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Extended Producer Responsibility Program for Packaging

In July 2021, the Maine legislature passed a law establishing a [stewardship program for packaging](https://legislature.maine.gov/statutes/38/title38sec2146.html) (<https://legislature.maine.gov/statutes/38/title38sec2146.html>). The program's purpose is to reduce the volume and toxicity and increase the recycling of packaging material. Producers of products will pay into a fund based on the amount and the recyclability of packaging associated with their products. These funds will be used to reimburse municipalities for eligible recycling and waste management costs, make investments in recycling infrastructure, and help Maine citizens understand how to recycle. The program will be operated by a stewardship organization ("SO") that will be selected by the Department following a competitive bidding process. The SO will be responsible for day-to-day operation of the program with the Department providing oversight. Costs to fund the SO and Department oversight will be funded by producer payments. In addition to sharing information via the website, the Department is issuing periodic newsletters to update interested parties. To be added to the Department's distribution list, please email MainePackagingEPR@maine.gov (<mailto:MainePackagingEpr@maine.gov>).

Anticipated Schedule for Implementation

The schedule for implementation will afford several years to coordinate Maine's program with programs anticipated in other states and for product manufacturers to begin to adjust packaging. This schedule will be revised as needed to reflect changes as program development progresses.

- July 2022 – Funding for program administration available - Hire staff for program development and oversight
- July 2022 – December 2023 - Stakeholder outreach for rule development
- December 31, 2023 – Deadline to initiate rulemaking with the Board of Environmental Protection
- Summer 2024 – Anticipated adoption of routine/technical rules and provisional adoption of major substantive rules by Board of Environmental Protection
- February 15, 2025 – First program update report due to legislature
- January 2025 – Submittal of major/substantive rules to the legislature for approval
- Spring/Summer 2025 – Anticipated final adoption of major substantive rules by the Board
- Fall 2025 – Issue RFP for stewardship organization
- 2026 – Selection of stewardship organization
- 2026 – First producer payments, payments due no more than 180 days after effective date of Stewardship organization contract
- 2027 – First payments to municipalities
- February 15, 2028 – Program report to legislature requiring comprehensive review of the rules and outlining any proposed changes to rules and law
- July 2035 – Reissue Bid for stewardship organization

Funding for the program positions was allocated by the legislature beginning in July of 2022. During 2023 and 2024 the Department will engage in a robust stakeholder outreach program to develop program rules. The program will not go into effect until the rules outlining the details of the program as described in the authorizing legislation are in place and a contract is established with the stewardship organization.

Stakeholder Meeting Schedule

The rulemaking for the EPR for packaging program will be extensive. To solicit input from stakeholders in an organized manner, the Department has divided the rulemaking topics outlined in statute among a series of stakeholder meetings. A minimum of two meetings will be held on each topic. The commentary in Meeting 1 will allow all stakeholders to become familiar with each other's perspectives and needs as everyone who has RSVP to share comments will be given time to do so. Meeting 2 will allow for discussion on how varying needs shared in Meeting 1 can be appropriately considered during rulemaking. For more complex topics, the Department anticipates additional focus-meetings may be necessary and plans to schedule those as needed. [Stakeholder meeting and registration information](https://content.govdelivery.com/accounts/MEDEP/bulletins/347ea10) (<https://content.govdelivery.com/accounts/MEDEP/bulletins/347ea10>).

What does this law do?

This law shifts the cost of managing packaging waste from municipalities and citizens to producers of the products we buy. It places a fee on producers based on their packaging choices. Payments by producers will be based on the net amount of packaging sold into the state and will consider toxicity and whether the packaging is readily recyclable. This will provide incentives for producers to choose more readily recyclable packaging and use less packaging.

Municipalities are eligible to receive reimbursement payments from the stewardship fund that reflect the average cost of managing packaging material, thereby providing incentives for more recycling and improved efficiency in recycling programs.

Additionally, the stewardship organization will conduct statewide assessments to identify potential improvements to recycling infrastructure and education. Money paid into the packaging stewardship fund by producers and not used for municipal reimbursements and program administration will be used to support

Stakeholder Updates

- [EPR Conceptual Draft Rules - Part 1](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (September 1, 2023)
- [Background information on alternative collection programs for the EPR stakeholder meeting](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (August 1, 2023)
- [DEP provides background information on producer payments and reporting for EPR stakeholder meetings](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (June 29, 2023)
- [Regarding the May 9th EPR stakeholder meeting](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (May 2, 2023)
- [Background information for EPR stakeholder meetings on education and investment](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (April 25, 2023)
- [March EPR Stakeholder Meetings Rescheduled](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (March 13, 2023)
- [EPR stakeholder meetings on readily recyclable, audits, and program goals](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (March 9, 2023)
- [EPR focus-meeting for municipal reimbursement](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (March 7, 2023)
- [DEP will host an EPR-related focus meeting for Municipal Reimbursement](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (February 10, 2023)
- [Background Information for Municipality Reimbursement](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (December 23, 2022)
- [Packaging Stakeholder Meeting - Schedule and Producer Exemptions Planning](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) (Nov. 16, 2022)
- [DEP sets timeline for Packaging Stakeholder meetings](https://content.govdelivery.com/accounts/MEDEP/bulletin) (<https://content.govdelivery.com/accounts/MEDEP/bulletin>) *correction notice: the education and investment meetings are scheduled for May 2023* (Sept. 23, 2022)

