

**Nadeau, Jessica**

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**From:** Allidah L. Iles <biles@megalink.net>  
**Sent:** Friday, August 9, 2024 9:46 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

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DEP,

I strongly support the proposed EPR for Packaging rules and commend the DEP for their comprehensive and flexible approach. This program is crucial for helping Maine municipalities manage recycling and reduce the burden of packaging waste. We must start this program immediately and work on continuous improvements.

To enhance the program's effectiveness, I suggest ensuring equitable reimbursements for managing non-readily recyclable materials. This will address varying capacities by town and support communities in meeting our recycling goals.

This is truly important as we are ruining our planet with trash that could be prevented. By charging companies for making too much packaging, they will change their ways and help preserve our planet.

EPR for Packaging is a logical next step in creating a cleaner, more sustainable Maine. I urge the Board to move forward with implementation of these rules without delay. Thank you!

Sincerely,  
Allidah L. Iles  
132 Paradise Road  
Bethel, ME 04217



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August 26, 2024

Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

### **Consumer Technology Association comments on Maine's Reposting Draft Rules for Stewardship Program for Packaging**

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on Maine's Reposting Draft Rules for Stewardship Program for Packaging (Reposting Draft). We appreciate the opportunity to comment on the Reposting Draft and appreciate the Department's engagement with stakeholders on the implementation of the law. CTA supports the overall goal of the law to increase recycling across material types and decrease the overall amount of solid waste. However, we offer the following constructive comments on the implementation procedures as proposed by the Maine Department of Environmental Protection (DEP).

CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship. The electronics industry is committed to achieving more sustainable packaging design by reducing packaging, switching to more sustainable materials, and increasing recycled content rates. Extended Producer Responsibility (EPR) is a complex policy and there is no "one size fits all" solution.

EPR for packaging is not a new concept and has been implemented by a variety of European countries as well as Canada. Additionally, three other US states are currently in the implementation process of their own state specific EPR for packaging laws. CTA believes that the growing patchwork of laws varying in scope and procedures will be costly and inefficient, especially considering the complex waste stream and variety of interested stakeholders. For this reason, CTA advocates that Maine looks to other jurisdictions to create harmonization where possible.

#### **Definitions**

Regarding the definition of "consumer", CTA requests the definition be changed to align with Colorado's definition in statute:

"CONSUMER" MEANS ANY PERSON WHO PURCHASES OR RECEIVES COVERED MATERIALS IN THE STATE AND IS LOCATED AT A COVERED ENTITY

"COVERED ENTITY" MEANS THE FOLLOWING LOCATIONS IN THE STATE FROM WHICH COVERED MATERIALS ARE COLLECTED: (a) ALL SINGLE-FAMILY OR MULTIFAMILY RESIDENCES IN THE STATE; AND (b)

NONRESIDENTIAL LOCATIONS IDENTIFIED IN THE FINAL PLAN, INCLUDING PUBLIC PLACES; SMALL BUSINESSES; SCHOOLS, AS DEFINED IN SECTION 22-1-132 (2)(c); HOSPITALITY LOCATIONS; AND STATE AND LOCAL GOVERNMENT BUILDINGS.

### **Program Goals**

CTA appreciates the clarification that the SO measuring progress towards program goals will not be used for compliance purposes, Section 10(A). We also appreciate the update in Section 3(A)(4) Reduction goals being measured via total weight as opposed to total units for reporting purposes. However, we still object to setting of program goals at this stage since the SO has not been selected and the Needs Assessment has not been completed.

Recycling rates and target dates need to be supported by data from the needs assessment conducted via a third-party expert consultant. The source reduction rates specifically outlined in the Section 3(A)(4) will be difficult if not impossible for the electronics industry to achieve without an increase in product breakage.

Additionally, while we agree that the transition to refillable or reusable packaging (Section 3(A)(5)) can be an important component to increased resilience in our recycling and solid waste management systems, we do not agree that these requirements can be applied to the electronic industry. The durable goods industry is a small contributor to packaging waste overall and CTA would support packaging reduction strategies specifically tailored to our industry, not arbitrary goals mandated in statute that will hinder innovation. CTA is interested to hear additional feedback and engage in a conversation with Maine DEP as to how they see reuse and refillable packaging being applied to the electronics industry.

CTA requests that post-consumer recycled material goals (Section 3(A)(9)) be harmonized with those already in statute in New Jersey<sup>1</sup>. An increasing amount of step stone state specific goals create unnecessary burdensome design requirements for producers, especially durable goods like electronics. As we previously indicated in multiple sets of comments, electronic products have unique protection needs – screen protection, protection against shock and vibration for sensitive components – that dictate and severely limit the packaging material types that adequately protect these products.

### **Litter**

CTA agrees with the overall intent to reduce litter in the state of Maine (Section 3(E)) However, CTA strongly disagrees with the litter targets outlined in Section 3(A)(10) and the litter fees outlined on Section 10(3)(c). In the reposting draft, the litter audits increased from one to two per year, CTA believes the audit should remain at one per year. CTA is supportive of the reposting draft changes to the litter audit reporting mechanism as outlined in Section 3(E)(2) since municipalities will have more resources to conduct the audit and the data gathered from municipalities will be more useful in determining infrastructure improvements. CTA requests the reposting draft provide more clarity on subsections (3) and (4). If a municipality is conducting the litter collection event, the SO should not be the responsible party as currently attributed in subsections (3) and (4), the municipality will be the party collecting, sorting, and measuring the litter. We believe that subsections (3) and (4) should not be their own subsection but be part of subsection (3).

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<sup>1</sup> <https://www.nj.gov/dep/dshw/recycled-content/>

Litter is a product of consumer behavior and while producers can attempt to influence consumers to stop littering, invest in recycling infrastructure, and create more convenient systems, producers ultimately cannot force consumer behavior.

### **Producer Reporting**

CTA appreciates the striking of Section 9(B)(4). As we previously commented, reporting on the level of units would have created an unnecessary burden for our producers.

Regarding Section 9(B)(6), CTA would like to emphasize that many companies package their products overseas to be delivered to consumers. Because of the global scale of our industry, the necessity for the total weight of PCR content to be validated by a third-party audit is very difficult if not infeasible. We request that alternative pathways be outlined that still encourage the use of PCR content, such as certification by individual producers when material is sourced and packaged overseas.

Additionally, CTA objects to Section 9(B)(7) and Section 9(B)(10), as outlined in the below topics.

### **Producer Fees:**

CTA believes that it is premature to set the producer fee structure and instead asks that this section be eliminated and replaced with a statement saying the SO will determine the fees for producers in their plan. CTA believes several actions need to take place before a fee structure is set, including a draft budget, the selection of the SO, the needs assessment, and reporting of producer data. Regarding the eco-modulation fees, CTA suggests that the SO set these fees and bonuses based on the system currently in place in Quebec<sup>2</sup> to create more harmonization.

However, CTA offers the following comments on the fees outlined in the Reposting Draft.

**Transitional Period (Section 5(C)):** CTA requests additional information as to why the time period was extended from 3 years to 4 years for a packaging material types fees to be accurately updated to their designation as not readily recyclable to readily recyclable in Section 5(C)(2)(a). CTA does not support the prolonged update to the fees.

**Average Cost over Highest Cost:** A few times throughout the proposal, DEP suggests that fees be attributed to the most expensive readily recyclable material type, CTA disagrees and alternatively proposes that fees be attributed to an average or median management cost. Again, because a budget has not been set and the SO has not been selected, we believe these numbers are arbitrary and should instead be more connected to data. See the below examples where CTA proposes "most expensive" be changed to "median":

- Page 41, 10(A)(2)(b)(i) From 2031 to 2040, if the goal in Section 3(A)(6) is unmet, the producer must pay three times the per ton cost of managing the **most expensive** readily recyclable packaging material type.
- Page 41, 10(A)(2)(b)(ii) From 2041 to 2050, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay four times the per ton cost of managing the **most expensive**

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<sup>2</sup> [Ecodesign incentive bonus - Packaging Ecodesign: An approach that everyone can take \(eeq.ca\)](https://www.eeq.ca/)



readily recyclable material for each ton of packaging material that is not readily recyclable they produce. If at least 50% but less than 75 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 3 times the per ton cost of managing the **most expensive** readily recyclable material type.

- Page 42, 10(A)(2)(b)(iii) From 2051, onward, producers of packaging material that is not readily recyclable must pay 5 times the per ton cost of managing the **most expensive** readily recyclable material type.
- Page 41, 5(A)(2)(b) For a packaging material type that is not readily recyclable, the producer must pay, per ton produced, two times the average per ton management cost of the **most expensive** readily recyclable packaging material type during the prior calendar year. If goals for the percent of readily recyclable packaging material established under Section 3(A)(6) are unmet, the producer must pay three, four, or five times the average per ton cost.

### Toxics

CTA has strong objections to all regulations of toxics in packaging that are outlined by DEP in the Reposting Draft as it goes beyond the initial intent of the legislation. Maine already has passed significant legislation, the PFAS in Product Program<sup>3</sup>, and CTA believes that any regulation on this chemical family should stay in that proceeding. Additionally, any regulation of toxic substances should be handled separately via Department conducted risk evaluations to determine if a material is toxic based on its risk and the exposure from the actual packaging material. The federal government is leading in chemical regulation under the Toxic Substances Control Act. The Reposting Draft does not offer any scientific basis for the ban of the listed substances and CTA believes regulation should be based on sound science conducted through a peer-reviewed risk evaluation.

Section 3(B)(2)(a) references packaging being “certified as containing no intentionally added toxics”. CTA believes that requiring certification of third-party suppliers is difficult and burdensome.

CTA does not support the additional language in Section 3(B)(6). “An updated list of toxics provided in an appendix.” CTA believes this goes beyond the original intent of the legislation because the authority to create this list is not clearly stated.

CTA does not support Section 9(B)(7) “Whether the producer can provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics” and that it be completely stricken from the Reposting Draft.

CTA does not support the inclusion of a “Toxicity Fee” as defined in Section 10(3)(b) and requests it be stricken from the Reposting Draft. The inclusion of a toxicity fee is not included in the statute.

### Labeling

CTA disagrees with the labeling provisions outlined in the Reposting Draft at Section 3(B)(2)(a) and Section 9(B)(10) and the associated fees with “improper labeling”. CTA believes this goes beyond the legislative intent of the scope of the law. The electronics industry is composed of global companies that label for multiple international jurisdictions simultaneously. Products should be allowed to have labels

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<sup>3</sup> <https://www.maine.gov/dep/spills/topics/pfas/PFAS-products/>

that are required by other jurisdictions. CTA requests these Sections be stricken from the Reposting Draft.

Additionally, we request that labeling be limited to labeling on the original product packaging. The reality is that a retailer, shipper or anyone can add a label, tape, etc. to a product along the supply chain and the labeling is outside a manufacturers control once the product leaves the factory.

On this subject, CTA suggests Maine follow the path of Oregon and New Hampshire, which have conducted a truth in labeling study to learn more information about product labeling before imposing fees.

### **Conclusion**

Thank you again for the opportunity to provide these comments on the Reposting Draft. The electronics industry is committed to increasing the overall amount of material recycled and decreasing solid waste. We welcome further engagement with stakeholders in this process, and if you have any questions about our above comments please do not hesitate to contact me at [apeck@cta.tech](mailto:apeek@cta.tech).

Sincerely,

A handwritten signature in black ink, appearing to read "Ally Peck". The signature is fluid and cursive, with the first name "Ally" and last name "Peck" clearly distinguishable.

Ally Peck  
Senior Manager, Environmental and Sustainability Policy  
[apeck@cta.tech](mailto:apeek@cta.tech)  
(703) 395-4177

August 18, 2024

Maine Department of Environmental Protection  
17 State House Station, Augusta, ME 04333

Mr. Brian Beneski

The Biodegradable Products Institute (BPI) is North America's leading certifier of compostable materials, products, and packaging, with over 500 member companies worldwide. As a science-driven organization, BPI supports a shift to the circular economy by promoting the production, use, and appropriate end of lives for materials and products that are designed to fully biodegrade in specific biologically active environments. Our certification program has verified thousands of items using ASTM standards as a baseline, plus additional requirements on PFAS, labeling, and eligibility criteria, all to help to keep organic waste out of landfills.

**Re: Definitions**

We thank you for updating the definition of "compostable packaging material" to include third-party certification to appropriate ASTM standards. In addition to providing clarity, it aligns with other statewide programs, creating uniformity for producers and consumers.

**Re: Defining Packaging Material**

We remain supportive of the goal for packaging and products to be compostable (and readily recyclable and reusable). The department's choice to amend language such that it "*may* further designate a packaging material type as...compostable" would seem to potentially delay determination and therefore allow for EPR reimbursement mechanisms to support compost (and reuse) infrastructure, creating (potentially) an 'on-ramp' for compostable (and reusable) products. However, we need clarification from the department regarding how this language change might practically affect determination, funding, and enforcement.

We also question whether identifying the 'base material' makes sense for products that aren't designed to be recyclable (i.e. compostable and reusable products). While recyclability may be largely determined by base material, the process for determining compostability is material agnostic. Certified compostable products can be made from any number of materials and combinations of materials, yet they must all adhere to the same ASTM standard specifications described above. Please clarify the purpose of determining 'base material' for products not designed to be recyclable.

## **Re: Postconsumer recycled material**

As mentioned in our previous comments, compostable products are designed to disintegrate and biodegrade in compost and provide a unique benefit in diverting food scraps and organic waste. As such, they are widely exempted from PCR requirements throughout the country. The Department should clearly exempt them from this requirement and any related fees described in 10(A)(3) to avoid unintended consequences.

## **Needs Assessment**

The draft states, “If requested by the Department, an assessment comparable to that described...for additional packaging materials that are not readily recyclable.” Given the goals of the program to improve recycling, reuse, and composting, the Department should request an assessment for compostable packaging materials as well, to better understand the funding, equipment, and educational needs of compost facilities capable of processing compostable packaging.

## **Incentive fees**

The department states that a producer must pay a per ton fee equal to 20% if a product is “labeled in a way that suggests it is compostable” where a material management pathway is unavailable. However, as mentioned in our previous comments, BPI-certified products already display a disclaimer noting that commercial compost “facilities may not exist in [the] area” per FTC guidelines. Having acknowledged on-product that an appropriate management pathway might be unavailable, we believe such products should be exempt from the additional fee. The department’s language also does not address home compostable products for which an appropriate management pathway is available in nearly every backyard. Would home compostable products (that are still certified to be commercially compostable according to the definition provided above) be exempt from this penalty fee?

Our last comments also addressed toxicity and the extent to which the BPI certification process already tests for toxicity. While we appreciate the additional language specifying ‘chemicals of high concern’ or ‘food priority chemicals,’ the new fee/requirements to “provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to the absence of intentionally added toxics” is unclear. What constitutes a legitimate entity and how are such entities confirmed? How many chemicals must be included to avoid a fee, or will the fees differ based on results?

## **Collection**

To ensure all packaging is recyclable, reusable, or compostable by 2050., BPI recommends the addition of “composting” within the collection goal “recycling.” While

food scraps and other organic wastes can contaminate products, rendering them non-recyclable, they enhance the utility of compostable products

**Cost & Reimbursement**

We appreciate the department providing more details on cost studies and how participating municipalities might be reimbursed. Because compostable packaging materials are disposed of along with other organic waste and cannot be sorted post-disposal like recyclables, how will the tonnage be estimated? Will it be based on products sold in areas where compost infrastructure is available, for example? Clarity on how cost studies might be conducted and how samples might be taken would be appreciated.

Please reach out to us with any questions or concerns,

Sincerely

Alexander Truelove

[alexander@bpiworld.org](mailto:alexander@bpiworld.org)

26 August 2024

Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

**Re: Revised Chapter 428 Stewardship Program for Packaging, Additional Draft Rule Comments**

Siemens Medical Solutions USA, Inc., on behalf of itself and its Siemens Healthineers affiliates – including Siemens Healthcare Diagnostics Inc. and Varian Medical Systems, Inc. – (collectively Siemens Healthineers), respectfully submits comments to the Maine Department of Environmental Protection during the additional comment period for the Draft Rule of the Extended Producer Responsibility Program for Packaging.

Siemens Healthineers prides itself on pioneering breakthroughs in healthcare for everyone sustainably. We manufacture and service a broad range of medical devices and components, including diagnostic imaging devices, in vitro diagnostics (IVD) tests and analyzers, devices to treat cancer through radiation, clinical information systems, IT systems and related hardware and software. Siemens Healthineers also manages and services multi-vendor devices on behalf of hospitals, clinics, and other health care providers.

Siemens Healthineers is required to adhere to strict packaging requirements to ensure compliance with federal and international regulations, including requirements specified by the FDA (Food and Drug Administration) and the DOT (Department of Transportation)/IATA (International Air & Transport Association) for the ground/air shipment of Dangerous Goods. These regulatory requirements are designed to protect public health and safety in the transportation, storage and use of medical devices. The regulations include, but are not limited to:

<p><b>Federal Laws/Regulations and International Standards impacting Siemens Healthineers product packaging</b></p>
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<p><b><u>Medical Device Regulations/ISO Certification</u></b></p>
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| <ul style="list-style-type: none"> <li>• FDA 21 CFR 820.130 Device Packaging</li> <li>• ISO 13485:2016 7.5.11 Preservation of Product</li> </ul> |
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<p><b><u>Transportation/Dangerous Goods Regulations</u></b></p>
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| <ul style="list-style-type: none"> <li>• 49 CFR 173 Shippers – General Requirements for Shipments and Packagings / United Nations Recommendations on the Transport of Dangerous Goods</li> <li>• 49 CFR 173.185 Lithium Cells and Batteries / IATA DGR 3.9.2.6 Lithium Batteries</li> <li>• 49 CFR 173.24 General Requirements for Packaging and Packages / IATA DGR 5.0.2 General Packaging Requirements</li> <li>• 49 CFR 173.301 General Requirements for Shipment of Compresses Gases and other Hazardous Materials in Cylinders, UN Pressure Receptacles, and Spherical Pressure Vessels / IATA DGR 5.2 Packaging Instructions, PI 200 – Packing Instruction 200 / IATA DGR 6.4 Compressed Gases</li> <li>• 49 CFR 178 Specifications for Packagings / IATA DGR 6.3 UN Packaging Performance Tests</li> <li>• 49 CFR 178.516 Standards for Fiberboard Boxes / IATA DGR 6.2.12 Fiberboard Boxes</li> </ul> |
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While the Maine Department of Environmental Protection's rule proposal includes welcomed changes to overall sustainability goals, the draft rules do not provide needed exemptions for packaging of medical devices. We believe it is critical to exempt these types of products and supporting equipment to ensure continued patient care in clinical laboratory and diagnostic imaging settings.

Packaging for medical device and components should be exempted for two key reasons. First, the highly regulated nature of this market requires extensive certification processes and prolonged testing periods, especially for IVD products, making any reworking of packaging a process that takes a minimum of 7 years to complete. Second, medical devices generally (and Siemens Healthineers' products specifically) require a high variety of packaging materials per shipment due to the sale of highly individualized products, making it exceptionally challenging to standardize or alter packaging without risking delays or compromising product integrity. Therefore, an exemption is essential to avoid disruptions in patient care.

Siemens Healthineers commends the state of Maine for its focus on sustainability and would welcome a collaboration to work with us as we continue to be an industry leader in sustainability in the medical device and IVD product space. Our sustainability strategy is built on three pillars: We are focused on improving healthcare access for all, limiting our environmental impact as we pioneer breakthroughs, and engaging our diverse Siemens Healthineers to achieve this impact on a global scale. We pioneer breakthroughs in healthcare. For everyone. Everywhere. Sustainably.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Pacitti', with a stylized flourish at the end.

David Pacitti  
Head, Americas Region  
Siemens Healthineers

### **Needs Assessment Elements**

Background: A Needs Assessment is a study conducted by the state (or regionally) to determine baseline information about the current state of materials management. It can provide a snapshot of how different materials are currently managed as well as a look at the existing recycling, compost, and disposal infrastructure, including access to curbside recycling access, rural recycling, state compost standards, and what products are currently not considered recyclable. The recycling system is very complex, often involving major differences between different geographic regions, housing types, facilities that process recyclable materials and waste management companies. Any legislation seeking to make changes to that system should be based on a thorough understanding of the current system so that policies can be targeted to address the largest problems.

#### **1. Who should conduct this assessment**

- A. Preference for the state or state agency to fund the needs assessment in collaboration with a third-party consultant rather than it being the responsibility of producers.
- B. State-specific information is likely needed to best understand when a state agency has the appropriate resources to conduct its own study or should hire a third party to conduct the study while under contract to the state agency.

#### **2. Must be transparent and given sufficient time to be thorough**

- A. The state agency must conduct a statewide recycling needs assessment, to be completed within two years of the effective date of this section, subject to the following requirements:
  - i. The final scope of the statewide needs assessment must consider comments and recommendations from stakeholders in the recycling system; and
  - ii. Stakeholders must have the opportunity to review and comment on a draft statewide needs assessment prior to its completion.

#### **3. Potential factors to be measured:**

- A. an analysis of existing solid waste management data collection, transportation, reporting and analysis mandates and practices, and recommendations for improvements necessary to support efforts to increase the recovery and reuse of recyclable materials.
- B. recent (up to five years) of data on the amount of recyclable material that has been recovered, (including commercial recovery and post-consumer recovery) by permitted facilities, regulated haulers and other entities; the amount of such material that was sold or otherwise diverted to markets, and if sold, the amount of receipts from such sales; and the amount of such materials that was disposed of



and the manner and costs of such disposal on a per ton and aggregate basis. Data should be on a county or regional basis.

- C. a description of existing municipal and private recyclable material collection and management capacity and practices, including a discussion of existing municipal collection efforts; a calculation of the cost of collections and transportation; an assessment of residential and commercial accessibility to curbside collection or transfer stations; a description of the nature, capacity and capabilities of material handling facilities on a facility-specific and regional basis; and a description of recommended improvements in equipment and practices and their projected costs.
- D. a description of the existing statutory and regulatory provisions governing the collection and handling of recyclable materials, and related state assistance programs.
- E. a description of recent (at least five years) state funding for improvements in the recovery, processing and reuse of recyclable materials and recommendations for future categories and levels of state funding.
- F. an assessment of, and projection of future trends for, in-state and regional markets for the use of recovered recyclable materials, by category, including current capacity, prices and other factors, as well as recommendations for incentives to increase in-state re-use capacity.
- G. an assessment of the current recyclability of specific categories of paper products and packaging, an assessment of potential barriers to increasing the recovery and reuse of recovered recyclable materials, and an assessment of recent and emerging technology that can improve the rate of recovery of recyclable materials.
- H. an assessment of how a statewide EPR mandate could address the identified barriers to recovery and recycling of covered products, and the identification and assessment of alternatives to EPR that could address specific covered product barriers, and the costs associated with the deployment of alternatives.
- I. an assessment of consumer awareness and education efforts regarding source separation, recycling, reuse and use reduction issues in general and of current local requirements for source separating materials, and recommendations for improving consumer awareness and practices.
- J. an assessment of current state and national packaging and paper product recovery rates, recycling rates, and post-consumer recycled content rates, by material type.
- K. an assessment of carbon emission impacts of material recovery, recycling and reuse, including the impact of carbon sequestration as a result of covered materials being derived from sustainably managed natural resources.
- L. identify cost factors and other variables that are associated with the collection, processing and marketing of post-consumer materials that could be used to establish a cost basis (on a per ton, per capita, or per unit rate) that is incurred by government agencies and private sector entities. Cost factors and variables to be considered in the base cost elements shall include but not be limited to:
  - a. Population size and density of a local jurisdiction;
  - b. Types of households serviced and collection method used;
  - c. Distance from a local jurisdiction to the nearest recycling facility;

- d. Whether a jurisdiction pays for transportation and sorting of collected materials and whether it receives a commodity value from processed materials;
- e. Geographic location or other variables contributing to regional differences in costs;
- f. Cost increases over time; and
- g. Any other factors as determined to be necessary by the department.



**American  
Forest & Paper  
Association**

August 26, 2024

Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017

### **RE: Comments on Chapter 428 Draft Proposed Rule Redraft**

The American Forest & Paper Association (AF&PA) and the Maine Forest Products Council (MFPC) appreciate the opportunity to weigh in on the Department of Environmental Protection (DEP) Proposed Rule Draft of the implementation process for the State Stewardship for Packaging program. The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. We are actively engaged in the stakeholder process and recognize the value this ongoing dialogue has to preserve and sustain Maine's historic forestry industry.

