed audio, video or communication devices developed for embedded use in motor vehicles.

Electronic products as designated material

56 Electronic products are designated materials for the purposes of section 22.1 of the Act.

Division 5

Packaging and Paper

Definitions

57 The following definitions apply in this Division.

“marketing material” means a material, substance or object that is, or is intended to be, attached to a commodity or product or its container for the purpose of marketing or communicating information about the commodity or product. (*matériel de marketing*)

“packaging” means any material that is used for the containment, protection, handling, delivery or presentation of a product that is provided to a consumer, any marketing material and any packaging-like products, but does not include

- (a) a designated material referred to in section 52, 54 or 64, or
- (b) packaging that is unsafe or unsanitary, or could become unsafe or unsanitary by virtue of its anticipated use, and is not suitable to be recycled. (*emballage*)

“packaging-like product” means a container or covering that is sold as a product, is used by a consumer for their own packaging needs and would be ordinarily disposed of after a single use or short-term use, but does not include

- (a) a product designed for the containment of waste, or

(b) a product that is unsafe or unsanitary, or could become unsafe or unsanitary by virtue of its anticipated use, and is not suitable to be recycled. (*produit utilisé aux fins d'emballage*)

“paper” means paper that is provided to a consumer that is printed, or intended to be printed, and includes telephone directories, but does not include

- (a) reference books,
- (b) literary books,
- (c) text books, or
- (d) paper that is unsafe or unsanitary, or could become unsafe or unsanitary by virtue of its anticipated use, and is not suitable to be recycled. (*papier*)

Packaging and paper as designated materials

58 Packaging and paper are designated materials for the purposes of section 22.1 of the Act.

Requirements do not apply

59 The requirements of this Regulation do not apply to a packaging or paper producer in the following circumstances:

- (a) the producer generates less than \$2,000,000 in gross annual revenue in the Province;
- (b) the producer manufactures, distributes, sells or offers for sale less than one tonne of packaging and paper annually in the Province; or

- (c) the producer is a charitable organization registered under the *Income Tax Act* (Canada).

Specific duties of packaging and paper producers with respect to the stewardship plan

60 For the purposes of paragraph 39(p), the stewardship plan of packaging and paper producers shall also address the following subjects:

- (a) with respect to the province-wide collection system in a stewardship plan under paragraph 39(c), information on the provision of services to
- (i) single unit dwellings,
 - (ii) multi-unit dwellings,
 - (iii) schools, and
 - (iv) provincial or local government property that is not industrial, commercial or institutional property; and
- (b) with respect to the means used to modify the design of packaging and paper to be addressed in a stewardship plan under paragraph 39(i), a description of the efforts being made to redesign packaging and paper to reduce the amount of packaging and paper sold, offered for sale or distributed within the Province.

Division 6

Pharmaceutical products and medical sharps

Definitions

61 The following definitions apply in this Division.

“medical sharp” means a needle, safety engineered needle, lancet or other similar instrument that is designed, for medical purposes, to puncture the skin of a consumer or their companion animal and includes anything affixed to the medical sharp, including a syringe (*objet médical pointu ou tranchant*)

“pharmaceutical product” means a drug as defined in section 2 of the *Food and Drugs Act* (Canada) and a natural health product as defined in subsection 1(1) of the *Natural Health Products Regulations* made under that Act, but does not include

- (a) a food as defined in section 2 of the *Food and Drugs Act* (Canada),
- (b) a cosmetic as defined in section 2 of the *Food and Drugs Act* (Canada),
- (c) a drug that is a radiopharmaceutical as defined in Part C of the *Food and Drug Regulations* made under the *Food and Drugs Act* (Canada),
- (d) a drug for veterinary use except a drug for veterinary use in a consumer’s companion animal,
- (e) a topical substance that does not contain an antibiotic, antifungal or analgesic, or
- (f) a drug that is represented as being solely for use as a disinfectant on hard non-porous surfaces. (*produit pharmaceutique*)