[Stakeholder Meetings \(javascript:\)+ \(javascript:\)](#)

[\(javascript:\)](#)

[Rule Concepts](https://www.maine.gov/dep/ftp/temp/epr/rule-concepts/) (<https://www.maine.gov/dep/ftp/temp/epr/rule-concepts/>)

[Background Information](https://www.maine.gov/dep/ftp/temp/epr/background/) (<https://www.maine.gov/dep/ftp/temp/epr/background/>)

[Comments](https://www.maine.gov/dep/ftp/temp/epr/comments/) (<https://www.maine.gov/dep/ftp/temp/epr/comments/>)

[Attendance Reports](https://www.maine.gov/dep/ftp/temp/epr/attendance/) (<https://www.maine.gov/dep/ftp/temp/epr/attendance/>)

improvements to recycling infrastructure and education in Maine.

What does this law not do?

This law will not limit a producer's packaging options; it does not prohibit the use of any type of packaging material or format. Producers can continue to package their products in ways that align with product needs and other regulatory requirements. However, some packaging material – due to its volume, toxicity, or lack of recyclability – will require higher payments into the packaging stewardship fund than others.

The law does not require municipalities to participate in the program, nor are municipalities given incentives to landfill packaging material. Municipalities that do participate will receive reimbursement payments based on the average per-ton cost of managing packaging material. Details on municipal reimbursement will be decided during rulemaking, but they must provide incentives for municipalities to avoid disposal.

[Producers \(#prod\)](#) and [municipalities \(#mun\)](#) will be the major stakeholders in this program. [Retailers \(#ret\)](#), [material recyclers \(#mat\)](#), and [Maine citizens \(#cit\)](#) will also be involved in the success of this program. All are encouraged to actively participate in the development of the rules of the program during the public outreach period and the rule making and program development process.

I am a producer, what does this mean for me? And what exactly is a producer?

The law defines a producer as the brand owner of the packaged product or, if the product brand owner has no U.S. presence, the producer can be a sole importer of the product into the State.

Producers will be required to report to the SO on the packaging associated with products sold into Maine and pay into the packaging stewardship fund. Low-volume producers, defined as those sending less than 15 tons of packaging into Maine on an annual basis, will have the option of reporting in a simplified manner and paying a flat fee of no more than \$500/ton of packaging material. The rules associated with this law will define a process whereby any producer unable to provide the requisite reporting information can estimate its obligation.

Producers are encouraged to participate in the rulemaking process, work with the SO on administration and programs to assist with producer compliance and help maintain a level playing field by identifying non-compliant entities. Producers will also be able to provide input on proposed investments in education and infrastructure.

Producers may choose to establish an alternative collection program to collect and manage a type or types of packing material brought into the state. This program must be approved by the Department following rules to be developed during the initial rulemaking process. A producer that manages a type of packaging material through an alternative program may wholly or partially offset the producer's payment obligations with respect to that same type of packaging only.

Producers can limit the amount they pay into the fund by making changes to packaging to reduce amount and increase recyclability of their packaging or by participating in an alternative collection program.

I'm a municipality, what does this mean for me?

This law does not require municipalities to participate in the program. However, a municipality that does participate will receive reimbursement payments based on the average per-ton cost of managing packaging material by similar municipalities. To participate a municipality – defined as a city, town, county, township, village or plantation; a refuse disposal district, or a regional association – must accept for recycling all materials that are designated as readily recyclable and must comply with certain data reporting requirements such as annual reporting of recycling and cost data. Reporting requirements will be defined during the rulemaking process, and the SO will aid municipalities that need help reporting. Details on the method of calculating payment and the definitions of readily recyclable and similar municipalities will also be determined through rulemaking.

Municipalities have several ways to assure their input into the program. Municipalities can participate in rulemaking, work with the packaging stewardship organization on administration and its programs to assist with municipal reporting, participate in alternative collection programs, provide input on proposals for investment in infrastructure and education, receive funding for investments in infrastructure and education, and participate in the on-going determination of similar municipalities and reimbursement calculations.

Municipalities may be able to increase their reimbursement payments by recycling more and otherwise moving waste up the waste management hierarchy. Because municipalities will be paid for recycling based on the average per-ton cost to similar municipalities, efficiency improvements will not decrease the amount of money a particular municipality receives.