AF&PA and MFPC support data-driven policy solutions, including packaging producer/stewardship responsibility, which are:

- **Data and Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and data-driven solutions that improve consumer education, increase recycling access, and limit administrative costs.
- **Equitable and Fair:** Focused on preventing cross-material subsidization, while acknowledging the investments and voluntary improvements historically taken by each material type to achieve their material-specific recycling rates.

We have concerns that the Draft Proposed Rule does not fully capture these elements, with limited structure created for the crucial needs assessment; no maximum limits on administrative or other costs in the program; and needs to do more to prevent cross-material subsidization and recognizing historical efforts toward sustainability.

### **Background on AF&PA and MFPC**

AF&PA serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recyclable resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — [Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future](#). The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP, manufactures about \$350 billion in products annually and employs about 925,000 people. The industry meets a

payroll of about \$65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

In Maine, the forest products industry operates 35 manufacturing facilities and employs more than 13,000 individuals with an annual payroll of over \$845 million and produces over \$4 billion in products each year. The estimated state and local taxes paid by the Maine forest products industry totals \$91 million annually.

MFPC represents Maine's forest industry. Maine's forest products provide over 30,500 direct and indirect jobs in the forest management and wood manufacturing business, covering 17.5 million acres of forest land. Our members cut across the whole spectrum of forest-related jobs from landowners, loggers, truckers, tree farmers and foresters to paper mills and lumber processors.

#### *Paper-Based Packaging Recycling Works*

Paper recycling rates in the U.S. have consistently increased in recent decades, with 68 percent of paper recovered for recycling in 2022.<sup>1</sup> The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the U.S. EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.<sup>2</sup>

In fact, our industry's recycling rates are so successful that some products are approaching the practical maximum achievable recycling rate possible.

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries — our members own and operate over 100 Materials Recovery Facilities (MRF) and 80 percent of U.S. paper mills use some amount of recycled fiber. Any Extended Producer Responsibility (EPR) system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products, and strictly prohibit use of fees generated by one material to subsidize development of recycling infrastructure for competing materials.

The paper industry has planned or announced nearly \$7 billion in manufacturing infrastructure investments between 2019 and 2025 that will use more than 9 million tons of recovered fiber.<sup>3</sup>

Continuing innovation and meeting customer needs is an important part of the way our members do business. Through research among our members and best practices in the industry, AF&PA developed a tool to help packaging manufacturers, designers and brands create and manufacture packaging that better meets their recyclability goals. *The Design Guidance for Recyclability* is intended to serve as a data-driven resource to support ongoing innovation.<sup>4</sup>

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<sup>1</sup> <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

<sup>2</sup> [https://www.epa.gov/sites/default/files/2021-01/documents/2018\\_ff\\_fact\\_sheet\\_dec\\_2020\\_fnl\\_508.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf)

<sup>3</sup> The Recycling Partnership; Northeast Recycling Council. Last updated: March 2024

<sup>4</sup> <https://www.afandpa.org/news/2021/afpa-releases-new-guide-further-advance-paper-recycling-0>

**Comments on Revised Ch. 428: Stewardship for Packaging Proposed Rule Redraft**

AF&PA and MFPC appreciate the opportunity to comment on the Stewardship Program for Packaging Proposed Rule Draft and applaud many of the changes made by DEP staff in response to feedback by stakeholders. This is a far-reaching policy with potential for massive impact, making thorough review essential. Maine was among the earliest states – along with California, Colorado, and Oregon – to pass EPR for packaging legislation, which means that lessons around process and effective policy are being learned along the way. These comments focus, in part, on concerns from engagement in other state implementation processes along with elements that remain in the language from our October 2023 and March 2024 comments.

**Readily Recyclable**

Key terms such as “readily recyclable” are paramount to the entire program’s success since the designation is the basis for the entire rulemaking process. For example, under the statute, municipalities will receive reimbursement payments for the median per-ton cost of managing packaging material that is readily recyclable and not readily recyclable. It is essential that the determination of “readily recyclable” is well informed.

AF&PA and MFPC support the inclusion of more stakeholders in the process for determining whether materials on the packaging material list are readily recyclable. MFPC and AF&PA’s members are well suited for inclusion in this process. Our members are not just the producers of paper-based packaging, but also own MRFs and are the customers of the recovered fiber sorted at MRFs. Furthermore, AF&PA published the *Design Guidance for Recyclability* in 2021 to provide guidance to brand packaging designers to maximize the recyclability of their product packaging based on member information. This makes our members uniquely qualified to be part of this process because they have worked for years with packaging designers and consumer brands to maximize recyclability and better understand how non-fiber elements, such as coatings and additives, impact the recyclability of paper-based packaging.

AF&PA and MFPC are concerned that the current transitional period process for the packaging material types list disincentivizes producers from upgrading packaging from not readily recyclable to readily recyclable. Currently, producers will not pay the correct material type fee in accordance with Section 10(A)(2) until the fourth calendar year after the packaging type is changed. We acknowledge that Maine needs time to see the benefits of this upgrade but feel that four calendar years is too long. Instead, please consider only having one year of the packaging material type fee as the anticipated cost per ton.

**Producer Off-ramp**

Maine should add the producer off-ramp established by California. California’s EPR statute includes an off-ramp or benchmark for highly recycled materials. Instead of levying ever-increasing fees on products each decade, Maine should follow California’s example and incentivize producers to improve their recovery rate and become eligible for a producer off-ramp.

Model language to integrate into the Maine rulemaking from California (CA) SB 54<sup>5</sup> can be found below. Maine should follow the California model where a producer that achieves an optimal rate of 65 percent or better recovery rate and maintains that level after the program is in place is still responsible for managing the product without needing to pay into a stewardship organization. CA has acknowledged that if a product already demonstrates a high recovery rate, there is little benefit to participate in a stewardship organization. This will help prevent industries that have already invested in infrastructure before EPR implementation from unintended punishment.

*From CA SB 54: a producer may comply with this chapter individually without participating in a PRO's plan if the producer can demonstrate to the department, and the department determines at its sole discretion, that the producer meets all of the following criteria or can demonstrate a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually<sup>6</sup>*

### **Paper Bag Exemption**

Paper bags sold in Maine already have a fee at the point of sale and must meet a 20 percent minimum recycled content rate. Adding an EPR fee for kraft paper bag producers on top of this is unreasonable and they should be exempt.

### **Compostable and Reusable Packaging**

AF&PA and MFPC are concerned that the inclusion of compost and reusable packaging in the rulemaking distracts from the goal of the EPR legislation to improve recycling infrastructure and collection. If composting remains within the scope, compostability claims must be consistent with the Federal Trade Commission's Green Guides and relevant ASTM standards.

Paper is a material that can either be recycled or composted at its end of life. Maine should utilize the U.S. EPA's waste hierarchy, which rates recycling over composting, as the preferred end of life management for materials. As long as paper is clean and dry, it is recyclable.

Compostability and reusability need to be integrated fully into the rulemaking document to ensure parity between end-of-life options. For example, Section 3(B)(2)(a) is missing composting where it would be assumed it should be listed. There is also no guidance on how reusable packaging material should be managed at its eventual end of life. It is unfair for reusable packaging material producers to be excluded from the responsibility of recycling infrastructure updates. Even though their material will be in circulation for longer, ultimately it will end up landfilled, recycled, or composted.

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<sup>5</sup> Plastic Pollution Prevention and Packaging Producer Responsibility Act, Public Resources Code (PRC) §42040 et. seq.,

[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?lawCode=PRC&division=30.&title=&part=3.&chapter=3.&article=4.&goUp=Y](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=PRC&division=30.&title=&part=3.&chapter=3.&article=4.&goUp=Y)

<sup>6</sup> PRC §42051 (2)(b)

The management of reusable packaging material by alternative collection needs to have guardrails on it. Reuse requirements can have unintended consequences that lead to reusable packaging being treated and disposed of as if it were single-use. For example, in 2022 New Jersey banned single-use carryout bags, including for grocery delivery and curbside pick-up. Reusable bags from grocery deliveries were being treated like single-use bags by consumers because of the glut of bags delivered to homes that regularly use ecommerce grocery options<sup>7</sup>. Post-implementation, the state had to create a reusable bag initiative where online shoppers can drop off reusable bags to participating retailers for donation. This solution is still not equal to home recycling access. The California plastic bag ban also resulted in a loophole that allowed for thicker plastic bags to be issued as reusable bags by stores. These thicker bags have led to an increase in plastic waste and are not actually recyclable<sup>8</sup>. Now new legislation is being proposed to address the previous legislation's oversight. In 2021, the Maine ban on single-use plastic bags went into effect. It is imperative that Maine examines the true impacts on reusable packaging and plans for proper management of this material at its end of life.

The definition for reusable packaging material still does not include informal reuse options. For example, residential consumers receiving packages in their home often reuse the cardboard delivery boxes for many purposes, from mailing an item of their own, to using it as at home storage, and that reuse has no pathway for being counted under the proposed rule. Additionally, this kind of reuse is not suited for management by alternative collection programs.

### **Audits and Cost Containment**

It is imperative that the Maine EPR program progresses towards its recycling goals and assesses on-going impacts to Maine consumers and industry in a way that decreases cost burden and helps municipal waste management systems improve.

The rulemaking document has proposed six different audits (litter, disposal, quality assurance and producer reporting, cost studies and representative, site specific, and total weight of post-consumer recycled material audits) to continually measure municipality progress and compliance. Of these six audits, five are to be conducted by the Stewardship Organization (SO) and one will be conducted by a third-party entity. These audits run on vastly different timelines and will complicate management of the EPR program. This process would be more effective if timelines were aligned, and DEP was a secondary reviewer of the audits to support in compliance and enforcement.

In Section 14(A), it is proposed that the SO facilitate two cost studies, complete and follow-up. It is essential that Maine monitors the cost of the recycling programs, however, 15 years is too long for a complete cost study to remain relevant. Instead, this process should be integrated into the needs assessment and be conducted every 5 years. Metrics should be established that help recycling systems benchmark costs and performance quality to demonstrate improvements to the overall recycling systems. This will allow regulators, legislators, stakeholders, and the citizens of Maine to fully understand if and how the recycling system is improving, what areas of revision may be necessary to improve

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<sup>7</sup> <https://www.cbsnews.com/newyork/news/new-jersey-plastic-bag-ban-too-many-reusable-bags/>

<sup>8</sup> <https://sd38.senate.ca.gov/news/legislation-ban-plastic-bags-passes-senate>

program performance, and what unintended changes may have occurred to the consumer or economic landscape as a result of the program. Lack of improvement on factors where municipal funding is targeted should result in changing programs, curtailing funding, or other changes to reflect potentially wasteful or incompatible systems.

### **Needs Assessment**

The needs assessment should determine the program goals and serve as a baseline to measure program performance. It is encouraging to see that two new requirements have been added to the needs assessment in Section 3(C)(4) and (C)(5) to determine some of the economic practicality of the program.

However, the requirements included in the needs assessment are still insufficient to help determine reduction, recycling, and other rates within Maine and ensure that producer fees do not incentivize landfilling. Additional elements previously submitted by AF&PA to include in the needs assessment are included in Attachment 1.

More clarity is also needed on the timeline, impact, and scope of the needs assessment. It is currently unclear if the needs assessment will happen before program implementation, if the results will help inform the readily recyclable determination, and if it applies to reusable and compostable packaging materials. The needs assessment should be conducted every 5 years, rather than every 10, to best manage the system.

### **Program Goals**

AF&PA and MFPC appreciate that the rulemaking has identified specific program goals to assess program performance, however, these goals should not be finalized until the results of the needs assessment have been assessed. The goals should reflect information gathered through the needs assessment and in consultation with producers and industry experts. It is currently unclear whether the program goals will be applied to each material type the same way. Additionally, it should be noted that not all the goals are appropriate for each material type. Some of the reasons why the application of these goals can be unique between materials are explored below.

As stated previously, AF&PA and MFPC support a **robust** state or regional needs assessment. It is wasteful to set program goals to change the existing systems before the assessment is complete.

1. Recycling Access: AF&PA and MFPC think the inclusion of “recycling access” as a program goal is a step in the right direction. The [2021 AF&PA Access to Recycling Study](#) found that by population 25.4 percent of Mainers have access to curbside recycling and 78.4 percent have access to drop-off collection. However, when access is examined at the community level, 64 percent of communities have access to curbside recycling, but only 45 percent have access to drop-off collection. This data shows that more access is likely needed in rural communities. It is important that DEP measures this in the needs assessment and uses it to examine the success of the EPR program.



2. Participation: There was a drastic increase in participation expectations from the 2023 concept rule, doubling the 2030 goal and setting the 2040 requirement at 100 percent. This is setting the stewardship program up for failure when many factors could result in non-participation. Multiple municipalities currently do not participate in recycling programs for valid factors other than a lack of awareness of the financial or environmental benefits as the draft suggests.
3. Collection and Base Material-specific Recycling: Since 1994, AF&PA has periodically conducted national surveys to measure the extent and growth of access to community paper and paperboard recycling. Our 2021 study found that 94 percent of Americans have access to community paper and paperboard recycling programs. The [2021 AF&PA Access to Recycling Study](#) also found more Americans, 79 percent, now have access to residential-curbide programs making it easier to recycle paper at home – an increase of more than 14 million people since the 2014 study.

Single-stream recycling is often the *de facto* curbside recycling option because of the perceived convenience for constituents, however, it can have a harmful overall impact in effective recycling practices. Single-stream collection is the largest contributor to contamination in the recycling stream but is widely adopted in Maine because of its wrongly perceived convenience to residents and cost-cutting capabilities for municipalities.<sup>9</sup>

Mandated convenience can continue support for inefficient and expensive systems rather than actual improvements. Because the state repeatedly supports single-stream recycling policies, the contamination of collected materials is and will be a continuing barrier to the circular economy. Any long-term solution to resource recycling, reuse, and recovery must also necessitate changes in consumer behavior and practices that may not always be more “convenient.”

*EPR programs should be **limited to residential collection***, focusing on increasing rates and quality of collection from consumers either through curbside or depot collection. The paper industry has a well-established system for the collection of materials from industrial, commercial, or institutional (ICI) sources. We urge the DEP to remove ICI collection that is not connected to municipal programs.

Products collected directly from ICI sources are:

- A. segregated from other forms of waste through the entirety of their collection, substantially reducing their exposure to contamination;
- B. not recovered through municipal recycling systems therefore adding no burden to local counties and cities; and
- C. directly collected because they have robust and well-established end markets.

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<sup>9</sup> <https://ctmirror.org/2020/02/17/is-connecticuts-outdated-recycling-system-in-line-for-an-overhaul/>

The established system of ICI collection works and achieves recovery rates significantly higher than other forms of recycling. Therefore, we respectfully request that the scope of any proposed EPR system is limited to concerns and needs *within residential collection only*.

By not explicitly excluding ICI (and explicitly including it for service businesses), there are important factors that will need to be clarified on an individual basis.

- a. For example, a multiunit case that is delivered to a big box store will arrive at the store, be used at the store, and be recycled by a service paid for by the store to take to a MRF for processing. It is unlikely to be contaminated or landfilled, so any fee for that packaging would add an unnecessary burden on material that is already effectively managed.
- b. Similarly, it is unclear if wooden pallets for shipping, or strapping material for transporting logs on trucks would be included in the referenced “for the protection of the product during transport.”

California’s Plastic Pollution Prevention and Packaging Producer Responsibility Act also allows for ICI collected material to qualify as a ‘non-covered material’ by meeting the below criteria:

*42041 (e)(2)(H): ...“covered material” does not include any of the following:...*

*(i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:*

*(I) The covered material is not collected through a residential recycling collection service.*

*(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.*

*(III) The covered material is recycled at a responsible end market.*

*(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.*

*(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.”*

4. Overall Recycling Rate: The level to which a material is actually recycled – or its utilization rate – is a focus of our industry and centers around multiple disparate elements. The paper and wood products supply chain is inherently circular, from the replanting/regrowth of trees that supply fiber and enhance the environment to recycling paper and packaging that is turned into new products.

One of our 2030 goals is to [Advance a Circular Value Chain Through the Production of Renewable and Recyclable Products](#), which will strengthen the role our industry plays in the circular economy. AF&PA members seek to meet evolving customer and

consumer needs, while improving the sustainability of the industry's products through:

- Innovating manufacturing processes, products, and packaging
- Increasing industry-wide utilization of recycled fiber and wood residuals in manufacturing to 50 percent
- Increasing the percentage of our products that are recyclable or compostable
- Collaborating with stakeholders and educating them on the contribution/value of renewable materials

Setting recycling rates when there are nuances far beyond the control of producers raises concerns that need to be considered in the needs assessment before requirements are set, not as a foregone conclusion. While AF&PA tracks the national paper recycling rate, we do not track state recycling rates. Breaking the rate down to a state level is exceedingly difficult due to material exports to other states or countries.

5. Reduction: Reduction has the potential to be so punitive as to undermine the rest of the program. The language requires that for every year a reduction goal is missed, a percentage must be dedicated to investments in reuse and refill projects, but investments and improvements take time to show a return, and this would not allow for that time to pass.

It is disappointing that Maine backtracked on the inclusion of total unit reduction and is once again focusing on total weight only. Efforts to encourage investment in sustainable products stand to be undermined by blanket requirements to decrease the weight of material categories, which ignore the primary purpose of packaging – to protect its contents from damage or spoilage. For example, at some point, lightweighting (designing packaging to be lighter) crosses a line into increasing waste due to insufficient protection of the contained item. Furthermore, the weight of a packaging type is not a reflection of any attribute other than weight; it does not make it smaller by volume, more efficiently produced, more renewable, recyclable or anything else. An unsustainable product should not be rewarded for simply weighing less.

A mechanism should also be added to allow producers to receive credit for historical reductions. The baseline should align with that of other programs, such as CA SB 54, so that when reductions are needed, producers are working with the same national baseline. Similarly, any reduction goal needs to be normalized by the number of packaging units shipped.

Our industry's recycling rates are so successful that some products are approaching the practical maximum achievable recycling rate possible. Setting reduction goals based on the first producer reporting regardless of other statistics immediately ignores the achievements of paper and other industries that have productively pursued sustainable manufacturing practices for decades.

6. Post-Consumer Recycled (PCR) Material: PCR goals can be problematic for the forest products industry. Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products. Meanwhile, *PCR is one of the only program goals that also has an incentive fee attached to it, raising the weight and importance of this problematic factor above many of the other listed goals.* There needs to be clear justification for the numbers and consideration of individual products and the voluntary action already underway to recycle them.

Moreover, the preference for PCR in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, recycled content minimums in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; increase yield loss of recovered fiber if the end product has high cleanliness requirements; jeopardize the strength characteristics of the end product; raise the cost of production for new paper products; and narrow available choices for consumers.<sup>10</sup>

Issues arise when recycled content minimums require inefficient economic and environmental uses of recovered fiber and, in some cases, restrict the availability of certain products altogether. For example, mandating recycled content in white colored copy paper or printer paper would require a drastic increase in the amount of bleaching and processing to make it a desirable product. Whereas the properties of tissue or packaging papers are more suitable to the inclusion of recycled content.

Additionally, recycled content use is already well established in the marketplace. An increase in recycled content in products that don't utilize it would take away supply from products that depend on it. This could have the unintended consequence of more virgin fiber being used to replace a lack of supply of recovered fiber.

Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

Fiber is selected for use in products based on several factors, including cost, availability, performance and customer specification. The specific performance and aesthetic needs for different products determine how PCR fiber is used. Imposing a PCR mandate also creates a path for government-based preference for one part of the market (recovered fiber) over another (virgin) in a state with family-wage jobs supported by both.

There is also a serious risk of the paper industry paying multiple times for the same recovered fiber – first through required fees for an EPR program, then again when producers purchase recovered fiber to make new products. To counter this problem,

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<sup>10</sup> [https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates\\_8152022\\_0.pdf](https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates_8152022_0.pdf)

EPR fees should credit the market value of the material that is put into the stream of commerce- often referred to as net-cost.

7. Litter: Litter from packaging material is not solely attributable to the producer. Instead, litter is exacerbated by lack of consumer education and proper recycling and disposal access. Public waste bins without lids to guard against wind and animals, public and event spaces with an insufficient number of receptacles, and lack of consumer knowledge on how to recycle or properly dispose of an item are all factors that increase litter. “To educate consumers about packaging material; or to pick-up litter” should be removed from the definition of “Manage” in Section 2(P) as it is unfair to put the blame entirely on producers.

This is an opportunity to include consumers and municipalities in a visible and shareable goal of reducing litter in Maine’s communities and environment, rather than as a goal solely in the hands of producers. The SO is now expected to identify materials that are frequently present in litter audits, consider whether a deposit system might help the situation, and whether location plays a factor, but there is still little emphasis on consumer responsibility.

Section 3(E) requires the SO to conduct two litter audits per year, anywhere in the state based on municipal feedback, but only one audit per decade to determine the relative weight and volume of packaging material in the waste stream. This places too much weight on litter results from selected municipalities compared to the presence of packaging material in the waste stream. Considering litter is a factor in one specific goal, while the packaging material in the waste stream is an overlay to the entire program, there needs to be a reevaluation of the resources given to litter abatement.

### **Additional Comments**

1. Definition of Consumer: The current definition of consumer as “the entity that uses a product, including an entity that uses a product to create a new product or includes its use in a service it provides” will lead to double- or triple-counting. It is unclear how many times the producer needs to pay a fee throughout its supply chain, and it is erroneously burdensome if producers must pay a fee for each step. For example, a box for cereal goes through many different suppliers and converters before it is sold to a consumer by a brand. Cereal brands purchase their boxes from a container plant, who purchase the paperboard from a paper mill, who purchase the fiber from a recycling facility or sawmill, who get that fiber from either a MRF in bales of paper or a forester from a logging company. At each step of the supply chain, material is packaged for shipping and delivery.
2. Toxicity: Requirements related to the toxicity of products are addressed in separate statute and should not be included in this legislation. The stewardship organization should not be responsible for making determinations on chemical considerations. Chemical knowledge is not included as a factor in their competitive bidding, has no

overlap with other knowledge required to execute the legislation, and interferes with the stakeholder engagement underway between producers and policymakers on chemical regulations in the state.

3. Labeling: Uniform labeling standards are essential to the free flow of interstate and international commerce. Most companies do not distribute products and the associated packaging solely to Maine. It will be very difficult, if not impossible, for manufacturers to comply with the currently drafted labeling standards because the language creates conflicting requirements across state jurisdictions. This would require a new regulatory framework that is partially duplicative of the Federal Trade Commission's Green Guides and a cumbersome new bureaucracy for the agency to update every two years based on current "readily recyclable status" for certain products to develop and maintain a list of "approved" list of recyclables.

### **Conclusion**

We look forward to working with the State of Maine as the Department continues its deliberations and information gathering during the implementation process. If we can be of any further assistance, please contact Abigail Szein, Executive Director of Recovered Fiber, at [Abigail\\_Szein@afandpa.org](mailto:Abigail_Szein@afandpa.org), Ryan Carroll, Senior Director of Government Affairs at [Ryan\\_Carroll@afandpa.org](mailto:Ryan_Carroll@afandpa.org), Shoshana Micon, Manager, Recycling and Packaging Sustainability at [Shoshana\\_Micon@afandpa.org](mailto:Shoshana_Micon@afandpa.org), or Krysta West, Deputy Director, Maine Forests Products Council at [kwest@maineforest.org](mailto:kwest@maineforest.org).

### **Attachments:**

1. Needs Assessment Elements

August 26, 2024

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333  
Sent via email: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

**RE: Comment on Chapter 428: Stewardship Program for Packaging**

Dear Mr. Beneski,

The Maine State Chamber of Commerce, representing a diverse network of more than 5,000 businesses across the state, appreciates the opportunity to comment on the proposed rule for Chapter 428: Stewardship Program for Packaging. As Maine's largest business association, the Chamber is dedicated to fostering a positive business climate that enables our members to thrive. Maine has been a leader on many environmental issues, and it has often been in close collaboration with the Maine business community. While the Chamber would similarly like to partner in the implementation of the new packaging law, the Chamber has significant concerns regarding the current draft of this complex rule and its potential impact on the business community. We appreciate the many hours of time the Department of Environmental Protection (Department) staff has put in to developing this rule; we do believe, however, that modifications are necessary to ensure the rule is fair, feasible, and aligned with the original legislative intent.