Pharmaceutical products and medical sharps as designated materials

62 Pharmaceutical products and medical sharps are designated materials for the purposes of section 22.1 of the Act.

Division 7

Beverage containers

Definitions

63 The following definitions apply in this Division.

“beverage” means a ready-to-serve liquid that is intended for human consumption but does not include milk, plant-based milk product alternatives that are fortified and a source of protein, unprocessed apple cider, concentrated drinks, infant formula, meal replacements or formulated liquid diets. (*boisson*)

“beverage container” means a sealed container, including all its component parts, that contains a beverage in a maximum quantity of five litres, and includes a box or similar container used to contain, protect, handle, deliver or present refillable glass beer bottles. (*réceptif à boisson*)

Beverage containers as designated materials

64 Beverage containers are designated materials for the purposes of section 22.1 of the Act.

Specific duties of beverage container producers regarding the stewardship plan

65 For the purposes of paragraph 39(p), a producer’s stewardship plan shall also address the following matters:

- (a) a plan referring to the prevention and reduction of littering of empty beverage containers, and

(b) information on the amount of a deposit for a beverage container and how the deposit is collected and refunded.

Deposit and refund

66(1) A retailer shall collect from a consumer, at the time of the sale of a beverage container, a deposit in the amount specified in the beverage containers stewardship plan pursuant to paragraph 65(b), and that amount includes any applicable federal and provincial sales tax.

66(2) The amount of the refund for an empty beverage container is equal to the amount of the deposit collected from a consumer for the beverage container.

Annual report

67 Despite subsection 45(1), a producer shall provide the Board with an annual report on or before May 31 in each year, beginning in 2025.

Division 8

Batteries

Definition of “battery”

68 For the purposes of this Division, “battery” means a container weighing 5 kg or less in which chemical energy is converted into electricity and used as a power source, including a single-use or rechargeable battery, but excluding a battery contained in a designated material.

Batteries as designated materials

69 Batteries are designated materials for the purposes of section 22.1 of the Act.

Division 9**Lamps****Definition of “lamp”**

70 For the purposes of this Division, “lamp” means a replaceable light source designed to produce light from electricity, including:

- (a) fluorescent tubes;
- (b) compact fluorescent lamps;
- (c) high-intensity discharge lamps;
- (d) incandescent lamps; and
- (e) light-emitting diode lamps.

Lamps as designated materials

71 Lamps are designated materials for the purposes of section 22.1 of the Act.

PART 6**INSPECTIONS****Definition of “inspector”**

72 In this Part, “inspector” means an agent designated under section 73 or an inspector appointed under the Act.

Appointment of inspectors

73 The Board may designate any person as its agent to conduct inspections under section 74.

Inspections

74(1) At any reasonable time and on presentation of proof of identification, an inspector may

- (a) enter any land or premises, other than a dwelling house, and conduct an inspection of the land, premises or personal property where or with which any person distributes, supplies, packages, labels, uses, stores, collects, transports, recycles, processes, disposes of or otherwise handles a designated material,
- (b) conduct an audit of records maintained by or on behalf of a registrant, or
- (c) examine any record maintained by or on behalf of a registrant.

74(2) An inspection may include an audit.

74(3) At the request of an inspector, a person in charge of land or premises entered under this section shall produce for inspection all records maintained by or on behalf of a registrant.

74(4) An inspector may remove any record produced as a result of a request or discovered during the inspection for the purpose of making copies or taking extracts, together with any equipment, hardware or other thing necessary to enable access to the records.

74(5) If the inspector consents, the person in charge of land, premises or personal property being inspected may provide the inspector with copies of any record or other thing for the purposes of removal instead of providing the original.

74(6) An inspector removing any record, equipment, hardware or other thing or copies of them under subsection (4) or (5) shall first provide a receipt for them to the person in charge of the land, premises or personal property and, subject to subsection (8), shall promptly return them to the person in charge after completion of making copies or taking extracts.

74(7) Copies of or extracts from any record or other thing removed from land or premises under this Regulation and certified by the person making the copies or taking the extracts as being true copies of or extracts from the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the record or other thing of which they are copies or from which they are extracts.