I'm a retailer, what does this mean for me?

Retailers who also meet the definition of a producer (as discussed above) will have the same obligations as a producer for the packaging associated with their own products.

Retailers who do not meet the definition of a producer do not have any obligations under this law for the merchandise they sell. However, the department will maintain lists of products, by UPC, that are compliant and known to be non-compliant. Retailers may help maintain a level playing field by providing information on non-compliant products. Retailers that are interested may also participate in the stakeholder sessions for rulemaking development.

I am a materials recycler, what does this mean to me?

To meet their reporting obligations, municipalities will require information from their recycling partners, including information obtained through program audits. Improvements to the efficiency and effectiveness of recycling operations will positively affect the municipalities that partner with a recycling establishment.

Recyclers can also participate in rulemaking, provide the packaging stewardship organization with input regarding its operations, participate in alternative collection programs, provide input on proposed investments in infrastructure and education, and receive funding for investments in recycling infrastructure and education.

I am a Maine citizen who wants to recycle, what does this mean to me?

Maine residents will be indirectly affected in a few ways. Packaging waste management, which is currently funded through municipal taxes and fees, will have a new source of funding. Municipal recycling programs may begin to accept more materials. Recycling infrastructure should improve, making recycling easier. The packaging seen on store shelves should become more recyclable. Citizens are encouraged to take advantage of these new recycling opportunities and support products with recyclable packaging through their purchasing choices.

The first major step of the program is rulemaking – What is rulemaking and what will be decided?

Rulemaking provides the detail that is required to implement a program but not outlined in the law that created it. The rulemaking process is designed to ensure the consideration of all input provided by interested parties. First, the department works with stakeholders to develop a draft rule. That rule is then published for public comment. After a comment period, the department must consider all comments and make changes as appropriate; if substantive changes are made, a new comment

period follows. The rule must then be adopted by the Board of Environmental Protection, a citizen board that oversees several department activities. Major substantive rules, which may be developed to allow for additional packaging exemptions, also require the approval of Maine's legislature.

Elements that will be defined through rulemaking include: a process for determining producer payments; producer reporting requirements; a process for determining which types of packaging are considered readily recyclable; a process for determining which municipalities are similar municipalities; a process for determining municipal reimbursements; municipal reporting requirements; requirements for the assessment for program performance; methods for performing audits of recycling, solid waste, and litter; a schedule for reporting by the stewardship organization; and a process for reviewing proposed investments for recycling infrastructure and education.

Are there any exemptions?

The law provides exemptions for producers as well as exemptions for the packaging associated with certain products. Producers with less than \$2,000,000 in gross annual revenue are exempt; producers whose Maine sales were packaged in less than 1 ton of packaging are exempt; producers that realized more than 50% of their total gross revenue from the sale of goods acquired through insurance salvages, closeouts, bankruptcies and liquidations are exempt; and producers of perishable food selling products with less than 15 tons of total packaging are exempt.

In addition to the producer exemptions, the law exempts some packaging specifically. The following packaging is exempt: packaging that is intended for the long-term storage or protection of a durable product; packaging that is defined as a beverage container in [33 MRS §3102 \(Maine's "Bottle Bill"\)](https://legislature.maine.gov/legis/statutes/38/title38sec3102.html); and packaging that contains architectural paint, as defined by 38 M.R.S. §2144, if at least 80 or 90% of containers collected through a [stewardship program](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flegislature.maine.gov%2Flegis%2Fstatutes%2F38%2Ftitle38sec2144.html%3A%3Atext%3DSubchapter%3A%3A%3AWASTE%20REDUCTION%20AND%20RECYCLING.%20%26%262144.Stewardship%20program%20for%20architectural%20paint&data=05%3B01%3BBeth.Chase@maine.gov%3A12a74b3d096477fa59808dad21432fc%3A413fa8ab207d4b629bcdea1a8f2f864e%3A0%3A638053281433851312%3AUnknown%3ATWfPbc) are recycled. In addition, the department will review packaging associated with certain federally regulated products to determine whether any of that packaging should be excluded.

What product categories will be considered for exemption during the rulemaking process?

Rulemaking will include a review of the packaging associated with some additional product categories. At the end of this review, the department may suggest additional product-based exclusions, subject to approval by the legislature. At a minimum, the following packaging will be considered during this process: material associated with drugs, as defined in section 321 of the federal Food, Drug, and Cosmetic Act; material associated with a medical device or biological product as regulated by the Food and Drug Administration (FDA) under 21 CFR, parts 200, 300, and 800; material associated with an over-the-counter human drug product, as regulated by the FDA under 21 CFR §211.132; and material associated with a product regulated by the Consumer Product Safety Commission for which tamper evident packaging is required under 16 CFR, part 1700.

Credits



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