1. Definitions

- a. Consumer. The current definition of "consumer" appears to encompass business-to-business transactions and commercial entities, which could have unintended consequences. We believe it is essential to clarify that the rule applies only to transactions with end-users and not to intermediaries or other businesses. This clarification would prevent unnecessary complications for businesses that are not directly involved in consumer transactions.
- b. Manage. The proposed definition of "manage" extends beyond the legislative intent by including responsibilities such as educating consumers about packaging and participating in litter clean-up efforts. While these activities are valuable, they should not be mandated as part of the Program without specific legislative authorization. In terms of education, the statute says that investments in education shall be made by the Stewardship Organization (SO) and approved by the Department. Furthermore, the SO is to include in

its Annual Report how that investment is designed to increase access to recycling and reuse of packaging. The Chamber urges the Department to revise the definition to focus on the core responsibilities of producers in managing packaging materials.

- c. **Toxics.** The requirement for producers to screen for nearly 2,000 chemicals, many of which may not be relevant to packaging, presents a significant challenge. This requirement will be particularly burdensome for small and medium-sized businesses, which may lack the resources to conduct such extensive screening. We recommend that the definition of "toxics" be narrowed to include only those chemicals that are directly applicable to packaging and remove all references to certificates of compliance, thereby reducing the regulatory burden on producers.
- d. **Readily Recyclable.** The term "readily recyclable" is central to the proposed rule, yet it lacks a clear sense of how this will be applied by the Department. The ambiguity surrounding this term creates uncertainty for producers attempting to comply with the regulation. The Chamber recommends that the Department consider adopting a definition of "readily recyclable" based on a thorough needs assessment, similar to approaches taken by other states. This would provide clarity and ensure that the term reflects practical recycling capabilities within Maine.

## 2. Costs

The proposed rule introduces several fees, but the actual cost of the program and the specific fees to be borne by producers remains unclear, in part due to the lack of clarity around packaging material definitions. Currently, the rule references "readily recyclable" and "not readily recyclable", but not knowing what specific packaging materials will fall under each of those categories creates an uncertain cost for producers. The topic of "cost" has been brought up by many of our members who are already preparing their budget for next year. Without clarity of what is expected of them, producers may face unexpected financial burden. It is important that the Department provides detailed cost estimates to allow businesses to plan accordingly. Included in the cost implications, the Chamber has a few specific concerns we request you consider.

- a. **Disposal Costs.** Our members are concerned that the rule includes disposal costs for landfilling and incineration, which departs from the statute. Including landfill and incineration costs could disincentivize municipalities from prioritizing recycling, undermining the Program's goals. Further, as drafted the rule disproportionately incentivizes incineration over landfilling, an arbitrary distinction that would create skewed market conditions. The Chamber recommends that the rule follow the Legislature's intent and exclude landfill and incineration disposal costs from the rule to encourage greater emphasis on recycling and waste reduction. Worth noting, Maine appears to be an outlier as the other states who have adopted packaging stewardship programs do not require producers to pay for disposal.
- b. **Manage Costs.** If the definition of "manage" is not amended, as suggested earlier in our comments, this will add to the cost producers will be expected to pay. The Chamber



encourages the definition to be amended and that this cost be absorbed in the administrative costs of the SO.

- c. **Program Goals and Penalties.** The rule stipulates that if program goals are unmet, producers will be required to pay penalties of three to five times the average per-ton cost. While the Chamber supports efforts to improve packaging recyclability, the research and development of the technology and implementation of the necessary infrastructure in the state required to achieve these goals will take time. Penalizing producers who are making good-faith efforts to develop more sustainable packaging could have unintended consequences, including increased costs for consumers. We urge the Department to consider more flexible timelines and realistic goals that recognize the challenges of innovation and the scale of these goals. We also encourage the Department to consider the voluntary programs that producers are doing to collect their packaging materials already. We feel these producers should not be penalized in paying for a program where they are already working to keep their packaging materials from ending up in municipal waste streams.

### 3. Exemptions

The Chamber strongly encourages the Department to consider exemptions for packaging products that are federally regulated. These products are subject to stringent federal oversight, required to meet certain design, manufacturing, and safety standards. Additional state-level requirements could create conflicts or redundancies. We would also ask that the rule exempt packaging that is critical to the personnel workers during storing, transporting, and protecting products through shipment, delivery, and storage process. For example, shrink and stretch plastic and expanded polystyrene keep handlers safe during the shipment and delivery process, and guarantee products are not damaged and remain durable throughout manufacturers' distribution network, from manufacturing plants to consumers' homes. Exemptions for federally regulated packaging as well as packaging specific to shipping and storing will ensure that the rule does not inadvertently hinder the integrity of packaging critical to protecting public health and safety.

Finally, we encourage the Department staff and Board of Environmental Protection to look at how other states, who have passed packaging stewardship laws, are establishing their programs. It's important that through this process, Maine does not become an outlier and that we implement the best practices from other states. Decisions around other states programs are being guided by information gathered following needs assessment; we feel Maine should also seriously consider taking this approach. Ultimately, developing a new regulatory framework that works for our environment and consumers will require economies of scale across state jurisdictions that promote the innovation and best practices.

In closing, the Maine State Chamber of Commerce is committed to working with the Department and the Stewardship Organization to ensure that the Program achieves its objective without placing undue burden on businesses and consumers. We hope that our comments will be taken into consideration to improve the proposed rule, ensuring that the final rule results in a program that is both effective and

equitable. We look forward to continuing to work with the Department to ensure the program benefits Maine's communities, environment, and economy.

Thank you for considering our comments.

Sincerely,

Ashley Luszczi  
Government Relations Specialist  
Maine State Chamber of Commerce  
[aluszczi@mainechamber.org](mailto:aluszczi@mainechamber.org)



August 26, 2024

[rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

Department of Environmental Protection  
State of Maine  
17 State House Station Augusta,  
Maine 04333-0017

Re: Comment on Chapter 428: Stewardship Program for Packaging

Dear Sir or Madam:

On behalf of Casella Waste Systems, Inc., (“Casella”) please accept the following testimony concerning the July 16, 2024 re-posted draft of the Department of Environmental Protection’s (the “Department”) Stewardship Program for Packaging Rule (the “Program Rule”).

We believe that the best way to improve outcomes with respect to an extended producer responsibility program is to ensure that the program is administered in a fair and equitable fashion. The most recent draft of the Program Rule does not do that, but instead, proposes to provide greater funding distribution to communities that incinerate, as oppose to landfill, materials that are not recycled. These program principles will put some communities at a disadvantage, and fails to recognize the reality and prevalence of by-passing of materials for landfill disposal. For these reasons, we offer the following comments for consideration with respect to the Program Rule

#### **Alternative Management (Section 13.D)**

For the management of non-readily recyclable packaging, the draft proposes reimbursement rates that vary according to the type of disposal facility a municipality uses for its MSW. Municipalities managing their MSW through an incinerator would be reimbursed at twice the rate of those municipalities who send their MSW to a landfill. Further, municipalities located in geographic proximity to an incinerator who send their MSW to a landfill would receive no reimbursement at all in this part of the program.

We strongly oppose this language on the ground that it obscures the current realities of waste disposal in the State of Maine, results in unfair outcomes for Maine municipalities, reduces market competition, incentivizes CO<sub>2</sub> emissions from the combustion of plastic, adds unnecessary complexity, and distracts from the stated goals of EPR for Packaging.

**Unfair Outcomes:** The draft implies that a municipality’s MSW consistently goes to one disposal facility throughout the year. However, this is often not the case. For many municipalities, particularly those in northern or rural parts of Maine, waste is commingled at a transfer station and delivered to disposal facilities with available

capacity. Municipalities whose MSW is contracted to an incinerator find that their tonnage is often redirected to a landfill for capacity or shutdown reasons. This happens regularly, is referred to as bypass, and is detailed in the *Maine Materials Management Plan* issued by the Department in January 2024.

The draft contains no mention of bypass, which raises further questions:

- ***Does the state intend for this program to reimburse based on the actual disposal outcome of a municipality's MSW, taking into account bypass from Alternative Management to landfill disposal?***

This would add unnecessary complexity and unfair outcomes for municipalities, as their tonnage is commingled at transfer stations and directed to disposal facilities based on numerous factors beyond their control. Would incinerators track specifically which towns' tons were bypassed? Would those towns receive less reimbursement? Would reimbursement be reduced for all members? Would members be given preferential treatment over non-members? Does any of this advance recycling in Maine?

- ***Does the state intend to disregard actual MSW disposal outcomes, and reimburse only based on a municipality's contracted disposal facility?*** This unfairly penalizes municipalities based on geography. More affluent municipalities in the south would easily access the highest reimbursement rate. Less affluent and more rural towns would be more likely to be reimbursed at the lower rate or not at all. This approach would also restrict market-based competition and could result in unintended outcomes such as increased disposal costs and decreased service quality.

**CO<sub>2</sub> emissions:** As noted in our March 7<sup>th</sup> testimony, incineration is a form of disposal, and it should not be given preferential treatment under a product stewardship program. Instead, Maine should apply its waste hierarchy to drive handling of society's solid waste materials to their highest and best use. Waste hierarchies should be used to promote continuous improvement in waste reduction, reuse, and recycling, and should not be co-opted to artificially prop up one form of disposal above another, particularly where incentives to incinerate plastic packaging would run directly counter to climate goals.

To understand how incentivizing incineration of non-recyclable packaging runs counter to Maine's climate goals, it is important to take into account that a substantial percentage of this material will consist of plastics. According to Environmental Protection Agency (EPA) data, incineration of plastics emits on average 1.63 MTCO<sub>2</sub>e per ton (EPA WARM v15.1). This is unsurprising given that plastic is essentially a fossil fuel. We estimate that Maine residential waste may contain as much as 64,000 tons per year of plastic packaging that is not currently accepted for curbside recycling. Incineration of this material would generate over 100,000 tons of greenhouse gas emissions, equivalent to the emissions from over 22,000 vehicles. Given Maine's climate goals, and the potential emissions impacts, incineration should in no way be incentivized as a sustainable solution for plastic packaging.

**Proposed Revision:** The section should be revised such that all participating municipalities are reimbursed at the same rate for management of non-readily recyclable packaging, regardless of the type of disposal they use, or their geographic proximity to one form of disposal or another. That reimbursement could be set at a rate of 50% of the median per ton cost of recycling. This way they receive real cost relief, but still have an incentive to seek recycling solutions for those materials.

Based on our steady participation throughout this rulemaking process, it is our understanding that Maine EPR for Packaging program is intended to provide municipalities with relief from the costs of managing packaging, to increase investment and participation in recycling services, and to give clear financial incentive for producers to

design their packaging to be recycled. The revision we have proposed will ensure that this program remains focused on achieving those outcomes.

Thank you for the opportunity to provide testimony in this proceeding. Please reach out if we can provide you with additional information, or if you have any questions.

Sincerely,

*Robert J. Cappadona*

Bob Cappadona  
Vice President

cc: Brian Beneski, Bureau of Remediation and Waste Management  
Susanne Miller, Director of the Bureau of Remediation and Waste Management



August 24, 2024

Via electronic submission: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017

## **RE: Chapter 428: Stewardship Program for Packaging, Reposting Draft**

Thank you for the opportunity to comment on the Maine Department of Environmental Protection's (the department's) Reposting Draft of Chapter 428: Stewardship Program for Packaging (Chapter 428).

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating an open and fair marketplace for all materials. Our core members include raw material and machinery suppliers as well as packaging manufacturers, which represent approximately 90 percent of the industry. Additionally, several distributors and purchasers of foodservice packaging are part of FPI's affiliate membership.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found [here](#).

As part of our commitment to increasing the recovery of foodservice packaging, we are supportive of policy approaches that advance this effort through systems such as recycling and composting. With respect to producer responsibility programs, it is our position that programs should be based on the principles of shared responsibility, fairness and system effectiveness and efficiency. With these principles in mind, please find below our main feedback and recommendations with respect to the Reposting Draft of Chapter 428, much of which is consistent with comments provided regarding earlier drafts.

### Definitions

As amended, the "consumer" definition seems to continue to capture commercial consumers. Our recommendation remains that the definition should be adjusted to reflect consumer packaging that is destined for the residential sector as it is our understanding that industrial, commercial and institutional properties often have (and pay for) private contracts for recycling and waste management services. We further note the addition of the following language to the "consumer" definition: "or includes its use in a service it provides" which appears to further expand the definition beyond the residential consumer. It is our recommendation that the consumer definition be amended as follows:

~~“Consumer” means an entity that uses a product in a residential location, including an entity that uses a product to create a new product or includes its use in a service it provides. A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.~~

We appreciate the amended definition of “compostable packaging materials” to include third-party certifications to ASTM standards. It may also be helpful to add “or any successor standards” to the end of the definition.

Further, we remain concerned with the definition of “manage”. It is our perspective that this amended definition expands the scope of activities that are eligible for reimbursement in a manner that is not consistent with the law. Also, as we previously commented, the terms “manage”, “managed”, and “management” are used throughout Chapter 428 and may not always reflect the drafted definition. Per our previous recommendation, we propose amending the language as follows:

~~“Manage” means to collect, transport, process, or otherwise prepare a packaging stream for recycling, reuse, composting, or disposal; to educate consumers about packaging material; or to pick-up litter. Manage may include educational initiatives to facilitate collection and litter pick-up.~~

Likewise, we believe the definition of “produce” may be problematic. The term is used in various ways throughout Chapter 428 that are not always aligned with the definition. For instance, under the annual Stewardship Organization (SO) reporting, the SO must “produce” a publicly available annual report. It is our perspective that the term “produce” may not be required or that other adjustments to the definition are needed to ensure consistent use and understanding of the term.

FPI also notes the deletion of the “retailer” definition. However, since the term is referenced in Chapter 428 and not defined in law, it may be necessary to keep this definition.

On the definition of “refill” we continue to suggest the inclusion of language that reflects the ability of the packaging to be refilled at home for the same or similar general purpose for which it was conceived (for example, for food storage purposes), as well as that formal systems are not always needed in these instances. This concept should be applied throughout Chapter 428 as it relates to “refill”.

### Program Goals

Our view remains that establishing program goals is a complex task, particularly in the absence of robust data to guide such goals in Maine. As proposed, the program goals are not grounded in baseline data while imposing significant financial penalties for missing future targets (under producer fees). Further, there is no clear process set forth for adjustments, if needed.

Goal setting should recognize that the SO will complete a needs assessment within 18 months of entering into a contract with the department. We submit that the proposed program goals should be tied to baseline data and that goals should be set after the needs assessment is complete. As such, FPI recommends the removal of the specific targets from Chapter 428 and instead detail a process for the SO to establish and adjust the program goals based on the needs assessment outcomes.

Even as amended, the reduction goals represent the most stringent in the country and do not recognize the value of packaging in reducing waste by protecting and safely delivering products to consumers.

Additionally, the amendments reduction targets change the baseline year to the fifth reporting year and do not include a mechanism for producers to report on recent reductions. We propose that an improved approach may be to create a baseline in the first year of reporting and provide an opportunity for

producers to report on and receive credit for reductions achieved in recent years.

We also note that the “base material-specific recycling rate” and “the post-consumer recycled material” goals both assume that each base material can achieve the same recycling rate and use the same proportion of post-consumer recycled content. This expectation is unrealistic due to each base material’s unique properties and the associated availability of recycled content. As previously suggested, this issue can be addressed by establishing a mechanism for the SO to develop appropriate targets.

Another concern we have with program goals is that many of them are beyond the control of producers.

First, it is important to recognize that the introduction of a “recycling access” program goal is not within producer control since municipalities are not required to participate in the program. While the SO’s responsibility is to measure progress towards this (and other goals), we are concerned that it sets unachievable targets for SO program performance reporting, investments and producer payments. We propose that the recycling access targets be developed by the SO rather than set in the rules, consistent with earlier comments concerning program goals. Additionally, we suggest the removal of “participation” performance goals as they are duplicative of “recycling access” and not required by law.

Similarly, on the matter of “collection” program goals, FPI notes that the amendments measure the goal across the state rather than in participating municipalities at ten-year intervals, making the achievement of this goal outside of the SO’s control. It is our perspective that the goal should be measured more frequently to align with the timing of the targets, and only take into account participating municipalities.

Next, with respect to litter program goals, addressing this issue must draw a clear distinction between the item itself and the human behavior and/or system-wide issues that create it. Producers do not control littering, nor do they have control over how much litter is not packaging. Tying the standard to the proportion of all litter that is packaging means that producers do not control either side of the calculation. A standard that moves toward continuous improvement, meaning an overall reduction in the amount of packaging litter, may be more sensible and connected to the program goals. We further suggest an approach that measures litter by weight rather than unit.

### Litter Audits

The current approach to litter audits, which relies on municipal litter collection events, may not yield a truly representative sample, as these events typically focus on known problem areas rather than being randomly selected. Additionally, the term “litter collection event” is not defined, and since municipal participation is voluntary, the resulting audits may not be representative. This is concerning as these audits are tied to the punitive “reduction of litter” incentive fee. To increase fairness, we recommend permitting the SO to design a more balanced and representative audit process across the state.

### Readily Recyclable

FPI has apprehensions with respect to designating packaging material types as “readily recyclable” and the associated “marketability” criteria (all of which need to be met).

The addition of “cost per ton” as a determination of marketability is problematic, as it may not be a reliable indicator of the viability of recycling a particular material. Like all commodities, markets for recyclables can vary significantly based on nationwide and global trends. It is our view that setting a regulatory standard connecting recyclability to cost per ton could limit market flexibility. We recommend removing this criterion.

On the “ratio of weight targeted for recycling to total weight”, the condition that “at least 60% of the weight of a packaging material type, on average, is composed of materials that are routinely separated and



recycled at recycling facilities that accept the packaging material type” requires clarification. This condition lacks information about how percentages will be determined, particularly in cases where a covered material includes multiple materials. It is our suggestion that the rules clearly state that only the base material is subject to meeting this standard.

### Transitional Period

It continues to be our perspective that the timeline for onboarding new packaging items to the readily recyclable list is too long. To promote increased diversion of covered materials and accurate producer fees, the program needs to be able to adjust and reflect recyclability and actual costs in real time as opposed to waiting between two and three years. This is particularly problematic given the significant financial implications for producers and municipalities.

### Defining Cost by Packaging Stream

Reimbursable costs by packaging stream detailed include labor, equipment, structure, and energy costs. We would ask that consideration be given to developing best practices and associated cost reimbursements in lieu of reimbursements for all costs without parameters.

Additionally, we recommend clarification between the structure costs detailed in this section (containers, warehouses, buildings, trailers, and roll-off containers) and the separate funds for investments in infrastructure.

### Producer Reporting

The Stewardship program for packaging requires that “a producer shall annually report to the stewardship organization the total amount, whether by weight or volume, of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer in the prior calendar year”. As drafted, we believe that producer reporting goes beyond these requirements, is overly burdensome and does not align with producer reporting for similar programs in other jurisdictions.

As an example, we have heard that the drafted requirement for producers to report by UPC or brick code will be problematic from both a volume and time perspective. In this regard, we recommend producer reporting that reflects the requirements of the law and is in alignment with other jurisdictions to the extent possible.

Further, while we appreciate the intent of the following amended requirement to provide more specificity, we propose that a percentage rather than weight threshold may be more appropriate. Such an approach would account for size and weight variability between various types of packaging.

The total weight of the base material or, in cases where separation and recycling of more than one material is determined to be routine as designated in Appendix A, the sum of the weights of the materials that are routinely separated and recycled, and a short description of the methodology used to determine this measurement number. Any material present that is neither the base material nor another material that is routinely separated and recycled according to Appendix A, and that weighs at least 0.1 gram, should not be included in this weight, only in Section 9(B)(5);

FPI also notes the addition of a requirement to report on a “statewide packaging recycling rate” which is calculated differently than the base material-specific recycling rate and overall recycling rate (under program goals). Most of the program goals are calculated based on recycling in participating municipalities, yet statewide reporting is focused on the total amount recycled across the state. This approach creates a disconnect between the program goals and the reporting requirements. To address this inconsistency, the program should align the program goal and reporting requirements.

### Producer Fees

We remain generally concerned with the punitive and seemingly arbitrary financial penalties proposed as part of the producer fees, including the incentive fees.

The financial penalties related to labeling continue to be problematic. Uniform labeling standards are crucial for facilitating smooth interstate and international trade, and it is important to note that companies often do not create and distribute packaging solely for one jurisdiction. As proposed, producers may be financially penalized for complying with labeling requirements in other states as well as following existing guidance from the Federal Trade Commission's Green Guides (Green Guides) and other industry standards.

As we understand it, to avoid financial penalties, packaging labeled as recyclable or compostable must meet various requirements centered around collection programs in every county, unless it is readily recyclable (as defined). Currently, other truth in labeling laws as well as the Green Guides center on the percentage of the population with access to programs for the collection and diversion of packaging. This draft language is unworkable and a significant departure from these existing approaches and would result in substantial penalties for producers.

While there is an exemption process in place for the "post-consumer recycled material fee" (see additional recommendations below), we suggest that compostable packaging should be broadly exempted from this fee. Rather than being designed to be recycled and made into new products, compostable packaging is intended to decompose in industrial or home composting systems and not as post-consumer feedstock for compostable packaging.

Similar to earlier comments regarding litter, we have concerns about the "reduction of litter fee" for the "top five brands" collected consecutively during litter audits over the previous three years. There is no substantiation of legislative reason for this fee and approach, and we propose that the SO may be best positioned to determine any necessary fees.

Regarding the "weight not recycled" incentive fee we believe it will be challenging to precisely quantify the amount of these materials. These amounts may vary depending on end markets and possibly even from one batch to another. Further we have seen varying interpretations of this requirement. We suggest that this requirement be removed and materials should all be reported under their packaging material type as in other producer responsibility programs.

### Municipal Reimbursement

As per previous comments, we suggest that consideration be given to developing best practices and associated cost reimbursements in lieu of reimbursements for all costs without parameters. This is a preferred approach rather than reimbursing municipalities at the median per ton cost of managing various packaging materials by similar municipalities.

Further, in principle, there should be no cross-subsidization of programs and reimbursements should reflect the management pathway for the packaging material type. We acknowledge the efforts made to adjust reimbursement practices to address this issue and encourage a requirement to document the costs of recovery for all diversion methods, including recycling and composting, to reduce reliance on alternative reimbursement models.

Regarding municipal reimbursement, FPI opposes the approach in paragraph D that would permit reimbursement of disposal costs for materials that are not readily recyclable. It is important to emphasize that references to disposal costs were deliberately removed during the legislative process. Therefore, we believe their inclusion contradicts the intent of the law and should be eliminated.

Requests for Exemption from the Post-Consumer Recycled Material Incentive Fee

While we appreciate the inclusion of a process for exemptions from the post-consumer recycled material incentive fee, we continue to recommend a more simplified approach as follows:

A producer may apply for an exemption from the post-consumer recycled material incentive fee. The department may grant an exemption, without penalty, if the producer demonstrates, and the department finds, in writing, that:

- (1) The producer cannot achieve the post-consumer recycled material requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other state or federal law, rule, or regulation;
- (2) It is not technologically feasible for the producer to achieve the post-consumer recycled material requirements;
- (3) The producer cannot comply with the post-consumer recycled material requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or
- (4) The producer cannot comply for another reason as determined by the department pursuant to rule, regulation, or guidance.

Thank you for your consideration of FPI's feedback. We would be pleased to discuss these comments and recommendations with you further.

Sincerely,



Carol Patterson  
Vice President, Government Relations  
[cpatterson@fpi.org](mailto:cpatterson@fpi.org)

**Nadeau, Jessica**

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**From:** Chrissy Adamowicz <cadamowicz@brunswickme.org>  
**Sent:** Tuesday, July 30, 2024 3:50 PM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my enthusiastic support for the EPR for Packaging rules. The DEP has developed a well-structured plan that will improve Maine's recycling efforts and reduce the wasteful packaging. We must get this program started to provide much-needed support to our municipalities. We know it'll work because it's been effective in many other places including Canada and the European Union – all while not increasing costs for consumers!

To ensure fairness, I recommend revisiting the reimbursements for non-readily recyclable materials and consider the varying capacities of different communities. This adjustment will help manage the costs more equitably and encourage more municipalities to participate in the program. Let's implement these rules now and continue refining them to achieve our 50% recycling goal.

Sincerely,  
Chrissy Adamowicz  
85 Union Street  
Brunswick, ME 04011

August 26, 2024

*Submitted via email: [MainePackagingEPR@maine.gov](mailto:MainePackagingEPR@maine.gov)*

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

**RE: Chapter 428 Stewardship Program for Packaging Rules; Comments – Reposted Draft**

Dear Mr. Beneski,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Maine Department of Environmental Protection (“DEP” or the “Department”) to submit written comments on the reposted draft of the proposed rules for the **Stewardship Program for Packaging** (“program”) (38 MRSA § 2146). AMERIPEN respectfully submits these written comments for consideration and with requested modifications to the draft rules. However, despite these comments we also are formally requesting that this current draft not be submitted to the Board of Environmental Protection, in order to consider fundamental changes to their structure to align with other states, by allowing the stewardship organization more overall authority and flexibility and defer to the results of the needs assessment. These regulations increasingly diverge from the four other states that have implemented extended producer responsibility (EPR) for packaging and adopting these regulations now would lock in a regulatory approach that is likely to be impossible to implement.