74(8) An inspector may seize and detain any record, equipment, hardware or other thing discovered which the inspector believes on reasonable grounds may afford evidence of the commission of an offence under the Act or this Regulation during an inspection under subsection (1).

74(9) No person shall obstruct or hinder a person conducting an inspection under this section.

PART 7
TRANSITIONAL PROVISIONS,
REPEAL AND COMMENCEMENT
Transitional provisions

Definitions

75 *The following definitions apply in this Part.*

“brand owner” means the holder of a brand owner registration issued under subsection 14(2) of Regulation 2008-54. (propriétaire de marque)

“producer” means any person who meets the criteria of section 4 of this Regulation. (producteur)

“Regulation 2008-54” means New Brunswick Regulation 2008-54 under the Act. (Règlement 2008-54)

Registrations

76(1) *On January 1, 2026,*

(a) any producer who, immediately before that date, was also a brand owner shall be deemed to hold a registration issued under paragraph 16(2)(b) of this Regulation, and

(b) all brand owner registrations are cancelled.

76(2) *A producer who is not a brand owner shall submit an application for registration to the Board under section 16 of this Regulation no later than June 30, 2025.*

76(3) *On the coming into force of this section,*

(a) any person who, immediately before the coming into force of this section, was a supplier holding a valid registration under subsection 14(2) of Regulation 2008-54 shall be deemed to hold a tire supplier registration issued under paragraph 16(2)(a) of this Regulation, and

(b) Regulation 2008-54 shall not apply to tire suppliers.

Application of Regulation 2008-54

77(1) Each brand owner shall remain bound by Regulation 2008-54 until December 31, 2025, as though that Regulation had not been repealed.

77(2) Subject to subsection (3), between the date of the coming into force of this section and December 31, 2025, the Board may approve any stewardship plan submitted for approval by a brand owner under Regulation 2008-54 as though that Regulation had not been repealed.

77(3) Any stewardship plan approved under Regulation 2008-54 shall be deemed to expire on December 31, 2025.

77(4) Each producer shall file with the Board a stewardship plan under this Regulation for the designated material concerned, including the performance measures and targets referred to in section 44, no later than June 30, 2025.

77(5) Each producer referred to in subsection (4) shall implement and comply with the stewardship plan from the date of its approval or imposition by the Board under section 40.

Producers of batteries and lamps

78(1) This section applies to any person who, immediately before the coming into force of this section, sells, offers for sale or distributes batteries or lamps as defined in sections 68 and 70.

78(2) Despite subsection 76(2), a producer of batteries or lamps shall submit an application for registration to the Board under section 16 of this Regulation no later than October 31, 2024.

78(3) Despite subsection 77(4), a producer of batteries or lamps shall file a stewardship plan for the designated material concerned no later than December 31, 2024.

78(4) Despite subsection 77(5), a producer of batteries or lamps shall implement the stewardship plan within 180 days of its approval or imposition by the Board under section 40.

78(5) Despite subsection 77(4), a producer of batteries or lamps shall submit the performance measures and targets referred to in section 44 within two years of implementation of the stewardship plan.

Right to sell designated materials

79(1) Despite subsection 14(2) of this Regulation, any producer referred to in subsection 76(2) or section 78 may sell, offer for sale or distribute the designated materials concerned until the Board renders its decision with respect to its application for registration.

79(2) If the Board refuses a registration in accordance with Part 3, the producer referred to in subsection (1) shall cease to sell, offer for sale or distribute the designated materials as soon as the producer receives notice of the decision from the Board.

Producer responsibility organization

80 *A producer may appoint a producer responsibility organization to represent the producer in relation to the obligations imposed under sections 76 to 78.*

Repeal and Commencement

Repeal

81 *New Brunswick Regulation 2008-54 under the Clean Environment Act is repealed.*

Commencement

82 *This Regulation comes into force on July 1, 2024.*

DRAFT
ÉBAUCHE