As a representative of the entire packaging supply chain, we have commented on these rules and participated in this nearly 3-year process constructively, offering comments at every opportunity. We appreciate DEP’s efforts to attempt to create a workable program, however, we continue to have serious concerns with the fundamental structure of these rules and especially the most recent redraft of the rules on which we are commenting here. Therefore, we are also requesting a pause in the rule-making process and to allow for possible consideration of an Administration bill to amend the significant flaws in the underlying law (38 M.R.S. §2146).

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several member

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companies with a presence in Maine, and many more who distribute packaging materials and products into the state.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

The below written comments and clarifying questions from AMERIPEN, ordered by section, speak to the contents of the rules in the reposted draft released by the Department on July 9, 2024.

## **Section 2. Definition**

**Composting:** The definition of “composting” cross-references an existing definition of “composting” in another Maine regulation. That existing definition does not explicitly include home composting, which is a more accessible form of composting than industrial composting but does not meet the standards in the current definition in the reposted draft rules. Home composting enables a wider range of compostable materials to be eligible under the Program. AMERIPEN recommends adding an additional sentence to paragraph (G) stating “Alternatively, composting means the controlled microbial degradation of source-separated compostable materials to yield a humus-like product.” This definition aligns with the one in the EPR law enacted in Minnesota in 2024.<sup>1</sup>

**Compostable Packaging Material:** AMERIPEN recommends the Department also consider amending the definition of “compostable packaging material” to only apply to fully certified products meeting international standards.

**Consumer:** AMERIPEN remains concerned that definition of “consumer” will inappropriately capture industrial, commercial, and other business-to-business entities rather than being limited

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<sup>1</sup> Minnesota Statutes Chapter 115A.1441, subdivision 7.

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to consumer packaging destined for municipal recycling systems that makes up most packaging material that is recycled. The expansion of “consumer” in the draft regulations greatly broadens the scope of the law and will result in capturing many packaging materials that will already have a business entity paying for those materials. Additionally, in contrast to residential recycling systems, commercial and industrial packaging materials already have payers for those materials and would not be any burden to municipal governments. To that end, AMERIPEN objects to the reposted draft’s proposed addition of “or includes its use in a service it provides,” which will significantly expand the scope to include any service provider even if the product it uses never reaches the municipal recycling stream. AMERIPEN recommends limiting the definition as follows:

*“Consumer” means an entity that uses a product in a residential location. ~~including an entity that uses a product to create a new product or includes its use in a service it provides.~~ A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.*

**Durable Product:** The definition of “durable product” provides that “A durable product is not depleted through use.” This would seemingly exclude products like paint, solvents, and waxes, even though they may be designed to last more than five years and are contained in long-term packaging that would avoid being managed as waste for at least as long. AMERIPEN recommends striking this latter sentence, as it is unnecessarily restrictive.

**Intentionally Added:** The proposed regulations use the term “intentionally added” several times, but it is not defined. AMERIPEN recommends including a definition, and suggests the following: “‘Intentionally added’ means provided through ‘intentional introduction,’ as defined in Title 32, chapter 26-A.”

**Manage:** The definition of “manage” has been revised in the reposted draft rules to explicitly include actions “to educate consumers about packaging material” and “to pick-up litter.” While the prior draft provided that “manage” included “educational initiatives to facilitate collection and litter pick-up,” this revision inappropriately and significantly expands the scope of activities that would be eligible for reimbursement. AMERIPEN opposes this change, as it is not supported by the reimbursement language in the law. Moreover, producers should not be charged for littering since it occurs outside of their control and should not be charged “to educate consumers about packaging material” because that is a vague and unnecessary obligation. The stewardship organization (S.O.) instead direct statewide investments in these areas. AMERIPEN therefore requests that the definition of “manage” be returned to how it appeared in the prior draft rules.



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**Produce:** In addition to the corresponding change recommended to definition of “manage,” above, AMERIPEN recommends revising the definition of “produce” to clarify that a residential consumer is the targeted party. This can be achieved as follows:

*“Produce” means to use packaging material to contain, protect, deliver, present, or distribute a product that is sold, offered for sale, or distributed for sale in or into the State to a residential consumer.*

**Producer:** In the definition of “producer,” a paragraph from the earlier draft rules governing situations where two people qualify as the producer for the same packaging material is now proposed for deletion. AMERIPEN seeks the Department’s explanation as to how such situations will be handled without specific language in the final rules.

**Producer:** Additionally, subparagraph (3) within the definition of “producer” states that a producer includes a person that “[a]dds packaging material to another producer’s product for distribution directly to a consumer. This person is only the producer for the packaging material that is added.” This definition would pose an impractical challenge because a producer generally cannot add its own packaging material to the packaging material of another. Rather, a producer would arrange to add another producer’s packaging material to its own or would add it directly. AMERIPEN recommends revising this subparagraph to instead provide that the producer is the one that adds another producer’s packaging material to its own. This is like the regulatory approach being contemplated in Oregon’s EPR program, where the producer that “directs” the manufacturing is the obligated producer.

**Product:** The definition of “product” in the reposting draft provides that, “[f]or products that are not durable, material that remains when the product is depleted is not the product; it is packaging material.” This condition is constructed too broadly, such that it will convert items that are clearly products into packaging material after they reach the end of their useful life (e.g., pens, wipes, and personal protective equipment.) If the intent of this sentence was to capture nondurable packaging materials, AMERIPEN recommends replacing it with the following:

(3) For products that are not durable and that are purchased empty or as wraps, wrapping, or tape for use in containing, protecting, delivering, or presenting items at a later time, material that remains when the product reaches the end of its useful life is not the product; it is packaging material.



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**Retailer:** The reposted draft rules propose striking the “retailer” definition that was included in the earlier draft rules. AMERIPEN recommends retaining this definition since that term is used later in the rules and is not defined in the law.

**Reusable Packaging Material:** For the revised definition of “reusable packaging material,” AMERIPEN is concerned with requiring the use of a formal alternative collection program, as it will hinder the rollout of reusable systems. AMERIPEN recommends partially restoring language from the prior draft, such that the definition reads as follows: “... by an alternative collection program collecting the reusable packaging material in every county in which it is produced or by adequate logistics and infrastructure as part of a reuse system.”

Further, it is unclear how this definition will be implemented for packaging produced outside of Maine, since it is tied to counties. Finally, AMERIPEN again recommends that in-home reuse and refill be incorporated into the definition to maximize the opportunities to adopt them as an alternative to reuse through an alternative collection program. In-home reuse systems currently have the greatest potential for reuse functionality and packaging source reduction.

**Toxics:** Regarding the definition of “toxics,” AMERIPEN is deeply concerned with the approach proposed in the reposted rules. The number of chemicals implicated is over one thousand and is subject to regular revisions, making it virtually impossible to implement the toxics-related provisions of the rules. AMERIPEN requests DEP review the application of the chemicals from two of the statutes referenced for their applicability to packaging materials and if they are even relevant. Those laws specifically deal with children’s products and food packaging, and therefore should not be applied indiscriminately to all forms of packaging. AMERIPEN therefore requests that the Department produce and update as necessary a discrete list of all chemicals that would appropriately qualify as “toxics” under this definition. These chemicals are not compiled anywhere, and that will make it challenging for producers to ensure they are checking for the right chemicals to remain compliant. Finally, AMERIPEN notes a misalignment between the definition of “toxicity” in the law and “toxics” in the draft rules: the statute refers to “intentionally introduced metals or chemicals regulated” by Title 32, chapter 26-A (Reduction of Toxics in Packaging), whereas the rules refer to PFAS and phthalates under that law. We recognize that the Department may be limited in its ability to correct this misalignment and that an amendment to the law itself may be required.

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### **Section 3. Assessment**

AMERIPEN continues to have fundamental concerns with the overall structure and approach to these rules, and continues to strongly recommend that the S.O., in collaboration with the Department and after the statewide recycling needs assessment has been completed, be able to propose programmatic goals in a manner that effectively balances costs, feasibility, and effectiveness. The S.O. will be in a suitable position for this role because it will be informed by the needs assessment and its experience working with all composting and recycling system stakeholders. **All other states that are implementing EPR programs are waiting until after the needs assessment to make these types of decisions and Maine should align with those other states.**

**Recycling Access:** The reposted draft adds a “recycling access” goal that ultimately expects that 100% of Maine residents will have “access to municipal recycling of readily recyclable packaging material.” This is an unrealistic goal, given that municipalities are not required to participate in the program and neither the S.O. nor the state can compel their participation. As with other goals, AMERIPEN recommends deferring to the S.O. to establish recycling access progress in a manner responsive to actual municipality participation and supported by the needs assessment.

AMERIPEN appreciates the effort to reduce duplicative reporting throughout this section, particularly by not compelling certain reporting more than once every three years.

**Participation:** Pertaining to the Participation goal in paragraph (A)(2), producers, the S.O., and consumers all lack control over whether a municipality participates in the Program. “Participation” is not required as an element for performance goals under 38 M.R.S. §2146(13)(A)(5). While municipal “recycling access” goals are required by law, and one is now found in these rules. “Participation” is not a proxy for “access,” as it does not measure consumers’ ability to use recycling systems. AMERIPEN recommends that this goal be stricken and that DEP instead work with municipalities to encourage participation using existing resources.

**Reduction:** The Reduction goal in paragraph (A)(4) for packaging weight entails escalating percentages that ultimately reaches 60% by 2050. It applies to the total weight for all packaging material. As previously expressed in comments submitted to the Department, AMERIPEN is deeply concerned that this goal significantly exceeds the ambitious single-use plastic source reduction policy California has adopted within their packaging extended producer responsibility law, in terms of materials covered, amount to be reduced, and pace of reduction. DEP’s proposed Reduction goal is unrealistic and should be readjusted to at least align with California, including

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using the same benchmarking year of 2013 to account for producers' historical progress on source reduction that has taken years and millions of dollars to achieve. The reposted draft moves the benchmarking year from the first reporting year to the fifth. AMERIPEN objects to this change because it will ignore many years of earlier progress made in reductions, including the initial 40% goal through 2049. Further, AMERIPEN requests that: (1) the reduction goal be normalized by the number of packaging units shipped, to avoid creating a barrier to future business growth; (2) producers be able to receive credit for historical reductions, to avoid penalizing companies that have already significantly optimized their packaging; (3) producers who make reductions in plastic materials through replacement with other materials not be subject to reduction requirements for those replacement materials; and (4) the method for calculating these reductions be enumerated. Finally, AMERIPEN requests restoration of the phrase "if its study identifies market demand for expansion of such programs," from the earlier draft rules to avoid unnecessary reporting obligations where no demand exists.

**Reuse:** Regarding the Reuse goal in paragraph (A)(5), AMERIPEN generally recommends collaboration among the S.O., producers, and other interested parties before specifying discrete reuse targets. The goal proposed in the draft rules measures "the percent by weight of total packaging material reported by producers that is managed for reuse," which creates an unintended incentive to use make reusable materials heavier. AMERIPEN therefore recommends considering revising the goal to measure "the weight of packaging material *engaged in reuse*" instead, to directly compare the amount of reusable packaging each time it is used to the equivalent amount of single-use packaging. Additionally, this goal focuses exclusively on reuse, which leaves out opportunities to encourage refill. AMERIPEN again requests that this provision be revised to ensure that the refilling of packages by the original consumer, whether inside their home or outside, be incorporated into the goal, in alignment with the suggested revision to the "reusable packaging material" definition above. Furthermore, federal law restricts the reuse of packaging designed with child-resistant closures, so AMERIPEN requests that packaging restricted for reuse by law or regulation should be exempt from this goal.<sup>2</sup> Finally, AMERIPEN requests restoration of the phrase "if its study identifies room for establishment or expansion of such programs" included in the earlier draft rules to avoid unnecessary reporting obligations where no capacity exists.

**Readily Recyclable, Reusable, Compostable:** Regarding the readily recyclable, reusable, or compostable goal in paragraph (A)(6), it is important that the Department address the

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<sup>2</sup> 16 Code of Federal Regulations 1700.15(c)

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reimbursement issues AMERIPEN has previously identified and commented on in Section 5. If the Department is going to establish such ambitious goals (up to 100% by 2050), it should ensure that any costs tied to reimbursement of readily recyclable materials are reasonable and justified. Otherwise, it will create a compound problem of undue expenses across a high volume of materials. Additionally, AMERIPEN requests that there be some off-ramps for critical packaging materials that serve vital functions that cannot be readily recyclable given the products that they contain or their use by consumers. Finally, while AMERIPEN appreciates the addition in the reposted draft rules of a specific number of the most common packaging material types that are not readily recyclable, AMERIPEN requests that it be modified so that the S.O. will determine this number.

The Base material-specific recycling rate goal in paragraph (A)(7) requires each base material to achieve the same recycling rate. Like the post-consumer recycled material content goal, it is not realistic to expect this would ever be the case, given each material's unique physical properties. Furthermore, the goals are overly ambitious considering the recycling yields presently attained for various materials. Finally, there is no current data that suggests that any material is achieving these recycling rates. AMERIPEN therefore requests again that the rates, as well as the rates in the overall recycling rate goal in paragraph (A)(8), be initially proposed by the S.O. following the needs assessment and adjusted appropriately by base material.

**PCR Content:** The post-consumer recycled material content goal in paragraph (A)(9) requires packaging in each base material to use the same proportion of post-consumer recycled material. Like the base material-specific recycling rate goal, it is not realistic to expect this would ever be the case, given each material's unique physical properties. AMERIPEN once again requests that the rates be proposed by the S.O. and adjusted by base material and the S.O. submit those goals to the Department for approval. Furthermore, the post-consumer recycled material content market and its use is complicated by U.S. Food and Drug Administration (FDA) requirements and supply constraints for packaging for many types of products (i.e., food). This fact may make it impossible to comply with the goals. As submitted in previous comments, AMERIPEN requests that packaging material that is precluded by law or regulation from using any post-consumer recycled material be excluded upfront from post-consumer recycled material goals and fees, rather than requiring a waiver request. This will save the Department resources from considering (potentially thousands of) cases that are clearly constrained by existing prohibitions. Absent of this approach, AMERIPEN acknowledges and appreciates the opportunity the Department is providing producers in Section 21 of the draft rules to request exemptions if certain criteria are met. But AMERIPEN requests that the final rules clearly state that packaging materials that are restricted from post-consumer recycled material due to other laws and federal safety

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requirements, and that have been granted an exemption from the PCR content requirements, not be considered when calculating the total weight under this goal and be discounted from the overall denominator.

**Litter Reduction:** As expressed in previous AMERIPEN comments submitted to the Department, meeting the litter goal in paragraph (A)(10) is ultimately contingent upon consumer behavior and must first be fully informed by the pending litter audits. Not all litter has an equal impact on the environment, and it should not be assumed that packaging litter is the most troublesome form of litter. Given that, AMERIPEN cautions the Department in setting such aggressive expectations here. This approach also is flawed in its assumption that discouraging litter across the state will only impact packaging materials. Moreover, this goal does not acknowledge that absolute reductions in litter may be made for all material types, and instead requires reporting on the top five types no matter how little is found. Therefore, the efforts under this law have broad application and such a goal and measurement are not justified and should be removed. Additionally, in this paragraph, the term “item” (“unit” in the earlier draft rules), for the purposes of measurement, is not defined. AMERIPEN requests that it be defined or clarified for each use, or that weight instead be used instead as the measurement for the purpose of this goal (consistent with some of the other goals).

**Annual SO Reporting:** AMERIPEN appreciates the removal of brand-level reporting from subsection 3(B)(2) regarding producer benchmarking, which was problematic in the earlier draft rules for several reasons.

This section requires the S.O. to produce an annual report by January 30 each year. However, that date is likely to be too soon for producers and municipalities to compile the requisite information from the preceding year and for the S.O. to consolidate it. AMERIPEN recommends using a date later in the year, such as April 1.

Subsection 3(B)(5) references “recycling establishments,” but that term is not defined or used elsewhere in the draft rules. Moreover, it is unclear what would happen if such “recycling establishments” were located outside of Maine. AMERIPEN requests more detail as to the definition of this term and how out-of-state situations will be handled.

**Toxics:** Subsection 3(B)(6) requires the S.O. to report an “updated list of toxics.” While producers would appreciate a regularly updated list, the responsibility for developing and updating it should be with DEP. The State of Maine has responsibility for managing the laws referenced in the “toxics” definition and is in the best position to accurately identify all applicable chemicals used



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in packaging, and the reliance on the current lists (per above) is not appropriate and too expansive with over one thousand chemicals.

**Infrastructure:** AMERIPEN recommends adding a requirement in subsection 3(C) for the Statewide Recycling Needs Assessment to include a review of the state of compostable packaging collection, existing capacity of composting infrastructure, and the projected need for more capacity and investment.

Subsection 3(C)(2) requires the needs assessment to identify the infrastructure necessary to collect single-stream recycling, dual-stream recycling, and readily recyclable packaging material separately by base material for areas that do not collect and recycle all readily recyclable packaging. This is an unnecessary level of assessment, because the need in such situations is to collect the remaining portion of readily recyclable packaging that is not collected. AMERIPEN requests the goal be revised to only identify the infrastructure necessary to collect the uncollected readily recyclable packaging.

**Litter Audits:**

Subsection 3(E)(2) regarding “Litter Audits” allows municipalities to report on litter collection events, from which the S.O. may randomly select two municipalities to audit. As submitted in previous comments, AMERIPEN remains concerned that this approach will not yield “representative audits,” despite its intent. A “litter collection event” is an undefined term and is unlikely to target locations *randomly*, as would be necessary, but instead would target sites where litter is common. Furthermore, municipalities are not required to participate. Altogether, this approach will deliver a biased examination, which is problematic given that the audits will also inform the “reduction of litter” incentive fee. AMERIPEN asks that the S.O. instead be allowed to design the nature of the litter audits in an unbiased, representative fashion. This can be done by replacing subparagraph (2) with the following:

**“(2) The S.O. must design and implement a process to randomly select a representative sample of site or sites in the state for a litter audit.”**

AMERIPEN also objects to the increase frequency of litter audits to twice annually, the option for providing stipends if they are producer-funded, and the requirement to categorize littered packaging material by brand in subparagraphs (E)(3) and (4).

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#### **Section 4. Defining Packaging Material**

Subsection 4(A)(3) states that “[p]ackaging material used to contain products that, regardless of the consumer’s generator status, are hazardous in accordance with Chapter 850, *Identification of Hazardous Wastes*, can be classified as a distinct packaging material type.” As the statute in question is focused on packaging, not products within the packaging, this is an unnecessary distinction and AMERIPEN therefore requests removal of this provision.

In subsection 4(C)(1)(a), AMERIPEN recommends deletion of “and conventions,” since “conventions” is undefined and the intent of the applicable provision is covered by reference to “laws.”

Subsection 4(C)(1)(c) in the reposted draft rules creates a brand-new requirement for a packaging material type to qualify as “readily recyclable.” Specifically, it requires that the “anticipated cost per ton is less than or equal to two times the cost per ton of managing the most expensively readily recyclable material type.” This is an arbitrary and unnecessary criterion that will hinder the recycling of packaging materials by imposing an economic test. Moreover, no other states with a packaging EPR program have such a requirement, so this would reduce harmony across programs. AMERIPEN strongly urges deletion of this subsection.

Subsection 4(C)(2) establishes “throughput” requirements for the definition of “readily recyclable.” AMERIPEN recommends that the S.O., in consultation with the Department, be empowered explicitly to determine when materials satisfy the proposed criteria.

#### **Section 5. Process for Defining the Packaging Material Types List.**

Subsection 5(B)(2) requires the S.O.’s annual report to the Department to include an appendix of suggested changes to the lists. The reposting draft requires the appendix to include “information gathered by the SO to support estimates of anticipated cost per ton for packaging material types being considered for readily recyclable designation.” AMERIPEN cautions that this information may be proprietary and difficult or impossible for the S.O. to acquire, as the S.O. does not have the power to compel its provision.

For subsection 5(C)(1)(a), AMERIPEN appreciates elimination of the use of the ready recyclable packaging material type with the highest management cost to determine transition costs. However, AMERIPEN is still concerned that the approach in the reposting draft may lead to excessive costs that do not reflect reality. That, in turn, may disincentivize producers from adopting readily recyclable materials. AMERIPEN therefore recommends shortening the

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transition period by deleting “and the calendar year following that in which the change occurs” and reverting “fourth” back to “third” later in the paragraph. Related, AMERIPEN recommends changing “two” to “one” in subsection 5(C)(1)(b).

Subsection 5(C)(1)(c) provides that newly designated readily recyclable materials must still be treated as not readily recyclable for reimbursement purposes for three subsequent calendar years. This will result in an inequitable overpayment of funds for materials that have met the recyclability requirements. AMERIPEN recommends rewriting this paragraph to tie the reimbursement value to the fee values as reflected in the recommendation for subsection 5(C)(1)(a), above.

To make subsection 5(C)(2)(a) consistent with the recommendation for subsection 5(C)(1)(a), AMERIPEN recommends amending the transition period from “three” to “two” calendar years and based on “the anticipated cost per ton,” and making a corresponding change to revert “fourth” to “third” later in the paragraph. This will create a more appropriate reimbursement framework for a readily recyclable material that might subsequently be designated as not readily recyclable.

AMERIPEN also notes it is fundamentally inequitable that there is a phase-in period with subsection 5(C)(1)(b), but no phase-out period in subsection 5(C)(2)(b).

Like the recommendation for subsection 5(C)(1)(c), above, AMERIPEN recommends rewriting subsection 5(C)(2)(b) to tie the reimbursement value to the fee values as reflected in the recommendation for subsection 5(C)(2)(a), above.

**Section 6. Defining Cost by Packaging Stream.**

The complexity and data required to define packaging stream costs under this section are significant, and every participating municipality would be required to pursue it to receive reimbursement. AMERIPEN recommends striking all the prescriptive formulas contemplated and instead permitting the S.O. to determine the appropriate ways to define costs. This will avoid locking in formulas that may not prove appropriate and ensure there is appropriate flexibility, while the Department retains oversight.



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AMERIPEN greatly appreciates the clarification in subsection 6(A), as per our previously submitted comment, that “labor costs” do not include “time spent maintaining equipment and structures.” This avoids introducing duplicative and unjustified expenses for producers.

Subsection 6(E) treats profit and overhead as reimbursable costs for managing packaging streams. Profit and overhead are not directly tied to the management of packaging, but rather are shaped by contractors themselves. To suggest within the draft rules that packaging producers may be wholly responsible for contractor profits or losses related to the management of packaging streams is inappropriate and fails to recognize factors that may be fully outside the scope of producers to control (e.g., mismanagement, poor operational practices, and inefficiency). Calculation of the profit and overhead amount will be extremely speculative, since contractors are unlikely to disclose the actual value. AMERIPEN therefore does not believe profit and overhead should be included in packaging stream cost calculations in Sections 6 and 7.

### **Section 8. Start-Up Registration and Payment.**

While AMERIPEN appreciates the allowance to use national sales data to estimate the total tons of packaging materials used in subsection 8(A), this allowance should not be limited to only the start-up registration period. Producers do not all have the same capacity to measure their production by state level, especially as the Program ramps up. AMERIPEN recommends allowing the estimation authority to be permanent, or at least until the S.O. submits a recommendation to the Department that it is no longer necessary. Furthermore, AMERIPEN recommends allowing the producer to calculate the Maine-adjusted estimate rather than requiring the S.O. only to make the determination to avoid having producers’ reported data overwritten by another party.

Subsection 8(B) requires non-low-volume producers to pay a start-up registration fee “within 180 days of the SO entering into a contract with the Department.” The payment deadline should be tied to the registration deadline (as provided in subsection 8(A)) instead, as the contract date and registration deadline may not be synchronized to make this provision feasible as written. AMERIPEN recommends replacing “within 180 days of the SO entering into a contract with the Department” with “at the time of the registration deadline provided in 8(A).”

### **Section 9. Ongoing Producer Registration and Reporting.**

In subsection 9(A), the reposting draft requires the specified information to be reported annually rather than when it begins production and within 60 days of the information changing. This is

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unnecessary and duplicative, given the requirement to report changed data within 60 days. AMERIPEN requests deletion of this new clause.

Subsection 9(A) also requires a producer to register with the S.O. “when it begins producing packaging material,” but the producer may have begun that production years in the past. As previously submitted to the Department, AMERIPEN seeks to clarify this provision to account for existing producers, as follows: *“when it begins producing packaging material, **or when this rule goes into effect if it already produces packaging material**, and must update the SO within 60 days of this information changing.”*

Regarding the reporting obligations listed in subsection 9(B), AMERIPEN appreciates the removal of the general requirement to report by brand. However, these obligations should be simplified to allow calculation of fees against statutory obligations without additional, unnecessary complexity that could introduce inaccuracies, given that producer data may be organized in different ways. To this end, AMERIPEN requests consideration of the following:

- Reporting should only be required within a range broader than the nearest kilogram or pound (as proposed in the reposted draft), such as within the nearest 10 pounds.
- Reporting should be by company rather than by brand, as required in subsection (B)(2), as brand-level reporting would necessitate massive amounts of data.
- Reporting should be by category and then packaging components as defined in the producer specification system, rather than defined by separability for recycling.
- Given that SKU UPCs do not always change when a package changes, this level of reporting is not needed as it might not create a distinction between packaging types and materials. AMERIPEN asserts that, while the statute references UPC code reporting, the Department should only require reporting of packaging materials by weight and could request UPC reporting if compliance with the law for all materials sold is in question for a particular producer and the producer is able to appropriately identify those UPCs. Additionally, AMERIPEN firmly believes that the Legislature should repeal this confusing and poorly drafted language and urges the Department to support statutory change in this area.
- Subsection 9(B)(4) requires reporting of the “total weight of the base material or, in cases where separation and recycling of more than one material is determined to be routine as designated in Appendix A, the sum of the weights of the materials that are routinely separated and recycled.” This may not align with the type of weight reporting done in other EPR states. AMERIPEN recommends deferring the nature of this reporting to the

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S.O. instead, or at minimum giving the S.O. the authority to request a different scope of reporting.

- Subsection 9(B)(5) requires reporting of the total weight of a packaging material type. AMERIPEN recommends adding a mechanism in this section allowing materials recovery facilities to report to the Department, S.O., or both about the weight of any material types that go to markets that use more than the traditionally targeted portion of packaging in their processing. This is because the “weight not recycled” incentive fee in Section 10 (Producer Fees) measures the weight of readily recyclable material types that do not end up recycled, and more specific data about the fate of various materials will help provide for accurate fee levels.
- Subsection 9(B)(6) requires a new, costly third-party auditing process for post-consumer recycled (PCR) content. AMERIPEN instead recommends allowing a producer to self-attest to compliance if it obtained third-party certifications of its material from PCR content suppliers. The S.O. could subsequently require provision of those certifications to check compliance.
- AMERIPEN opposes the new requirement in subsection 9(B)(7) for producers to declare if they can “provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to the absence of intentionally added toxics.” This will create an entirely infeasible obligation to obtain certification for an extremely large universe of chemicals, per comments above. AMERIPEN preferred the prior version of this language, which was less prescriptive. If the Department does not revert the language to the prior version, AMERIPEN requests that producers be allowed to self-attest to the absence of intentionally-added toxics.
- Subsections 9(B)(8) and 9(B)(9) require reporting as to whether a producer “provides, or is aware of,” refill or reuse options, respectively. It is not useful or productive for producers to report their awareness of options, so AMERIPEN recommends striking “, or is aware of,” from both subsections.
- In subsection 9(B)(10), packaging must be labeled “in a way that suggests it is” recyclable, reusable, or compostable. “Suggests” is an unclear and undefined term and will generate significant challenges for producers in determining compliance. AMERIPEN prefers striking this newly added clause altogether, as the language would be more objective and certain without it.

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AMERIPEN requests the addition of clarifying language in subsection 9(D) that producers be allowed to make weight and unit estimates using prorated/normalized national data prorated for Maine's population.

Subsection 9(D)(1)(c) requires producers to measure any parts of a packaging material type that weigh at least 0.1 gram when estimating weight from units. This weight threshold is extremely low. AMERIPEN requests the Department's rationale for its use and consideration of a higher, more reasonable threshold.

For the auditing provisions in subsection 9(E), AMERIPEN appreciates use of producer-level reporting rather than brand-level reporting, and the inclusion of auditing of information reported under subsection 9(C).

### **Section 10. Producer Fees.**

As previously submitted by AMERIPEN as a general structural comment on the entire rule, and like the program goals referenced above, the type fees and incentive fees proposed in the draft regulations will be financially punitive for producers and introduce steep costs. AMERIPEN recommends instead to defer to the S.O. to set any type fees and incentive fees or credits in a manner that effectively balances costs, feasibility, and effectiveness, as well as the overall budgetary needs for an approved S.O. plan in the state. AMERIPEN also cautions against allowing collected revenues from exceeding actual management costs and a limited reserve; doing otherwise will inflate costs statewide.

Section 10 requires the S.O. to invoice producers by July 1 and requires producers to pay the invoice by September 1 every year. Based on experiences in other EPR jurisdictions, this timeline is likely too compressed. AMERIPEN recommends consultation with producer responsibility organizations and producers involved in EPR elsewhere to determine a more appropriate timeframe. The reimbursement deadline in Section 13 would also need to be adjusted accordingly.

Subsection 10(A)(1) sets the aggregate annual registration fee at the full \$300,000 – the maximum amount authorized in the statute for Department administration. As previously submitted, AMERIPEN seeks the Department's analysis or justification as to why that value was determined appropriate, rather than a lesser amount. Additionally, this subsection exempts low-volume producers from sharing in the cost of the S.O.'s annual budget, thereby shifting costs

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disproportionately on all other producers. AMERIPEN recommends that some proportion of the S.O.'s annual budget be allocated to low-volume producers.

Reusable materials must be designed to make them sufficiently reusable multiple times for at least five years. As a result, it may be harder for them to qualify as “readily recyclable,” and this creates a tension with the proposed reuse goal and the increased fee for non-readily recyclable material. To help address this, AMERIPEN recommends adding language stating that, “Reusable packaging materials that are managed through a reuse system must not be charged producer fees more than once, upon initial entry into the marketplace.” This is based on a similar provision in Minnesota’s packaging EPR law.<sup>3</sup>

As previously submitted, AMERIPEN seeks to know whether the Department performed cost impact analysis regarding the fee provisions, as many appear to be purely speculative for cost factors. Specifically, subsection 10(A)(2)(b) requires producers to pay (at least) twice the costs for materials that are not readily recyclable, reusable, or compostable, based on the cost of the most expensive readily recyclable material rate. These two requirements will lead to unjustified costs. AMERIPEN recommends the S.O. instead determine the factor and propose that for approval by the Department in the stewardship plan.

Also previously submitted, subsection 10(A)(2)(b)(iii) lacks a bifurcated fee approach for varying levels of recyclability/reusability/compostability, unlike subsection 10(A)(2)(b)(ii). Such bifurcation provides an incentive for producers to incrementally increase the recyclability/reusability/compostability of their material. AMERIPEN recommends bifurcating this subsection so that materials achieving a rate between at least 75% and 100% after 2050 would pay four times the cost.

Subsection 10(A)(3)(a) establishes a “post-consumer recycled material fee.” Compostable packaging is not capable of utilizing post-consumer recycled content because the packaging is ultimately intended to break down in an industrial or home composting system rather than be recycled directly into new products or packaging. Applying this fee will unfairly inflate the cost of compostable packaging in a way that cannot be addressed. AMERIPEN recommends exempting compostable packaging material directly from this fee.

Subsection 10(A)(3)(b) establishes a “toxicity fee.” As commented above, AMERIPEN believes the new requirement to provide a certificate of compliance is infeasible and excessive. AMERIPEN

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<sup>3</sup> Minnesota Statutes Chapter 115A.1454, Subdivision 1, Paragraph (5).



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recommends instead that a producer’s self-certification that there are not intentionally-added toxics in their packaging during reporting is sufficient to not be subject to this fee.

Subsection 10(A)(3)(c) bases a “reduction of litter” incentive fee on whether a brand is one of the top five brands found in litter audits. This fee on five brands is not specifically called for by statute. It is also an arbitrarily designed, unsupportable approach that ignores the possibility that litter goals will have been met and/or that litter is de minimis. In such cases, this would add unnecessary costs without justification. Litter reduction can instead be incentivized through increased waste collection opportunities and education efforts. AMERIPEN recommends letting the S.O. design any potential litter-related fee and assessing any fee by packaging material type rather than by brand.

Subsection 10(A)(3)(d) establishes a “labeling” incentive fee that penalizes labeling for material management pathways that are “not available throughout the State.” This approach is not supported by any reasonable standard and will jeopardize the ability to communicate proper waste management to consumers. This is especially challenging for compostable materials, which have not had as much time or investment yet to develop infrastructure as ubiquitous as for recycling. The law requires the labeling fee “to reduce consumer confusion,” but the proposed fee will make it harder to communicate appropriate materials management. AMERIPEN instead requests that this incentive be tied to national labeling best practices and standards until such time a clearer picture of what materials are uniformly recycled across the State of Maine, and that the fee be set by the S.O. AMERIPEN further notes the inappropriate use of “suggests” and reiterates the same concerns expressed for subsection 9(B)(10).

Subsection 10(A)(3)(e) establishes a “weight not recycled” incentive fee of 30% of the packaging material type fee per ton not recycled and applied to packaging material types designated readily recyclable. This fee is fundamentally unfair, as producers do not have control over consumer behavior and whether consumers appropriately recycle materials. Further, the 30% rate is steep and will result in excessive costs for producers and consumers alike. This fee is not required by law, and AMERIPEN therefore requests it be struck.

### **Section 11. Alternative Collection Programs.**

Subsection 11(A) delineates proposal fees must be paid to the Department for reviewing alternative collection program proposals. It is unclear how the Department arrived at these fee amounts and AMERIPEN is concerned they may prove excessive. AMERIPEN appreciates the allowance in subsection 11(A)(4) for the Department to waive or reduce the proposal fee for a

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proposed modification to an alternative collection program if its review does not require significant staff resources.

Subsection 11(B)(1)(c) limits the credit that a producer can receive for an alternative collection program that operates in one, two, or three to fifteen counties to 10%, 20%, or 30%, respectively. This is an overly simplistic approach. AMERIPEN recommends revising the credit amount to instead reflect the statewide proportion of the population served in the applicable county or counties.

Subsection 11(D) establishes the annual report fees for alternative collection programs. AMERIPEN seeks the Department's justification for these fee levels and asks whether the Department has considered whether lower levels would be more appropriate given the reduced complexity of a single producer/industry collection program.

### **Section 13. Defining Municipal Reimbursement.**

In conjunction with the previous recommendation to allow in-home refill to qualify as reuse, AMERIPEN recommends amending subsection 13(B) to provide that municipal reimbursement is not required for reusable packaging that the consumer refills in the home.

AMERIPEN vehemently objects to the approach in paragraph (D) for providing reimbursement for packaging material types that are not readily recyclable but are sent to a landfill. AMERIPEN firmly believes that reimbursement for disposal and landfill costs for packaging material that is not readily recyclable should **not** be allowed under the program. This is evidenced in the law and legislative intent, through clear amendments taken during the legislative process that struck "disposal" costs in three places. Specifically, this concept was removed from the law and references to disposal were specifically struck from LD 1541, through a floor amendment (H-A to C-A (H-714)) from then Representative Ralph Tucker. The legislative intent is clear, and "disposal" costs were struck in three places from the bill. Disposal costs therefore cannot be paid for under the final rules promulgated for the law. In contrast, AMERIPEN does support funding for alternative management of packaging materials that are diverted from disposal at landfill and moved up the state's solid waste hierarchy, as stipulated in 38 MRSA §2101.

### **Section 14. Obtaining Information for Municipal Reimbursement.**

Subsection 14(A)(2) requires that if "a participating municipality or any affiliated contractor makes a change to the management of a packaging stream that requires notification, it must contact the S.O. within 30 days of making the change." As previously submitted, AMERIPEN urges the Department to give thought to how it can be ensured that municipalities report changes in a

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timely manner – particularly those that will result in lower reimbursement. This may entail robust auditing and enforcement efforts.

Related, the third paragraph of subsection 14(A)(2) details what qualifies as “changes to the management of a packaging stream that might require notification.” AMERIPEN recommends deletion of “might” to ensure the S.O. is fully informed of any actions that could necessitate a follow-up cost study. Additionally, AMERIPEN appreciates the revisions in the reposted draft rules from “additional” to “changes to” in the last example.

Subsection 14(B)(2)(d) requires audit results from two municipalities that “are not significantly different” to be averaged and represent all municipalities managing the same commodity or accepted materials. This methodology relies on very small sample sizes and appears to risk biasing the average in favor of just two results that agree by chance. As previously submitted to the Department, AMERIPEN seeks justification as to why this approach was chosen and how it will produce truly representative values. It may be preferable instead to let the S.O. set the nature of this applicability determination.

### **Section 16. Determining the Median Per Ton Cost of Recycling, Reusing, and Composting Each Packaging Material Type.**

Subsection 16(B)(3) provides that, if “there are not three current complete cost studies measuring the per ton cost of a management pathway for a packaging material type, the S.O. will not determine the median per ton cost for this management pathway for this packaging material type.” AMERIPEN requests clarification as to what would happen next in this scenario to complete the determination of the median per ton cost.

### **Section 17. Calculating the Tons Managed of Packaging Material Recycled, Reused, or Composted.**

Subsection 17(B)(2)(a) requires municipalities to report to the Department “total tons of the set of accepted materials received by the receiving facility,” which presumably is not a figure to which municipalities already have access. As previously submitted to the Department, AMERIPEN suggests including an explicit requirement for receiving facilities to share this information with municipalities, including any appropriate confidentiality measures.

Subsections 17(B)(3)(a) and 17(B)(3)(b) lack the language stating, “unless a specific case is brought to the attention of the Department and determined to be an exception,” which was included in corresponding language in the rule concept. AMERIPEN again seeks the Department’s explanation for the reason for this omission.



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### **Section 18. Investments.**

Subsection 18(A)(2) limits eligibility for infrastructure investments to municipalities, tribes, school administrative units, career, and technical regions, 501(c)(3) organizations, or businesses with less than \$5 million in total gross annual revenue. However, the law does not place any restrictions on who may receive investment funding. As previously submitted to the Department, AMERIPEN believes that full flexibility for eligibility is warranted to ensure that every option that can support packaging recycling in Maine. The S.O. and Department will still be responsible for evaluating the merit of each proposal, so there will be no loss in stringency for funding use. While we appreciate the addition of the conditions not applying to major investment needs, AMERIPEN again recommends striking specific references to eligible entities.

AMERIPEN appreciates the addition in the reposted draft rules the increased flexibility for pilot projects provided in subsection 18(A)(5).

Subsection 18(A)(6)(c) establishes a \$2,000/ton recycled cost effectiveness requirement for infrastructure proposals. AMERIPEN again requests to know how the Department established this figure.

Regarding the Major Investment provisions in subsection 18(D)(4), there is a lack of criteria to determine when a major investment is necessary and justified. AMERIPEN recommends that major investment proposals must demonstrate that they will increase efficiency and/or recycling capacity where there is a regional need. AMERIPEN also requests restoration of the last sentence of the final paragraph, which required funds not reallocated to other major investments needs within three years to be made available for all program needs. This would help defray the need for increased fees.

As previously submitted, an earlier published rule concept included a requirement for the S.O., in its annual report, to “include the amount of investment funding approved during the prior calendar year and a description of the approved investment proposals.” AMERIPEN supports the reporting of this information to give insight into investment performance and requests it be added back into the draft rules.

### **Section 19. Packaging Stewardship Fund Cap.**

AMERIPEN supports this section governing the treatment of “excess funding,” particularly for the reduction of producer costs. Related to previous comments submitted, AMERIPEN appreciates the addition of a tiered reserve level requirement in the reposting draft in paragraph (A).

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Subsection 18(B) requires the S.O. to “reduce the amount owed for each ton of packaging material produced” according to the calculation of expected excess funding. AMERIPEN is concerned that this approach will penalize producers that sell into commercial spaces have a business entity paying for their recycling by spreading out the excess collected from those producers - as their funds then subsidize other producers whose packaging is collected in the municipal recycling stream.

**Section 21. Requests for Exemption from the Post-Consumer Recycled Material Incentive Fee.**

AMERIPEN appreciates the addition of this section and acknowledgement of the limits of incorporating post-consumer recycled material. AMERIPEN reiterates its support for six of the parties that requested exemptions pursuant to this authority, expressed in the letter AMERIPEN submitted to the Department on July 30, 2024. However, we feel it is critical to note that the underlying statute is overly restrictive in not exempting materials for which it is impractical or impossible to comply. This is especially apparent when comparing Maine’s law with those in the other states with similar programs, which all contain affirmative exemptions that do not require a request and review process. Our letter, and the exemption requests submitted by the aforementioned parties, delve much further into these facts.

As previously submitted to the Department, AMERIPEN seeks to clarify in the rule that, if a request is approved, the amount of the applicable fee would be entirely eliminated and not reapportioned to any other producers. Additionally, and consistent with the law, AMERIPEN recommends that this section explicitly state that a material that receives an exemption should be excluded from all packaging material requirements, including the calculation of a PCR rate.

Additionally, the draft of these rules posted on February 5, 2024, removed an appeals process involving the Maine Board of Environmental Protection (BEP). As we previously submitted to the Department, AMERIPEN seeks to know why this appeal option was eliminated and requests some form of appeal be made available in the final rule.

Finally, AMERIPEN again requests that packaging material that is precluded by law or regulation from using any post-consumer recycled material be excluded upfront from post-consumer recycled material goals and fees, rather than requiring a waiver request. This will save the Department resources from considering cases that are clearly constrained by existing prohibitions.

## Maine DEP – Stewardship Program for Packaging – Reposted Draft Rules

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# # #

AMERIPEN strives to offer a good-faith and proactive approach that integrates elements from other established packaging producer responsibility programs with hopes of developing a plan that will incentivize recycling growth and the beneficial impacts that come along with that in Maine. AMERIPEN continues to focus on strategies that develop and/or strengthen policies to progress the “reduce, reuse, recycle” strategies, while at the same time, enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain. Unfortunately, these regulations fall short of what we believe is a workable approach and continue to take major unproductive steps backward. Therefore, we reiterate our request that these rules be paused, and that the Department and the Administration offer an opportunity for a larger dialogue about the structure of the rules and the law itself, and potential changes that need to be made to the law before rules are promulgated further.

AMERIPEN hopes that a pause in the regulations would allow for an open dialogue with the Department, the Administration and interested stakeholders while collectively balancing the myriads of needs for packaging, recycling, and sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, which in the end, ultimately assists in the success of this program. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

As always, AMERIPEN thanks the Department for this opportunity to provide written comments regarding the above proposed draft rules and appreciates the Department staff’s time and assistance during the rulemaking process. Please feel free to contact me or Andy Hackman with Serlin Haley, LLP (AHackman@serlinhaley.com) with any questions on AMERIPEN’s positions.

Sincerely,

Dan Felton  
Executive Director

**Nadeau, Jessica**

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**From:** David VonSeggern <vonseg1@sbcglobal.net>  
**Sent:** Wednesday, August 7, 2024 9:45 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I strongly support the proposed packaging rules that have been put forth by MDEP. Maine can lead the nation in reducing wasteful, unnecessary packaging by shifting the responsibility for reuse and recycling to the manufacturers.

Next step -- require Amazon, FEDEX, UPS to accept used cardboard containers placed at delivery points for pickup when any delivery is made.

Sincerely,  
David VonSeggern  
51 Emery St Unit 1 Unit 1  
Westbrook, ME 04092



August 26, 2024  
VIA ELECTRONIC MAIL  
[MainePackagingEPR@maine.gov](mailto:MainePackagingEPR@maine.gov)

Re: IDEXX Comments on Section 13(D) of 38 M.R.S. § 2146 “*Stewardship Program for Packaging*”

Commissioner Loyzim, Mr. Beneski and the Department of Environmental Protection:

Thank you for the opportunity to comment on the Maine Department of Environmental Protection’s proposed new rule (“Chapter 428”) under Section 13(D) of 38 M.R.S. §2146 of the “*Stewardship Program for Packaging*” (the “Program”).

IDEXX Laboratories, Inc. is headquartered in Maine. Operating out of our Westbrook and Scarborough facilities are about 3,000 of our 11,000 global employees. Additionally, we conduct approximately 90% of our world-wide manufacturing and annually invest in approximately \$150 million in research and development at these facilities. Our manufactured products are essential to the functioning of society, and include veterinary diagnostic tests for infectious diseases, veterinary diagnostic instruments for blood chemistry, hematology, urology, and blood gases, and drinking water safety. Our products are sold within Maine, across the United States and exported all over the world.

Product safety and our operations require IDEXX to consider packaging materials sourced from hundreds of local and international providers. Some are procured directly and utilized in the packaging of our products while others are included in the products we use internally or in third party products we sell or distribute directly. In many cases, the packaging is integral to assuring the accuracy of the diagnostic test being sold and can be a regulated component of the product itself.

In light of our experiences working with numerous vendors, regulatory agencies and other global stewardship programs, we offer the following recommendations to assist in the successful implementation of Maine’s Program.

**Ongoing Producer Registration and Reporting (Section 9)**

To assure program effectiveness, we encourage the state to align the reporting obligations with analogous and highly effective national waste reporting programs in other jurisdictions which would also be in compliance with 38 M.R.S. §2146. Producers should report material types determined by the department, with the SO applying its deeper market knowledge as it manages packaging waste throughout the system. This will allow for consistent year over year information.

Further, IDEXX recommends that the DEP determine recyclability based on a recognized standard and use the fee structure to incentivize ‘readily recyclable’ material, with any future changes being published at least 270 days prior to the producer reporting window to prepare and adapt. Reporting obligations for producers should remain consistent (as discussed above) with other EPR programs.

As an example, the European EPR (Extended Producer Responsibility) Directive requires companies to register as a producer, but the reporting is defined at the Packaging Material level and does not extend to the product SKU level. In Appendix A, we offer an example of the information required to be reported under a similar program to Maine's law. To meet obligations, companies can provide data-driven reports of all packaging across the portfolio, aggregating the data to a summary of all packaging components made of the same material type.

There are several challenges with reporting at the product SKU level and not at the producer level, which is why other governing bodies have not implemented this approach. Since many of the packaging materials being considered are used in multiple products, assigning a classification to each packaging element would not be possible before knowing its final use. Yet, this imperfect determination would still require substantial manual effort and place a significant burden on companies with lengthy product catalogs. In our situation, IDEXX has more than 4,000 unique products that we manufacture or distribute to customers, and each product could contain 6-10 or more units of unique packaging supplied by multiple suppliers. Even with our existing investment in compliance software specifically for waste reporting programs, reporting at the product SKU level would be near-impossible to automate or make efficient. For IDEXX, let alone other businesses with less resources, compliance at this level will require 1,000s of manual hours to assemble information that changes frequently.

### **Toxicity Definition**

Producers' requirement to report on intentionally added toxics in Section 9(B)7 of the proposed rule should be based on a readily available and reasonably ascertainable standard as it is highly unlikely that such certifications will be made available to Maine based Producers from a global supply chain.

### **Fee Structure**

Transparency about the fee structure is important for both manufacturers of covered products and producers that procure packaging to make longer term decisions on selection of packaging materials, directly influencing product design. These decisions require planning in advance and have far reaching impacts on manufacturing, product handling, storage and transportation. For some categories of regulated products, packaging changes may have to be validated and notified to regulatory agencies for approval. Therefore, IDEXX recommends that the DEP publish fee changes information at least 270 days prior to the implementation date.

In the end, to achieve Program goals it is critical that companies and Operators have the benefit of consistent standards and approaches – both within the US and internationally – for information to be available, comprehensible, and useful. Accordingly, we urge that draft Chapter 428 take an approach consistent with those taken by other governing bodies so that data can be easily aggregated and not dependent on variable information including ongoing changes in the capacity and capability of Maine recyclers. Such an approach will ensure that the final Chapter 428 can be feasibly implemented and complied with, will generate accurate, consistent and recognizable data for the Maine Stewardship Operators to use, and will continue to allow critical products to remain on the market

We look forward to working with the DEP in your ongoing development of Chapter 428, and again thank the DEP for the opportunity to provide these comments.



Diana Rondeau  
Director Global Product Compliance  
[Diana-rondeau@idexx.com](mailto:Diana-rondeau@idexx.com)  
(207)556-8906

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#### **Appendix A: EU 94/62/EC Reference**

- EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/62/EC  
of 20 December 1994 on packaging and packaging waste  
Annex III, tables 1, 2, 3

TABLE 3

**Quantity of packaging waste recovered and disposed of within the national territory**

	Tonnage of waste produced	- Tonnage of waste exported	+ Tonnage of waste imported	= Total
<b>Household waste</b>				
Glass packaging				
Plastic packaging				
Paper/cardboard packaging				
Cardboard composite packaging				
► <sup>(1)</sup> Ferrous metal packaging				
Aluminium packaging ◀				
Wood packaging				
<b>Total household packaging waste</b>				
<b>Non-household waste</b>				
Glass packaging				
Plastic packaging				
Paper/cardboard packaging				
Cardboard composite packaging				
► <sup>(2)</sup> Ferrous metal packaging				
Aluminium packaging ◀				
Wood packaging				
<b>Total non-household packaging waste</b>				



The EU Packaging and Packaging Waste Directive which has been in place since 1994 across all EU member states, implements reporting as per the following materials:

<b>Cat. No</b>	<b>Predominant packaging material</b>	<b>Packaging type</b>	<b>Format (illustrative and non-exhaustive)</b>	<b>Colour / Optical transmittance</b>
1	Glass	Glass and composite packaging, of which the majority is glass	Bottles, jars, flacons, cosmetics pots, tubs, ampoules, vials made of glass (soda lime silica), aerosol cans	-
2	Paper/cardboard	Paper/cardboard packaging	Boxes, trays, grouped packaging, flexible paper packaging (e.g. films, sheets, pouches, lidding, cones, wrappers)	-
3	Paper/cardboard	Composite packaging of which the majority is paper/cardboard	Liquid packaging board, and paper cups (i.e. laminated with polyolefin and with or without aluminium), trays, plates and cups, metallised or plastic laminated paper/cardboard, paper/cardboard with plastic liners/windows	-
4	Metal	Steel and composite packaging of which the majority is steel	Rigid formats (aerosols cans, cans, paint tins, boxes, trays, drums, tubes) made of steel, including tinplate and stainless steel	-
5	Metal	Aluminium and composite packaging of which the majority is aluminium – rigid	Rigid formats (food and beverage cans, bottles, aerosols, drums, tubes, cans, boxes, trays) made of aluminium	-
6	Metal	Aluminium and composite packaging of which the majority is aluminium – semi rigid and flexible	Semi rigid and flexible formats (containers and trays, tubes, foils, flexible foil) made of aluminium	-
7	Plastic	PET – rigid	Bottles and flasks	Transparent clear / coloured, opaque
8	Plastic	PET – rigid	Rigid formats other than bottles and flasks (Includes pots, tubs, jars, cups, mono- and multilayer trays and containers, aerosol cans)	Transparent clear / coloured, opaque

9	Plastic	PET – flexible	Films	Natural / coloured
10	Plastic	PE – rigid	Containers, bottles, trays, pots and tubes	Natural / coloured
11	Plastic	PE – flexible	Films, including multilayer and multi-material packaging	Natural / coloured
12	Plastic	PP – rigid	Containers, bottles, trays, pots and tubes	Natural / coloured
13	Plastic	PP – flexible	Films, including multilayer and multi-material packaging	Natural / coloured
14	Plastic	HDPE and PP – rigid	Crates and pallets, corrugated board plastic	Natural / coloured
15	Plastic	PS and XPS – rigid	Rigid formats (includes dairy packaging, trays, cups and other food containers)	Natural / coloured
16	Plastic	EPS – rigid	Rigid formats (includes fish boxes / white goods and trays)	Natural / coloured
17	Plastic	Other rigid plastics (e.g. PVC, PC) including multi-materials – rigid	Rigid formats, including e.g. intermediate bulk containers, drums	-
18	Plastic	Other flexible plastics including multi-materials – flexible	Pouches, blisters, thermoformed packaging, vacuum packaging, modified atmosphere/modified humidity packaging, including e.g. flexible intermediate bulk containers, bags, stretch films	-
19	Plastic	Biodegradable plastics[1] - rigid (e.g. PLA, PHB) and flexible (e.g. PLA)	Rigid and flexible formats	-
20	Wood, cork	Wooden packaging, including cork	Pallets, boxes, crates	-
21	Textile	Natural and synthetic textile fibres	Bags	-
22	Ceramics or porcelain stoneware	Clay, stone	Pots, containers, bottles, jars	-



August 26, 2024

Maine Department of the Environment  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017

RE: Comments on Chapter 428 Draft Proposed Rule Redraft

Thank you for the opportunity to provide input on the Proposed Rule Draft of the implementation process for the State Stewardship for Packaging program. PRINTING United Alliance (Alliance) hopes that the comments contained herein will prove useful and stand ready to continue to work with the Department of Environmental Protection (DEP) in the further development of the requirements.

As background, the Alliance represents the interests of facilities engaged in producing a wide variety of products through various print processes including screen printing, digital imaging, flexography, and lithography. There are 126 facilities involved in printing and packaging in the state of Maine that employ almost 3,500 people. The value of goods shipped ranges from \$1.2 billion to \$1.4 billion per year. The printing and packaging industry is comprised primarily of small businesses, with approximately 95 percent classified as a small business according to the Small Business Administration standards.

Many of the Alliance's members in Maine are engaged in the production of packaging. In addition, the Alliance also has members that produce packaging for customers that ship products into Maine. These customers would be classified as producers under the proposed regulations. As such there is a requirement for producers to indicate if they have a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics.

#### Producer Certification of No Intentionally Toxics in Packaging

Producers will be required to provide this information when they register with the Packaging Stewardship Organization (SO) and provide detailed information about the packaging they are using to distribute their products. As part of the registration process, they need to indicate which package can be certified to show that no "toxics" have been intentionally added to the package. For all products that cannot be certified, the producer will be charged a higher fee under the program.

Here are some of the key provisions to the proposed regulation:

#### **B. Annual Reporting for Producers Other Than Low-Volume Producers.**

(7) Whether the producer can provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics;

**10. Producer Fees.** A producer must pay fees based on the packaging material it produces each year. The SO must invoice producers by July 1st of each calendar year, and a producer must pay fees owed in accordance with this Section by September 1st of each calendar year. The SO's contract with the Department must define, or provide a mechanism for defining, late fees.

(3) Incentive fees. Beginning the third calendar year in which producers report under this Chapter, a producers must pay the following incentive fees, as applicable. These fees are relative and additional to packaging material type fees.

(b) Toxicity fee. For a packaging material type for which a producer is unable to provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify no intentional addition of toxics, it must pay a per ton fee equal to 10% of the packaging material type fee.

Here is the definition of a "Toxic Chemical":

**2. Definitions.** The following terms, as used in this Chapter, have the following meaning unless the context indicates otherwise:

**DD. Toxics.** "Toxics" means chemicals of concern, chemicals of high concern, or priority chemicals priority chemicals listed by the Department in accordance with *Toxic chemicals in children's products*, 38 M.R.S. § 1694; PFAS and phthalates as defined in under *Reduction of toxics in packaging*, 32 M.R.S. § 1732; and food contact chemicals of high concern or priority food contact chemicals priority chemicals listed by the Department in accordance with *Toxic chemicals in food packaging*, 32 M.R.S. § 1743.

#### Problems With Producer Toxic Chemical Certification Requirements

This requirement poses significant challenges for producers and their suppliers. The first is the ability to obtain a certificate in a timely manner. Supply chains for packaging can be very complex with many different components required to assemble a single package. Requesting a certificate from a supplier that is a single source provider is challenging, but when multiple components are involved, the process becomes a time consuming and complex administrative burden for both producers and their suppliers. In addition, some producers may be manufacturing their own packaging which includes printing information on it required for distribution.

The certification requirement introduces additional, unnecessary costs to the producer and their packaging suppliers. The daunting list of nearly 2,000 chemicals that must be evaluated exacerbates the complexity of the certification requirement. Verifying that a package is free from these substances may require expensive testing of each lot produced, which is highly impractical. This is because the primary tool for assessing chemical composition is the Safety Data Sheet (SDS) required by OSHA. The information available on SDS's is often insufficient for this purpose, making compliance with certification nearly impossible.

Under the Hazard Communication Program, manufacturers and importers must provide a Safety Data Sheet for products containing hazardous constituents, except for articles, which are exempt. OSHA

requires that these constituents, most of which are chemicals, to be identified if they are present in a concentration of 1% and 0.1% for carcinogens.

If the constituent is not a human health hazard, then it does not have to be identified on the Safety Data Sheet. Likewise, if a material is considered an article, then a Safety Data Sheet is not required to be produced or provided to an end user. In many instances, the base substrate for packaging such as paper, paperboard, corrugated, rigid plastics, plastic films, etc. are articles and Safety Data Sheets are not available for them. Manufacturers and importers can also withhold the name of ingredient, if it is considered a trade secret, when they follow OSHA's guidance.

The inclusion of the chemicals of concern and chemicals of high concern under the Children's Products and Toxics in Packaging regulations is inappropriate, because these lists were originally intended as a candidate list for potential regulation under the program. These lists of chemicals were analyzed by a process created by the DOE that ultimately determined which chemicals would be regulated under each program.

There is a process by which the candidate chemicals are evaluated and just because a chemical appears on a candidate list does not automatically mean it is toxic and a threat to human health or the environment. There are many factors that need to be considered before a chemical is identified as one that requires some form of regulation. The chemicals on the candidate lists must be carefully vetted before they are regulated. Presence alone does not imply exposure. Exposure must be assessed using factors such as concentration, duration, and pathway.

#### Revisions To Certification Requirement

The certification requirement for producers needs to be eliminated from the proposed regulations. There are two main reasons: first, the logistical challenge of obtaining such certification is nearly impossible; second, the requirement is not mandated by the enabling legislation, Stewardship Program for Packaging (38 M.R.S. § 2146). The certification requirement is a burdensome administrative requirement that will only increase the cost and complexity of compliance.

As an alternative to the certification requirement, the regulation could require a producer to provide an assurance that they are working with their supply chain to reduce or eliminate the presence of the identified chemicals. Producers that do not provide an assurance could be identified in the annual report required by the SO as an incentive.

The number of toxic chemicals that need to be investigated by the producer needs to be reduced to only the chemicals that are being regulated under the identified statutes. They are as follows:

- Title 32, Chapter 26-A: REDUCTION OF TOXICS IN PACKAGING: [Toxics Use Reduction Program \(TUR\), Maine DEP](#)
- Title 32, Chapter 26-B: TOXIC CHEMICALS IN FOOD PACKAGING: [Toxics in Food Packaging Program, Maine DEP](#)
- Title 38, Chapter 16-D: TOXIC CHEMICALS IN CHILDREN'S PRODUCTS: [Safer Chemicals in Children's Products, Maine DEP](#)

Reducing the number of chemicals that need to be investigated has two key benefits. First, it aligns this program with existing requirements, preventing an increase in the compliance burden for producers and

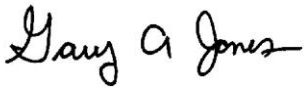
their suppliers. Second, it streamlines compliance, ultimately benefiting consumers. Producers cannot absorb all the costs of compliance and fees associated with this program. Some or all the costs of compliance and fees will be passed on to the consumer in the form of higher prices for products sold in covered packaging.

#### Conclusion

The producer certification process for toxic chemicals needs to be scaled back from what is contained in the proposed regulations. It is a requirement that will impose significant compliance costs and complexities that may not be able to be met.

We look forward to working with the State of Maine as the Department continues its deliberations and information gathering during the implementation process. If we can be of any further assistance, please contact me at [gjones@printing.org](mailto:gjones@printing.org).

Sincerely,

A handwritten signature in black ink that reads "Gary A. Jones". The signature is written in a cursive, flowing style.

Gary A. Jones  
Vice President EHS Affairs  
[gjones@printing.org](mailto:gjones@printing.org)  
(703) 359-1363

**power tool institute, inc.**

1300 SUMNER AVENUE, CLEVELAND, OHIO 44115-2851 216-241-7333 FAX 216-241-0105

E-Mail: [pti@powertoolinstitute.com](mailto:pti@powertoolinstitute.com) URL: [www.powertoolinstitute.com](http://www.powertoolinstitute.com)

August 26, 2024

TO: Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Transmitted electronically to [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov).

SUBJECT: Chapter 428: Stewardship Program for Packaging

The Power Tool Institute (PTI) is pleased to be provided with an opportunity to submit comments on implementing the Packaging Stewardship Program, under 38 M.R.S. § 2146. PTI is a trade association representing market-leading brands in the areas of portable and stationary power tools for consumer and professional use. Power tools represent a nearly \$10 billion industry in the U.S and our members employ over forty thousand people. Founded in 1968, PTI's primary objectives are to encourage high standards of safety in the manufacture of power tools (and lithium-ion batteries); to prepare and distribute information about safe use of power tools; to promote the common business interests of the power tool industry; to represent the industry before government; and to educate the public as to the usefulness and importance of power tools.

As an industry, we recognize the increasing presence of state-supported stewardship programs aimed at reducing waste and promoting recycling. However, to maximize the effectiveness of these initiatives, it is crucial that they are developed consistently across state lines. We encourage Maine to review and consider aligning its program with those already enacted in states such as California, Oregon, Colorado, and Minnesota.

Alignment across state programs can reduce the complexity and administrative burden on businesses that operate in multiple states. When states adopt similar guidelines, definitions, and reporting requirements, companies can more efficiently implement compliance measures, allowing them to focus resources on innovation and sustainability rather than navigating a patchwork of varying regulations.

Additionally, alignment of reporting requirements can mitigate packaging design complexities between states and increase product availability. Inconsistent state regulations can lead to market disruptions, where businesses may face competitive disadvantages or increased costs due to differing requirements. Alignment mitigates these risks, ensuring a level playing field for all companies while advancing shared environmental objectives.

**Objection to Specific Producer Reporting Requirement:**

We would like to express our concern regarding the proposed annual reporting requirement in 9.B(6), which mandates that producers report the total weight of post-consumer recycled material as verified by a third-party audit. While we support transparency and the use of recycled content, this audit requirement introduces significant challenges. The process of third-party verification is costly and administratively burdensome. Moreover, the accuracy and consistency of such audits can vary, leading to potential discrepancies and compliance issues.

If such documentation must be provided, we recommend allowing proof of the total weight of post-consumer recycled material to be based on a certificate from the entity or entities that manufacture the packaging material. This approach aligns with the language in 9.B(7) concerning the attestation of the absence of intentionally added toxics. We believe that self-reporting, with the option for the Stewardship Organization (SO) to audit producers under 9.E if inaccuracies are suspected, could achieve the same environmental objectives without imposing undue burdens on producers.

In conclusion, while we fully support the goals of the proposed stewardship program, we believe its success will be greatly enhanced by aligning it with other state initiatives. We strongly encourage Maine to adopt common definitions and standards to ensure that key terms, packaging material classifications, and recycling measures align with those used in other states. Alignment in reporting requirements and timelines will not only reduce the burden on businesses but also increase compliance rates.

In closing, PTI is grateful to the Maine Department of Environmental Protection for the opportunity to comment on Chapter 428: Stewardship Program for Packaging. Please feel free to contact us with any questions regarding our comments.

Sincerely,



Heather Darrah  
Technical Director  
Power Tool Institute  
1300 Sumner Avenue  
Cleveland, Ohio 44115-2851  
Direct: 216-270-3089  
[hdarrah@thomasamc.com](mailto:hdarrah@thomasamc.com)



August 26, 2024

**Submitted Via:** [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

The Honorable Melanie Loyzim  
Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

**Re: Reposting Draft – Stewardship Program for Packaging**

Dear Commissioner Loyzim:

The Association of Home Appliance Manufacturers (AHAM) appreciates the opportunity to provide comment on *Chapter 428: Stewardship for Packaging-Reposting Draft* (Reposting Draft). AHAM supports reasonable and effective extended producer responsibility (EPR) measures and is committed to working with stakeholders to establish an effective program in Maine.

**AHAM Feedback on the Reposting Draft**

AHAM appreciates the opportunity to comment on the Reposting Draft. While the Public Comment period was open on the Posting Draft, AHAM noted the necessity for the Stewardship Program to align its definition of a “Durable Product” with the Bureau of Economic Analysis’ (BEA). The Posting Draft and Reposting Draft have defined “Durable Product” as “a product that wears out over an expected lifespan of at least 5 years. A durable product is not depleted through use.”

AHAM again requests Maine align its definition of “Durable Product” with BEA’s, which defines durable goods as: “Tangible products that can be stored or inventoried and that have an average life of at least three years.”<sup>1</sup> AHAM appreciates the continued inclusion of a definition for durable products. A consistent definition of a durable product is vital to a national marketplace, which helps to ensure Maine consumers continue to enjoy a broad range of products.

With respect to packaging for durable products, AHAM recommends Maine provide an exclusion for packaging that does not enter the household or curbside recycling stream. Appliance packaging materials, including expanded polystyrene (EPS) and thin plastic film (PE), may ultimately not enter the residential recycling stream because large appliances are usually delivered to a consumer’s home and, as part of the installation, the packaging material is removed by the installer and not left in the home. The installers load the packaging into the

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<sup>1</sup> <https://www.bea.gov/help/glossary/durable-goods>

delivery truck and return those materials to be recycled through commercial (non-residential) recycling systems.

Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream. A shipment of portable and floor care appliances would include hundreds of products placed in multiple master cartons that are secured to a pallet. The pallet of product goes to a distribution center and is either separated by units or delivered to the final seller.

Oregon's EPR law, the Plastic Pollution and Recycling Modernization Act (SB582, 2021) recognizes and encourages this successful recycling process by including a provision that exempts covered packaging materials if the producer can demonstrate that their packaging is recovered as a function of the distribution chain and is recycled at a responsible end market. The Oregon law states the following:

*A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:*

- (A) Is collected through a recycling collection service not provided under the opportunity to recycle;*
- (B) Does not undergo separation from other materials at a commingled recycling processing facility; and*
- (C) Is recycled at a responsible end market.<sup>2</sup>*

Ontario, Canada takes a similar approach with a regulation that allows for two deductions and home delivered appliances are one of them. The following is a common deduction in Canada:

*Allowable deductions are those Blue Box materials that are:*

*Collected from an eligible source at the time a related product was installed or delivered. For example, packaging that is supplied with a new appliance and is removed from the household by a technician installing the new appliance.<sup>3</sup>*

Circular Materials, a Canadian not-for-profit producer responsibility organization (PRO) works to develop, implement and support effective and efficient recycling programs across Canada. To help producers meet their obligations, Circular Materials publishes a *Guidebook for Stewards*, under extended producer responsibility (EPR) regulations in Canada's provinces.<sup>4</sup>

The 2023 Guidebook notes that there are differences in the definitions of packaging across the provinces and in an attempt to harmonize the programs, Circular Materials has designated packaging to be defined as: "*materials that are used for the containment, protection, handling,*

<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB582>

<sup>3</sup> <https://www.circularmaterials.ca/faq/>

<sup>4</sup> <https://www.circularmaterials.ca/>

*delivery or presentation of goods which are supplied to residential consumers (as opposed to industrial, commercial, or institutional consumers).”<sup>5</sup>*

Circular Material’s Guidebook identifies and distinguishes between packaging materials that are supplied to residential consumers and packaging materials that would not enter the residential or household system of packaging recovery.

**AHAM respectfully requests Maine include the provisions above in the Stewardship for Packaging Program.**

The Reposting Draft includes the proposed 2050 goals for Maine’s recycling and waste management program. The program goals outlined in the Reposting Draft appear overly ambitious given the significant uncertainties over the next 25 years. These goals and requirements are inconsistent with existing federal guidelines and lack harmonization with packaging EPR program goals in other states. Several key points highlight the aggressive nature of these targets:

- **Recycling Access Goal:** The program aims for 70% to 100% recycling access in Maine, a target far higher than other Extended Producer Responsibility (EPR) programs and the Federal Trade Commission’s Green Guides<sup>6</sup>, which recommend a 60% access threshold. Achieving such high access levels is ambitious and may be unrealistic given the challenges of implementation and regional disparities.
- **Ambiguity in Target Responsibility:** It remains unclear which performance targets will be managed collectively by the Stewardship Organization (SO) and which will be the responsibility of individual producers. This lack of clarity could create confusion and inefficiencies in achieving the goals.
- **Aggressive Reduction Goals:** The reduction target of 40% by 2040 and 60% by 2050 is a cause for concern. For comparison, California’s SB54 caps its reduction goal at 25% by 2032. Given the national scale of many product markets, Maine risks losing access to certain products due to this aggressive mandate, which may not align with broader market conditions.
- **Unrealistic Reuse Goals:** The reuse goal, set at 30% by 2040 and 50% by 2050, is similarly ambitious. It’s unclear whether this target applies collectively or individually, and it’s unlikely that producers will uniformly transition to reusable packaging across the national market. This could also lead to diminished product availability in Maine as producers struggle to meet the state’s stringent requirements.

<sup>5</sup> <https://www.circularmaterials.ca/wp-content/uploads/2023/06/2023-Circular-Materials-Steward-Guidebook.pdf>

<sup>6</sup> [https://www.ftc.gov/system/files/documents/public\\_events/975753/ftc\\_-\\_environmental\\_claims\\_summary\\_of\\_the\\_green\\_guides.pdf](https://www.ftc.gov/system/files/documents/public_events/975753/ftc_-_environmental_claims_summary_of_the_green_guides.pdf)

- **Overly Detailed Labeling Requirements:** The labeling requirement necessitates material management services in each of Maine's 16 counties, which could be counterproductive to efficient program management. Such a granular requirement is likely to hinder the scalability and cost-effectiveness of the EPR program, potentially leading to inefficiencies. Moreover, the compliance timeline is unclear, and it's unlikely that all counties will have the necessary infrastructure in place by the start of the program (or even after three years), creating a risk of non-compliance for producers through no fault of their own.

While the 2050 goals are intended to be forward-looking, their aggressive nature raises concerns about feasibility and the risk of unintended negative consequences, particularly given the uncertainties in the market and infrastructure development over the next 25 years.

### **The Program Should Focus on Packaging Recovery and Not Material Design Requirements**

As Maine DEP continues to determine the design and requirements of their EPR program, the unavoidable use of certain packaging materials must be recognized.

Worker safety in warehouses, distribution centers or during transportation/delivery is essential, especially when dealing with large appliances such as refrigerators, freezers, dishwashers, cooking ranges, clothes washers and dryers. Once assembled, major appliances are often packaged, stored and moved in very large warehouses or distribution centers. These facilities often have limited climate control and can experience extreme temperature and humidity changes. Low temperatures can cause packaging materials to become brittle while humidity and heat can affect the packaging's structural integrity and limit the effectiveness of adhesives or the strength of products made from fiber.



For safety purposes, it is vital to maintain the structural strength of packaging materials, particularly with respect to major appliances that are regularly stacked vertically with multiple units above ground. Furthermore, these appliances are often moved around by clamp truck and the packaging must withstand the force of the clamps to be moved efficiently. Other paper



alternatives such as cardboard, molded pulp or honeycomb can only handle a limited number of impacts and are more apt to lose structural integrity in hot and humid environments.

A fiber-based alternative to EPS would be bulkier and heavier. Consequently, this increased unit size leads to more truck loads need to transport the same number of units, more fuel to move them, and more warehouse space required to store them. It is estimated that there would be an increase in size of five to ten percent in all directions for the equivalently designed protective packaging, which

equates to an increase of about 20-30 percent more trucks needed to deliver large appliances. Such an increase of delivery trucks drastically increase emissions and the environmental impact of delivery trucks in Maine.

Additionally, thin plastic film (PE) is used to protect the finish of appliances as well as the display screen. Fiber alternatives, such as paper, are like sandpaper and would scratch the product and would lead to consumers either accepting a damaged product or refusing delivery and the distributor returning the product to the warehouse. There is no alternative to the use of plastic film to protect the finish of appliances or the display screen.

Appliance packaging is used to protect the appliance and factory personnel during storage, transport and delivery. The safest and most effective materials for this use are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions. Unlike smaller, fast-moving consumer goods, packaging for heavy durable goods have different requirements and must be able to ensure the protection of workers during transportation and at distribution centers. Large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers are stacked as high as 30 feet and packaging cannot fail while products are warehoused, regardless of environmental or climate conditions.



### **Durable Product Manufacturers Should Have Designated Seat on Advisory Board/PRO**

Manufacturers of durable products should have an equal role in the management of the program as other stakeholders. Durable goods have unique packaging needs that other, non-durable manufactured goods do not necessarily require. A designated seat or position would ensure that all stakeholders have a voice in the program.

Recovery programs that place responsibility for recycling and/or disposal of post-consumer packaging with producers must ensure producers' involvement is not limited to merely subsidizing the status quo of inefficient recovery and recycling programs. If producers are responsible for the costs to dispose/recycle in a given jurisdiction, then producers must have the authority to exercise proper oversight without being required to give preferential treatment to existing partners, collectors, or municipal programs during the program's design and implementation.

### **Material Fees Appropriately Assigned Based on Material's Environmental Impact**

Packaging material fees or "eco fees" must consider the life-cycle impact of the material. The use of packaging material that is easily and readily recycled should be incentivized as compared to lightweight, non-biodegradable materials. Alternatives to existing packaging materials or material source reduction involve tradeoffs. For example, plastic-based products will generally be lighter and less volume than fiber-based packaging. In addition, there are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging, especially for home appliances that have non-consumer facing packaging, because the packaging is not used for marketing purposes. It is purely an additional cost to the product to ensure the product arrives at the home without being damaged.

The methodology used to set fees should be consistent with established practices to determine fair allocation of costs based on the complexity required to collect certain material. Maine should require the PRO(s) to apply the minimal annual administration fee feasible to prevent less environmentally impactful materials from subsidizing more environmentally impactful materials,

### **Credit Manufacturers for Previous Packaging Reductions**

Manufacturers who proactively reduced and/or included recycled material in their packaging should have those actions counted toward any source reduction or recycled material requirement. A future packaging law or regulation should not penalize companies that have already taken these steps.

### **States Should Seek a Harmonized Approach**

To the greatest extent possible, AHAM requests Maine harmonize its stewardship program, including definitions and the process for reporting and remitting, with other state's programs. Harmonization of recycling policies will encourage economies of scale, efficiencies and convenience for consumers, while streamlining compliance. In Canada, "EPR" packaging programs exist in most Provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents.



AHAM appreciates the opportunity to provide comments on the Reposting Draft. Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value electronics from retail establishments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Cassady', with a stylized, flowing script.

Jacob Cassady  
Director, Government Relations  
(202) 202.872.5955 x327  
[jcassady@aham.org](mailto:jcassady@aham.org)

**About AHAM:** AHAM represents more than 160 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

In Maine, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Maine is \$437.4 million, more than 3,200 direct indirect jobs, \$66.5 million in state tax revenue and more than \$138.3 million in wages.

The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances also are a success story in terms of energy efficiency and environmental protection.



**Nadeau, Jessica**

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**From:** Jamie Garvin <garvin@ecomaine.org>  
**Sent:** Monday, August 26, 2024 4:53 PM  
**To:** DEP Rule Comments  
**Cc:** Kevin Roche  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear Mr. Beneski, Chair Lazard, and Members of the Board,

On behalf of ecomaine, a community-owned, non-profit organization responsible for the sustainable management of recycling and solid waste for more than 70 Maine cities and towns, I am writing to express our strong support for the updated draft rules for Chapter 428: Stewardship Program for Packaging. We commend the Board for its forward-thinking approach in addressing the critical issue of packaging waste, which has significant environmental and economic impacts on our communities.

As you approach your final deliberations on the draft rules and hopefully move towards their approval, we urge you to keep the following in mind:

#### **Reducing Packaging Waste and Enhancing Recyclability**

One of the most crucial aspects of the proposed rules is the emphasis on reducing the overall volume of packaging material. This is an essential step in minimizing the environmental footprint of consumer products and alleviating the strain on our recycling systems. By incentivizing manufacturers to use less material and to design packaging that is more readily recyclable, the draft rules will help create a more sustainable and circular economy. This approach not only conserves natural resources but also reduces the burden on municipalities tasked with managing growing volumes of waste.

#### **Shifting the Cost Burden to Producers for Lifecycle Accountability**

A key component of these updated rules is the critical need to shift the financial burden of managing packaging waste away from municipalities and onto the industry—specifically, the brands and producers responsible for the packaging materials. Currently, local governments and taxpayers are left to bear the costs of collecting, processing, and disposing of packaging waste. This is not only financially unsustainable but also fails to hold producers accountable for the environmental impacts of their products.

By requiring producers to take financial responsibility for the entire lifecycle of their packaging—from design and production to end-of-life management—these rules promote a system of total lifecycle accountability. This approach incentivizes producers to design more sustainable packaging, reduce excess waste, and invest in recycling infrastructure. Shifting the cost burden to industry will help ensure that the true costs of packaging waste are internalized by those who have the greatest influence over packaging design and material choices, ultimately leading to more environmentally responsible products.

#### **Alternative Collection Programs Must Be Easy to Use**

We understand and appreciate the DEP's commitment to flexibility and innovation within the framework of the Chapter 428 rules, recognizing that a one-size-fits-all approach may not be effective across all sectors or regions, but we also continue to emphasize the importance of ease of access and ease of use for the consumer when it comes to Alternative Collection Programs. ACPs must not be so cumbersome that they alienate users from utilizing them and cause other less sustainable options to be more appealing by erecting barriers of inconvenience.

For instance, programs that require residents to drop off materials at specific collection sites that are far from their homes or only open during limited hours can discourage participation. Additionally, systems that mandate complex sorting or the use of specialized containers can also lead to lower engagement. This can be especially true in areas where curbside collection is not available or where the materials accepted by the program are not clearly communicated to the public, leading to confusion and non-participation.

### **The Role of Waste-to-Energy in the Waste Hierarchy**

While recycling remains a cornerstone of our waste management strategy, it is important to highlight the critical role of waste-to-energy (WTE) as part of a comprehensive waste hierarchy. In comparison to traditional landfills, which are significant sources of methane—a potent greenhouse gas—waste-to-energy facilities offer a more environmentally responsible alternative. WTE not only reduces by 90% the volume of waste that ends up in landfills but also generates renewable energy (10x the amount from landfill gas) that can be fed back into the grid, further reducing our reliance on fossil fuels.

Methane emissions from landfills pose a severe threat to our environment, contributing to climate change at a much higher rate than carbon dioxide. By diverting waste from landfills to waste-to-energy facilities, we can significantly mitigate these harmful emissions. The integration of WTE into Maine's waste management strategy ensures that even non-recyclable materials are managed in a way that maximizes environmental benefits and minimizes harm.

### **Conclusion**

In conclusion, ecomaine fully supports the updated draft rules for Chapter 428 and believes they represent a significant step forward in addressing the challenges of packaging waste. By reducing packaging material, enhancing recyclability, shifting the cost burden to producers, and supporting waste-to-energy as a critical component of our waste management strategy, Maine can lead the way in sustainable waste management practices.

We urge the Board to adopt these rules and continue to prioritize strategies that reduce waste, promote recycling, and utilize waste-to-energy to protect our environment and strengthen our communities.

Thank you for your consideration.

Sincerely,

**Jamie Garvin**

Director of Communications & Public Affairs

**ecomaine**

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**Nadeau, Jessica**

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**From:** Jeff Titon <jtiton@myfairpoint.net>  
**Sent:** Wednesday, August 7, 2024 9:02 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

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DEP,

I fully support the implementation of the EPR for Packaging rules. The Department's thoughtful approach provides a strong foundation for improving our state's recycling systems and reducing waste. Maine communities need this program. It has worked successful in many other places across the world to lessen the burden of managing packaging waste, which has been a persistent – and expensive – challenge.

One key area for improvement is ensuring fair reimbursements for handling non-readily recyclable materials. By addressing this, we can create a more equitable system that supports all municipalities and helps us achieve our recycling targets.

Let's move forward without delay and make a positive impact on Maine's environment.

Sincerely,  
Jeff Titon  
49 Honey Road  
Little Deer Isle, ME 04650

**RE: Chapter 428 Stewardship Program for Packaging, Reposting Draft**

Submitted by:

PakTech  
Jonathan Levy  
Manager, Public Policy and Sustainability  
[Jonathan.Levy@paktech-opi.com](mailto:Jonathan.Levy@paktech-opi.com)



August 12, 2024

Mr. Brian Beneski  
17 State House Station  
Augusta, ME, 04333

**RE: Chapter 428 Stewardship Program for Packaging, Reposting Draft**

Dear Mr. Beneski,

PakTech would like to thank Maine DEP for giving us an opportunity to share our thoughts related to the *Chapter 428 Stewardship Program for Packaging, Reposting Draft (Draft Regulations)*. We congratulate DEP for its yeoman work on developing these regulations and the countless hours of stakeholder input and feedback it has solicited that have led to the release of the Draft Regulations. With that in mind, we hope our comments are received in the spirit they were written as we are interested in seeking clarity with some of the sections and helping to improve the final draft.

Founded in 1991, PakTech's facilities are located in Eugene, Oregon and is a manufacturer of HDPE plastic carrier handles that exclusively utilize recycled resin as a feedstock. We use approximately 1.4 million pounds of recycled HDPE resin per month and is part of our commitment to sustainability and ensuring this material remains in the circular economy. Our commitment to sustainability doesn't end with the use of recycled resin as we also use over 170,000 pounds of recycled fiber per month.<sup>1</sup> From purchasing shipping containers and boxes that contain recycled fiber, to using energy efficient and sustainable power sources, to sustainable water use, we are committed to utilizing sustainable business practices throughout the manufacturing process. Our commitment to sustainability and good manufacturing procedures demonstrates our belief a manufacturing facility can provide a quality product while still being environmentally responsible.

**DISCUSSION:**

**1. Section 2 Definitions**

We are concerned with the current definition of "Producer" that is contained within the draft.

Specifically, Section V. (3) which states:

*"Adds Packaging material to another producer's product for distribution directly to a consumer. This person is only the producer for the packaging material it adds"*

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<sup>1</sup> Through the use of purchasing shipping containers made with recycled fiber content. As such, we are a significant market for recycled fiber products and are proud to support the recycled fiber industry.



We find this definition somewhat vague and confusing as we are unsure what “adds” means in the context of the definition. As stated earlier, PakTech is a manufacturer of 4-Pack and 6-Pack PCR HDPE carrier handles. PakTech manufactures a component part which is then sold to a Brand Owner who then affixes our handle to their package. We do not physically “add” our handles to any packaging. Therefore, we are wondering if the word “add” in this context means a person who physically affixes the component to the package or merely makes that component part available by selling it to a Brand Owner.

We believe the way component parts are treated in the Draft Regulations will directly impact the status of thousands of manufacturers that provide such items to brand owners and packaging manufacturers. Manufacturers of components are typically engaged in business-to-business transactions and provide those items at the request of the primary packaging manufacturer based on their specifications and criteria.

We believe that once the component part is affixed to the package that component loses its identity as “separate and distinct”. This is due to the function of the component. By itself, the component is not able to perform the function it was designed to do. Typically, component parts are designed to provide some function that aids in the delivery or handling of the package it is affixed to. Accordingly, once affixed, it loses its identity and therefore should be considered to be part of the primary package. Because of this, we believe the Brand Owner, and not the manufacturer of the component should be considered the “Producer”.

Many states, such as California and Oregon have taken a look at this situation and have applied various solutions. For example, California has created the definition “component”:

*“Component,” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function.*

A definition like this would readily distinguish our parts from the rest of the package and with a simple amendment to this definition DEP could clearly delineate who is and who is not considered a producer. Accordingly, we suggest DEP consider the following definition:

*“Component” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function. Manufacturers of “component” parts are not considered producers.*



By contrast, Oregon, in its second rulemaking draft has looked at this situation and has included the following definition to “Producer”

*A person that manufactures a packaged item includes a person that directs the manufacturing of the item, including setting specifications for an item’s packaging. Purchasing or ordering an item for retail sale in the normal course of business is not directing manufacturing.*

In this case, Oregon is highlighting the fact that the Brand Owner who is directing the manufacture of the item through specifications should be considered the “producer”.

In either case, both states have acknowledged that manufacturers of component parts should not be considered a “producer”. This clarifies the hierarchy of responsibility and will reduce confusion once the program comes online.

## Conclusion

We look forward to working with all stakeholders in this process to develop rules for the RMA that will ensure that the maximum amount of material is recycled and handled responsibly.

**Nadeau, Jessica**

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**From:** Karen Wood <rlovelace@myfairpoint.net>  
**Sent:** Thursday, August 8, 2024 7:30 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

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DEP,

I fully support the implementation of the EPR for Packaging rules. The Department's thoughtful approach provides a strong foundation for improving our state's recycling systems and reducing waste. Maine communities need this program. It has worked successful in many other places across the world to lessen the burden of managing packaging waste, which has been a persistent – and expensive – challenge.

One key area for improvement is ensuring fair reimbursements for handling non-readily recyclable materials. By addressing this, we can create a more equitable system that supports all municipalities and helps us achieve our recycling targets.

Let's move forward without delay and make a positive impact on Maine's environment.

Sincerely,  
Karen Wood  
35 Newell Brook Rd  
Durham, ME 04222



August 26, 2024

Mr. Brian Beneske  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Re: Comments of the American Chemistry Council on Proposed New Rule:  
Revised Chapter 428, Stewardship Program for Packaging

*Submitted via email: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)*

Dear Mr. Beneski:

The American Chemistry Council is pleased to comment on the Department of Environmental Protection's (DEP) revised proposed regulations to implement its statewide Extended Producer Responsibility (EPR) program for packaging. ACC represents over 190 companies engaged in the business of chemistry—an innovative, \$639 billion enterprise that is helping solve the biggest challenges facing our nation and the world. In Maine alone, our industry helps generate more than \$22 million in state and local taxes. The business of chemistry drives innovations that enable a more sustainable future, creates approximately 555,000 manufacturing and high-tech jobs—plus over four million related jobs—that support families and communities, and enhances safety through the products of chemistry and investment in research. For Mainers, this is more than 500 direct jobs and 600 related jobs.

ACC and our members are working hard to create a more circular economy for plastics. That is why ACC and its Plastics Division members were among the first to establish ambitious, forward-thinking goals that all plastic packaging in the United States is reused, recycled, or recovered by 2040 and that all U.S. plastic packaging is recyclable or recoverable by 2030. Achieving these goals will require industry, manufacturers, brands, and retailers; recyclers and waste haulers; as well as citizens, communities, non-profits, and academics; and federal, state, and local governments to come together to support policies and programs to increase the supply of and the demand for recycled materials, to create the circular economy we all want.

ACC offers the following comments to help inform the development of the Maine implementing regulations. Addressing these issues will be critical to advancing an effective Stewardship Program for Packaging in Maine.

## **I. Utilization of the Full Range of Circularity Criteria to Guide Overall Draft Regulations**

As Maine seeks to implement the regulations for this program, it must take a holistic approach to advance the most effective EPR program. Failure to take a holistic, life-cycle approach to packaging that does not consider impacts on packaging design and performance, overall product safety, and availability and safety of potential alternatives will undermine the effectiveness and viability of the program. The authorizing statute outlines criteria used to incentivize circularity improvements that should be fully considered, including: use of recycled content; increased recyclability; reduction in amount of packaging material used; reduction of litter; increased reuse of packaging material; labeling of packaging material; and other incentives.

## **II. Proposals Related to Priority Chemicals**

We have concerns with the proposed regulation’s approach to identifying priority chemicals for certification. The July 9, 2024, reporting of the draft rule for Chapter 428 seems to be taking a rather broad approach for the blanket inclusion of all the approximately 1400 compounds from Maine’s three statutory chemicals lists – and lists under which potential “priority chemicals” require additional regulatory review. The proposed regulations should establish a science-based process with clear criteria for identifying, assessing, and prioritizing substances for certification that consider the actual use of chemicals in packaging and the overall program circularity criteria. This process should include a notice and comment period for interested parties to provide input that can inform DEP’s evaluation and the overall program. As noted above, the evaluation and any determinations of chemicals for certification should take a holistic approach and explicitly consider the overall program circularity criteria. Failure to do so will undermine packaging design and performance and the success of the overall program.

## **III. Exemption of FDA Regulated Packaging**

Given the U.S. Food and Drug Administration (FDA) regulates the safety of food packaging, as well as medical devices, we recommend DEP exempt FDA-regulated food packaging and medical packaging from the “lower toxicity” criterion in its packaging EPR program. FDA’s regulatory process has determined safe levels of chemicals in food packaging (FDA uses a stringent reasonable certainly of no harm safety standard), so a “lower toxicity” measure would be duplicative.

## **IV. Definitions of “Toxicity and “Toxics”**

As noted above, the authorizing statute already provides a definition of toxicity to mean the presence in packaging material or the use in the manufacturing, recycling or disposal of packaging material of intentionally introduced metals or chemicals regulated under three sections of Maine statutes. The law requires rules to be promulgated that outline criteria to be used to incentivize circularity improvements in seven areas:

- use of recycled content
- increased recyclability
- reduction in amount of packaging material used

- reduction of litter
- increased reuse of packaging material
- labeling of packaging material
- other incentives.

An eighth category is also noted - “lower toxicity” - in packaging material. Contextually, the category of “lower toxicity” immediately follows the category of “increased recyclability of packaging material.” Further, DEP’s annual report to the legislature must subsequently address whether packaging “exhibits” toxicity, particularly if that toxicity is demonstrated to have a disproportionate impact on any community in the State.”

ACC recommends DEP consider its goal of “lower toxicity” in packaging material in tandem with the overall circularity criteria of packaging material and not as a stand-alone category. This will require careful review of opportunities to improve circularity, including whether a concentration of a particular substance impedes recycling, reuse, or other circular technology suitable for packaging.

Accordingly, we recommend DEP strike its proposed definition of “toxics” and focus on implementing its EPR program to achieve circularity objectives – evaluating specifically where chemical substances in food packaging may be impeding recycling.

## **V. Certification of “No Intentionally Added” Toxics**

DEP’s proposed producer benchmarking provision would require that the packaging “is able to be certified as containing no intentionally added toxics.” As noted above, we recommend that DEP not add a new term to the regulations (“toxics”). Further, since the statutory term “toxicity” refers to three different statutory lists, adopting this approach (to certify to “no intentionally added toxics” that would require certifications for all the chemicals on all three lists is likely unworkable. At a minimum, DEP would need to align its definition of “intentionally added” with the certifying body.

DEP should clarify that “intentionally added” does not mean used in a manufacturing facility, equipment, intermediate processes, as a monomer or otherwise in manufacturing or processing of the base material. Styrene, for example, is a monomer polymerized to make polystyrene, and styrene is certainly intentionally used to make polystyrene. Styrene is not, however, subsequently added to the polymerized polystyrene.

We recommend that DEP either use “intentionally added” or “intentionally introduced” as the relevant term of art in the regulations or clarify that the two terms mean the same thing. DEP should also clarify that the mere presence of an impurity or byproduct in the base material does not meet the definition of “intentionally added” or “intentionally introduced.” The specific evaluation of whether a trace amount of a chemical substance in packaging should be targeted to the packaging at issue and its use/application and should take into consideration whether the trace is relevant to DEP’s circularity objectives (e.g., does it impede or disincentive recycling or other technologies).

## VI. Incentive Fees - Proposed Toxicity Fee

DEP has not yet analyzed which chemicals, if any, in which packaging types, in what concentrations, impede or disincentivize recycling or other circularity measures. Accordingly, it is premature to propose criteria to charge a “toxicity fee” and we recommend that DEP strike this section. We recommend that DEP first determine, by regulation, which packaging materials are readily recyclable and which are not in accordance with the Producer Payments section of the statute as a prerequisite to understanding where and how incentives to achieving lower toxicity in packaging material are warranted to improving recyclability. After this review, DEP can more readily move to establishing targeted incentives. As we noted above, food contact packaging (as well as medical devices) regulated by FDA should be exempted from any incentive provisions related to a toxicity criterion.

## VII. Updated List of Toxics Provided in an Appendix

DEP proposes including an updated list of “toxics” in an Appendix. As noted above, the statute already defines “toxicity” by reference to three statutory lists, so it is unnecessary for the implementing regulations to do anything further. More importantly, we recommend that DEP use the statutory lists as reference lists only, since the use of specific chemicals in each type of packaging will likely vary. DEP should not aggregate the chemicals on the three statutory lists and present them in an appendix, which could be misunderstood as a “no presence” list rather than the “lower toxicity” goal set out by statute.

\* \* \*

Thank you for the opportunity to comment. ACC welcomes the opportunity to meet with DEP to discuss our comments in greater detail.



Karyn Schmidt  
Senior Director, Regulatory & Scientific Affairs  
American Chemistry Council  
703-7950-3254



**August 23, 2024**

**Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017**

**HDA Comment Letter  
Maine EPR Chapter 428 Proposed Rule, Updated**

On behalf of the Healthcare Distribution Alliance (HDA), thank you for the opportunity to continue engaging in the rule making process for Maine's Packaging Stewardship Law, § 2146 on behalf of our wholesale distributor members who ensure that over 1,500 points of care in Maine are physically stocked with the products they need to treat their patients.

HDA is the national trade association representing healthcare wholesale distributors, the vital link between the nation's pharmaceutical manufacturers and more than 200,000 pharmacies, hospitals, long-term care facilities, clinics and others nationwide. Healthcare wholesale distributors are unique entities in the supply chain, operating 24 hours a day, 365 days a year, shipping approximately 10 million products across the nation every day. Wholesale distributors' role is to serve as the logistical experts who purchase pharmaceutical products from manufacturers, securely store them, and then safely deliver manufacturer's products to state and federally licensed healthcare providers. Pharmaceutical distribution is a high-volume, high value, yet very low margin industry, operating on less than one percent annual profit margin on average.

**HDA would respectfully like to share our ongoing view that certain exemptions should be added to the rules in order to achieve the stated intentions of the program, streamline operations for the state, and avoid adding disruptive burden to the supply chain.** Further, such exemptions are critical to ensuring that distributors do not face undue barriers in their ability to safely and efficiently delivering over 93% of all products to Maine. Specifically:

- 1.) The packaging of products regulated by FDA as drug or medical devices should be exempted from the definition of "packaging materials" in the Chapter 428 Final Rules.**

The rules as stated are designed to provide an incentive for packaging that meets certain environmental standards regarding material, recyclability, and labeling. However, due to stringent federal laws, regulations, and standards<sup>1</sup> governing the packaging of drugs, distributors would be limited or precluded from switching to packaging materials to increase the recyclability or reduce the volume of packaging material. Accordingly, the content and construction of packaging for U.S. Food and Drug Administration (FDA) regulated drugs and medical devices meet the requirements for exclusion and should be exempted via rulemaking from the final rules. Requiring each and every drug product to go through the application process will create voluminous and duplicative reporting resulting in an unnecessary burden for the state and the



pharmaceutical supply chain. Due to these concerns, HDA requests that the Department add the following exemption language, which is included in several other state's EPR statutes:

Packaging material does not include packaging used for products regulated as a drug or medical device by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(g)(1) of U.S. Code of Federal Regulations.

**2.) Drugs already covered under Maine's Drug Stewardship Program should be exempted from the final Chapter 428 rules to prevent products from being fined multiple times, adding undue burden and strain to the critical pharmaceutical supply chain which keeps Maine shelves stocked with essential medication.**

Maine's Drug Stewardship Program law is already underway, as outlined in *Title 38 Chapter 16 §1612*, with the selected drug stewardship organization being tasked by the statute to report how packaging collected by the program was recycled, and manufacturers being required to make payments to fund the program based on weight, volume, and type of packaging material. Since the packaging for these products is already being funded and recycled under Maine's Drug Stewardship program, including such covered drugs in the Packaging Program or requiring them to undergo individual application process will add unnecessary duplication in fees, efforts, and strain on the pharmaceutical supply chain. HDA believes that the final rules should exempt products covered under this law, as is the case in the current rules draft for other products also covered by other stewardship programs, such as architectural paint. **HDA believes that adding the FDA exemption language would best resolve this conflict and avoid harmful duplications between the programs-** however should the Department choose not to approve such FDA exemption language, we would further urge the Department to add an exemption for covered drugs under this program as follows:

"Packaging material" does not include a discrete type of material, or a category of material that includes multiple discrete types of material, that is:

(4) Packaging used for a covered drug, as defined in Title 38 Chapter 16, section 1612, subsection 1, paragraph D, as long as the drug stewardship program is in operation, has been approved by the department pursuant to section 1612 and the stewardship organization operating that program:

(a) Has demonstrated to the department's satisfaction that it recycles at least 90% of the packaging of a covered drug collected under the program; or  
(b) Subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department's satisfaction that it recycles at least 80% of the packaging of a covered drug collected under the program; or

**3.) The final rules should make it explicit that distributors are not producers.**

It is HDA's view that the original manufacturer of a pharmaceutical product are in the best position to manage product stewardship activities and to reduce waste, rather than those entities in the middle of the pharmaceutical supply chain that "handle" products, such as wholesalers, private label distributors, repackagers, retailers etc. Clarifying that distributors,

who temporarily own manufacturer products before fulfilling pharmacy orders and deliver the product, are not producers will reduce redundancies and administrative burdens for the state, further ensuring that single products are not fined or tracked multiple times as it passes through the healthcare supply chain.

V. Producer. "Producer" means a person that: (1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material; (2) Is the sole entity that imports into the State for sale, offer for sale or distribution for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material branded by a person that meets the requirements of Section 2(VW)(1) and has no physical presence in the United States; or (3) Adds packaging material to another producer's product for distribution directly to a consumer. This person is only the producer for the packaging material it adds. Producer includes a low-volume producer, as defined in 38 M.R.S. § 2146(1)(G), and a franchisor of a franchise located in the State but does not include the franchisee operating that franchise. Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3). **Producer does not include a wholesaler that sells or offers for sale in the State at wholesale a covered drug if the covered drug is manufactured by a manufacturer who participates in a recycling or drug stewardship program.**

Should the Department choose not to incorporate this clarifying exemption language, HDA would like to express our support for this line currently included in the definition of producer remaining in any final rules:

This person is only the producer for the packaging material it adds.

In summary, the pharmaceutical supply chain is unlike any other and must be regulated appropriately and precisely to avoid disrupting patient access to essential medications. Accordingly, HDA again continues to urge the final rules to include appropriate and necessary exemption for the packaging of drugs and medical devices. Thank you for any further consideration that may be provided to these exemption requests, and please contact HDA for any further discussion at [kmemphis@hda.org](mailto:kmemphis@hda.org).

Sincerely,



Kelly Memphis  
Director, State Government Affairs  
Healthcare Distribution Alliance

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<sup>i</sup> **Specific laws, regulations, and standards which HDA requests the Department consider as grounds for exemption via rulemaking:**

- **The United States Pharmacopeia** (a standard setting body) [Code 659](#) precludes and prevents distributors' ability to increase the recyclability or reduce the volume of packaging material for certain cold controlled products, such as certain essential vaccines. This code, which is

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referenced by the FDA, establishes standards critical to patient safety regarding the packaging, storage, and shipping of controlled cold products regarding protection from moisture, freezing, heat, and light- standards which can exclusively be met through the use of Styrofoam containers. Therefore, failing to incorporate an exemption in the rules for all pharmaceutical products, **but especially for Styrofoam containers**, would unduly penalize distributors for utilizing the highest product and patient safety guidelines on behalf of Maine patients.

- **Federal Code [21 CFR 205.50](#)**- HDA encourages the Department to reconsider their view that this code does not establish content or construction standards which preclude or significantly diminish a producer's ability to increase the recyclability or reduce the volume of packaging material. Specifically, this code establishes that drugs must be packaged in specific ways to meet federal standards and ensure drug stability and inform patients. Failing to exempt the packaging of FDA-regulated medical and drug products would create conflict with federal requirements, adding undue strain to the healthcare supply chain providing critical products to Maine patients.
- **Federal Code 21 CFR Part 211 [Subpart G](#); [Subpart E](#)**- Again, HDA encourages the Department to reconsider their view that this code does not establish content or construction standards which preclude or significantly diminish a producer's ability to increase the recyclability or reduce the volume of packaging material. These codes establish container construction standards for control of components, labeling requirements, and other packaging requirements for drug products.
- **Federal Code [21 CFR Part 1302](#)**- This code establishes specific requirements for the packaging and labeling of controlled substances. Due to the highly regulated and highly sensitive nature of controlled substances, HDA requests that the Department assess this regulation as grounds for exemptions.
- **FDA Guidance for Specific Products**- HDA requests that the Department thoroughly review and assess the following FDA guidance which establishes packaging and labeling requirement for specific products:
  - FDA Guidance on [Selection of the Appropriate Package Type Terms and Recommendations for Labeling Injectable Medical Products Packaged in Multiple-Dose, Single-Dose, and Single-Patient-Use Containers for Human Use](#)
  - FDA Guidance on [Container Closure Systems for Packaging Human Drugs and Biologics](#)
  - FDA Guidance on [Safety Considerations for Container Labels and Carton Labeling Design to Minimize Medication Errors](#)
  - [USP Chapter <659> \(Packaging and Storage Requirements\)](#) – Provides definitions for packaging, package type terms for injectable medical products, noninjectable packaging containers, measuring devices (e.g., dosing cup, dosing spoon, medicine dropper, oral syringe), temperature, and storage.



August 26, 2024

VIA EMAIL at rulecomments.dep@maine.gov

Brian Beneski  
 Maine Department of Environmental Protection  
 17 State House Station  
 Augusta, Maine 04333-0017

**Re: Comments on Second Posting for Chapter 428: Stewardship Program for Packaging**

Dear Mr. Beneski:

As the association for the consumer-packaged goods (CPG) industry, including makers of food, beverage, personal care, and household products, the Consumer Brands Association<sup>1</sup> advocates for uniform, workable, and durable regulatory frameworks that are informed by risk-based science, promote consumer choice, and build consumer trust across the sectors we represent. State-by-state patchwork regulations cause uncertainty to the industry and confusion to consumers; Consumer Brands supports state and federal frameworks that ensure clarity for consumers and efficient interstate commerce. We have significant concerns about producers' ability to comply with the proposed regulations for the Maine Stewardship Program for Packaging, as well as the overall effectiveness of the program. We appreciate the opportunity to comment on the Maine Department of Environmental Protection's ("DEP's") second posted draft rule of Chapter 428: Stewardship Program for Packaging. Our comments are provided below.

I. The new rule inappropriately reimburses for disposal

In Section 13(D)(1) on page 52, the re-posted rule now provides that municipalities can be reimbursed for landfilling packaging that is not readily recyclable. The legislative history of the EPR bill clearly demonstrates that disposal was *not* intended to be reimbursable. The original LD 1541 committee amendment did provide that municipal spending for simply disposing of not readily recyclable materials. However, those provisions were explicitly stripped, though the amendment proposed by Rep. Tucker and adopted by the House and Senate. For example, the committee amendment language on municipal reimbursement stated the following on page 11, lines 7-11:

For the purposes of this subsection [about municipal reimbursement], the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of

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<sup>1</sup> The Consumer Brands Association ("Consumer Brands") champions the industry whose products Americans depend on every day, representing more than 2,000 iconic brands. From household and personal care products to food and beverage products, the consumer-packaged goods ("CPG") industry plays a vital role in powering the U.S. economy, contributing \$2 trillion to the U.S. GDP and supporting more than 20 million American jobs.

packaging material, whether readily recyclable or not readily recyclable, and the costs associated with the disposal of packaging material that is not readily recyclable.

After Rep. Tucker's amendment was adopted, the last clause about disposal was explicitly stricken from the final language that became law, and the provision about municipal reimbursement was limited to the following:

For the purposes of this subsection, the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of packaging material, whether readily recyclable or not readily recyclable.

38 M.R.S.A. § 2147(10). The DEP's rulemaking drafting process has brought municipal reimbursement for disposal back into the rule a number of times, and each time, stakeholders have brought to the Department's attention that the legislative history was clear in not supporting any such rule language. The reimbursement for disposal would then be taken out of a draft, only to reappear again later in a subsequent draft. This is the third time that municipal reimbursement for landfilling has inappropriately appeared the rulemaking language, and it needs to be the last. The DEP must remove it (again) because the statute does not support this interpretation at all.

## II. Toxics

The cited statutes which DEP has determined to delineate "Toxics" under the Maine stewardship program for packaging are not directly applicable to the materials regulated under the Maine EPR program. Statute 38 M.R.S. § 1694 identifies "toxic chemicals in children's products", which are exclusively applicable to children's products such as toys, baby products, and car seats, as written within the statute. Statute 32 M.R.S. § 1743, regulates "toxic chemicals in food packaging" and its jurisdiction is limited to food packaging. The Maine stewardship program for packaging is intended to regulate a much broader segment of packaging than these two statutes consider. The proposed rule language insinuates DEP is broadly applying statutes intended to regulate specific, defined segments of materials to the wide variety of materials covered under the Maine packaging stewardship program. This is not reflective of the intent or the scope of these two statutes. Materials that are not children's products and food packaging should not be regulated by requirements specific to those product types.

## III. Post-consumer recycled material limitations

There is currently not enough high-quality mechanically recycled plastic to meet producer demand due to supply limitations, availability, and quality. Some mechanically recycled plastics do not meet FDA requirements for food and medical applications due to downcycling, an adverse effect of mechanical recycling in which the quality of the material being recycled is reduced. Due to an insufficient supply of high-quality post-consumer recycled content and the potential for migration of chemical contaminants to the product being protected, we recommend exempting the packaging for products intended for use on, in, or in contact with the body, including: drugs, medical devices, and hygiene products (for example, diapers, menstrual products, toilet paper, baby wipes) and products intended for contact with food (for example, paper towels) from the post-consumer recycled material targets and applicable fees.

Additionally, requiring producers to conduct additional third-party audits of their PCR content is duplicative and an unnecessary cost. Post-consumer recycled content suppliers are already

typically required to obtain third-party certifications of their materials to provide to buyers (producers). Alternatively, we recommend that under the Maine stewardship program producers have the option to provide PCR certifications from suppliers during a compliance audit.

Packaging materials that are prohibited from using postconsumer recycled material due to federal law (for example, transportation regulations) should be clearly out of scope of these requirements and not included in the total weight of packaging material used to calculate the percentage that is postconsumer recycled material. There should be a clear exemption for such packaging in the regulations rather than a process to request an exemption.

#### IV. Definition of “consumer”

The broadened definition of "consumer" in the draft regulations significantly extends the law's scope and could lead to the inclusion of packaging materials already covered by business entities that are out of scope for the Maine packaging stewardship program. The proposed definition of "consumer" includes industrial, commercial, and other business-to-business entities, rather than consumer packaging intended for municipal recycling systems. Unlike residential recycling systems, commercial and industrial packaging materials already have responsible parties for their disposal and do not impose any burden on municipal governments. The inclusion of the language "or includes its use in a service it provides," unnecessarily expands the scope to include these service providers, even when the products they use never enter the municipal recycling stream.

#### V. Reuse

The definition of "Reusable Packaging Material," should be revised to include the scenario where a consumer refills a reusable package at home. This material usage is not currently covered under "managed for reuse by participating municipalities or through alternative collection programs."

Additionally, reusable packages, which need to be durable enough for multiple uses, may necessitate the use of materials that are not easily recyclable. Reusable materials should be designed for durability, ensuring they can be reused multiple times over at least five years. However, this durability may make it more difficult for these materials to meet the criteria for being "readily recyclable." In order to encourage the adoption of reuse systems, these packages should not be subject to the same recyclability standards as other materials and should be exempt from the fees mentioned in section.

Additionally, packaging with child-resistant closures, which cannot be reused under federal law, should be exempt. Child-resistant closures are critical for safety, especially in preventing children from accessing hazardous substances. Moreover, due to strict regulatory requirements, child-resistant packaging designs cannot be easily or quickly altered. Packaging with child-resistant closures should be exempt from reuse targets.

#### VI. Clarity and Standardization of Reporting

Reporting obligations should be simplified to enable fee calculations without adding unnecessary complexity, which could lead to inaccuracies due to variations in how producers organize their data. To achieve this, the following considerations should be addressed:

##### A. UPC

- a. Given that SKU UPCs do not always change when a package changes, other codes that represent the various SKU versions sold during the reporting year should be the basis of reporting rather than UPCs.
- B. Material weight
  - a. Reporting should be only by weight of each material in the packaging material types list material.
- C. Estimates
  - a. The regulations should include clear language to allow for producer reporting using national data prorated for Maine's population.

## VII. Recycling Access Target

The reposted draft introduces a "recycling access" goal, aiming for 100% of Maine residents to have "access to municipal recycling of readily recyclable packaging material." The establishment of a recycling access target should be the responsibility of the stewardship organization. Municipalities are not obligated to join the program. As written, the packaging stewardship program requirements, the stewardship organization itself, and the state do not have the authority to enforce their participation. Requiring a 100% access rate for Maine residents when it cannot be guaranteed that all municipalities participate in the packaging stewardship program sets an unattainable and unrealistic goal. The stewardship program should be able to establish an appropriate, achievable access target as informed by a needs assessment and information on what percentage of municipalities are utilizing the program.

\* \* \*

Consumer Brands appreciates the opportunity to provide its feedback and recommendations on the second posted rule. Thank you for your attention to our comments.

Sincerely,

Greg Costa  
 Senior Director, State Affairs  
 Consumer Brands Association



**Nadeau, Jessica**

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**From:** Lindy Moceus <Lindy@fairpoint.net>  
**Sent:** Wednesday, August 7, 2024 2:02 PM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my strong support for the proposed Extended Producer Responsibility (EPR) for Packaging rules. Maine's municipalities urgently need this program to cut costs and help manage recycling effectively. The Department of Environmental Protection has done a great job developing these rules.

As you finalize these rules, I urge you to ensure equitable reimbursements for Maine communities, particularly for non-readily recyclable materials. This consideration will enable towns to manage packaging materials they cannot control.

Let's get this proven solution started now so we can bring the benefits to Maine communities and work on improvements as needed to achieve our longstanding goal of 50% recycling.

Sincerely,  
Lindy Moceus  
601 Town House Rd  
Vienna, ME 04360

**Mailing Address:**

P.O. Box 605  
Caribou, Maine 04736-0605

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303 Murphy Road  
Fort Fairfield, Maine 04742



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August 23, 2024

Mr. Brian Beneski,  
Bureau of Remediation and Waste Management  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Re: Written comments regarding Chapter 428: Stewardship Program for Packaging

Submitted electronically via: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

Dear Mr. Beneski:

Thank you for once again accepting comments regarding the proposed rule as referenced above. I will reiterate that AWS is generally very supportive of the overall effort by the Legislature and the Department to bolster municipal recycling through this proposed program, and we are looking forward to (hopefully) working through the implementation phase to come.

Our only comment(s) is similar to that which we submitted in March – and that is regarding the level of reimbursement for disposal of not readily recyclable packaging material, which should be the same regardless of the method of disposal (landfill or “alternative management”). More specifically:

Definition of “Alternative Management:” this definition (found on page 2 of the proposed regulation) continues to include only incineration or processing facilities, and specifically excludes disposal at a landfill. Therefore, according to this definition and how it is applied in the proposed regulation, municipalities would be reimbursed at a higher rate for the cost of *incinerating* their packaging waste, and municipalities that *landfill* their packaging waste would be reimbursed at a lower rate for that cost.

Section 13.D(1) and (2); Municipal Reimbursements: these sections define the level of municipal reimbursement for managing packaging material that is not readily recyclable. If that packaging is sent for “Alternative Management” at an incinerator, the municipality is reimbursed at a rate of 2/3 the cost of recycling readily recyclable packaging. If a municipality sends that

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packaging to a landfill that is closer than the nearest incinerator, the municipality is reimbursed at a rate of 1/3 the cost of recycling readily recyclable packaging. While we appreciate the effort to recognize the limitations many municipalities find themselves due to geographic location, it still creates an unequal tier of reimbursements for circumstances that municipalities have no control over. In fact, there are several Maine municipalities that may not be eligible for *any* reimbursement if they must send their waste to a landfill that is further away than the nearest incinerator. That could occur for a number of reasons, not the least of which is a lack of capacity at the incinerator. To be fair, the reimbursement levels should be equal - and preferably at the "2/3 level" regardless of disposal method.

The very first goal listed in the Department's summary of the proposed rule is to "*reduce the burden to municipalities of managing packaging material.*" If that burden is to incur the cost of landfilling the packaging material, then the goal should be to reduce that burden through reimbursement of that cost at the same level as other disposal methods.

Furthermore, given the ambitious municipal participation goals set in the rules, it would seem counter-productive to disenchant the many Maine municipalities that use landfilling as their (only) disposal option. Only through robust municipal participation will the program be successful.

Thank you for your consideration of my comments. I look forward to the Department's response.

Sincerely,



Mark Draper  
Solid Waste Director



August 22, 2024

Brian Beneski  
Bureau of Remediation and Waste Management Director  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

RE: Extended Producer Responsibility (EPR) Draft Rules

Dear EPR Team of Maine Department of Environmental Protection:

I am writing on behalf of the Municipal Review Committee (MRC) to provide feedback and express our support for the proposed rule for Chapter 428, Extended Producer Responsibility (EPR), put forth by the Maine Department of Environmental Protection (DEP).

While we acknowledge that EPR is a complex initiative, the MRC and its members recognize the significant potential for our members and the Hampden processing facility, operated by Municipal Waste Solutions (MWS), to serve as invaluable assets to the EPR program and our member communities.

While the MRC recognizes that anaerobic digestion complies with EPR rules, it deserves explicit recognition in the rules rather than being subsumed within a complex system process definition. Our search for the word "anaerobic digestion" within the rules yielded no results, highlighting the need for clearer acknowledgment of this process.

We believe that larger facilities like MWS, in which MRC holds a stake, should be leveraged to maximize the benefits of the EPR program. These facilities have the capacity, technology, and expertise to handle substantial volumes of recyclable materials efficiently and effectively. By utilizing such facilities, the program can achieve economies of scale and improve overall recycling rates across the state.

Furthermore, we propose that the Stewardship Organization (SO) work directly with MRC rather than individual municipalities in our region. This approach would streamline the program's administration, reducing bureaucratic complexities and potential inconsistencies in implementation. MRC, as an established entity representing multiple municipalities, is well-positioned to coordinate efforts, aggregate data, and serve as a central point of contact for the SO.

This streamlined approach offers several advantages:

1. Simplified reporting and data collection processes
2. Consistent implementation of EPR guidelines across member municipalities
3. More efficient allocation of resources and funds
4. Enhanced ability to adapt to program changes and improvements

We believe that by leveraging MRC's existing infrastructure and relationships, the EPR program can achieve its goals more effectively while minimizing administrative burdens on individual municipalities.

The MRC is committed to supporting the success of the EPR program and is eager to collaborate with the DEP and the future Stewardship Organization to ensure its smooth implementation in our region. We stand ready to provide any additional information or assistance that may be helpful in refining the proposed rule.

Thank you for your consideration of our feedback. We look forward to working together to create a more sustainable future for Maine through this innovative EPR program

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Carroll", written over a horizontal line.

Michael Carroll  
Executive Director Municipal Review Committee



**Michael J. Smaha**

Vice President, Government Relations  
The Homer Building  
Industrious, 12th Floor  
601 13th Street, NW  
Washington, DC 20005  
Cell: (202) 876-4347

August 26, 2024

Mr. Brian Beneski  
Product Stewardship Program  
The Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, ME 04333-0017

VIA EMAIL: rulecomments.dep@maine.gov

**RE: Revised Chapter 428: Stewardship Program for Packaging Draft Rule Reposted for Additional Comment**

Dear Mr. Beneski:

The Can Manufacturers Institute (CMI) appreciates the opportunity to provide input on the revised Chapter 428 stewardship program for the packaging draft rule. We look forward to working with the Maine Department of Environmental Protection (the Department) to develop a successful program to achieve Maine's goal of increased recycling access for residents and higher recycling rates for packaging throughout the state.

CMI is the U.S. trade association representing metal can makers and their suppliers. The industry employs more than 28,000 people, and our members have facilities in 33 states. Members manufacture a variety of steel and aluminum cans used to package food, beverage, personal care, cleaning and paint products. Our members are proud to make the most sustainable packaging solution.

CMI provides the following recommendations on key definitions and sections of the draft.

**Section 2 Definitions. DD. Toxics**

CMI is concerned that Maine has not set de minimis levels or conducted risk assessments on some chemicals listed on its [Chemicals of Concern](#) and [Chemicals of High Concern](#) lists. There are some materials on the Chemicals of Concern list (for example, untreated and mildly treated mineral oils) that may be used, even if they are considered highly treated. Some other chemicals (toluene and hydrogenated rosin) are byproducts of raw materials, but there is no determined de minimis level, and no risk assessment has been conducted. Some levels are so small for some materials that they wouldn't be listed on a safety data sheet, and producers may not be aware that they are present in their packaging.

CMI recommends that the Department apply the relevant lists to the types of packaging they were developed to refer to (e.g., apply the “toxic chemicals in food packaging” list to food contact packaging), rather than a blanket application of all lists to all packaging. CMI additionally recommends that DEP remove the penalty fee provision in 10(A)(3)(b) that would apply to manufacturers unable to present supplier certifications of no intentional addition of toxics.

CMI is opposed to the inclusion of language regulating the use of materials approved by the United States Food and Drug Administration in extended producer responsibility (EPR) for packaging and paper legislation. Although the draft language requires producers and the stewardship organization members to comply with existing Maine law, this language is unnecessary because they already comply with state laws to sell or distribute products in Maine. EPR legislation should instead focus on increasing recycling rates for the materials in the program through producer funds and the responsibility of managing the program. The regulation of materials used to manufacture food contact packaging is out-of-scope in such legislation and should be left to regulatory agencies to decide through a public comment process. While acknowledging the time to remove such references to toxic materials was during the legislative process of writing and passing LD 1541, this comment period should be used to remove Section 2, DD, and all other subsequent obligations the stewardship organization has related to toxic materials in Chapter 428. This allows the scope of the law to focus on establishing the role and responsibilities of the stewardship organization and other related elements of the program.

### **Section 3. Assessment (5) Reuse**

CMI understands the law intends to encourage reusable packaging and reduce the amount of single-use packaging that goes to landfill. However, the performance rates are very aggressive for reusable packaging. CMI suggests that language be added to clarify that the reusable package pays for the setup of necessary infrastructure and covers its cost each time the package enters the market. This ensures that other packaging types do not cross-subsidize reusable packaging. CMI does not support the public sector choosing winners and losers when it comes to reusables versus single-use containers. Consumer demand should determine the growth of reusable container systems.

### **Section 3. Assessment (9) Post-consumer Recycled Material**

CMI supports an exemption for packaging materials that have end-market demand. These materials, such as steel food cans, should be exempted from any post-consumer recycled material requirement. Chapter 428 establishes high post-consumer recycled content (PCR) targets for covered materials (30% by 2050). Requiring steel packaging to have a minimum of 30% post-consumer recycling content is an ineffective tactic for achieving decarbonization and circular economy goals. Requiring higher post-consumer recycled content has unintended consequences of increasing energy inefficiencies in steel production, lowering the environmental benefits.

First, requiring a minimum recycled content of 30% will make it difficult for the specialized steel used to produce cans to meet strict product safety and formability requirements. If the recycled content threshold is set too high, steel canmakers will not be able to meet quality and safety standards.

Second, the requirements for recycled content for steel are difficult to achieve due to how steel is made. The steel used in canmaking is produced in the basic oxygen process (BOP), which typically incorporates 20-30% scrap. Only BOP steelmaking has the capability to produce the grades of steel utilized in packaging. Requiring a minimum recycled content of 30% may result in adding so much recycled content during production that the process becomes energy inefficient. This inefficiency reduces the desired environmental benefits of reusing used steel to make new products.

Third, there is no need for any minimum recycled content requirement for steel cans, given the material's robust end markets in Maine and other states. Demand for used steel scrap already exceeds supply, and all collected steel has a market. Adding a minimum recycled content requirement to increase steel can recycling would not result in more steel cans being recycled. Improvements in recycling access, as Maine's EPR law is laudably aiming to do, will increase the recycling of steel cans; a minimum recycled content amount in steel cans would not increase steel can recycling. It would only shift steel from one end market to a mandated market, adding cost and greater environmental impact to the production of cans.



**Section 3. Collection Assessments (3), Statewide Recycling Needs Assessment (C), and Disposal Audits (D) and Timing**

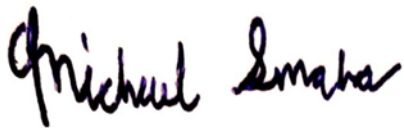
The current draft requires assessments of recyclable materials in disposal waste, statewide recycling needs assessments, and disposal audits every 10 years. This period between assessments is too long. CMI suggests eight years as a balanced approach that does not overburden the stewardship organization but collects data necessary to inform the Department of the stewardship organization's progress toward meeting the law's goals.

**Section 4. Defining Packaging Material (B) Identifying the Base Material**

CMI supports designating the package's base material as the one routinely targeted for recycling. This clarity should prevent confusion if a package has a dominant and a de minimis material type. For example, an aerosol can's dominant material is either steel or aluminum. The nozzle, inside tube, and cap are made of plastic, which is removed when the aerosol can is processed for recycling.

CMI thanks you for the opportunity to comment on the reposted product stewardship program draft chapter. We appreciate your consideration of our feedback and look forward to working with you to improve the state's recycling access and rates. Please let me know if CMI can answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Michael Smaha". The signature is written in a cursive, slightly slanted style.

Michael Smaha  
Vice President of Government Relations  
Can Manufacturers Institute



August 26, 2024

Bill Hinkel  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

*via* electronic submission

Subject: HCPA Comments on Maine Proposed Rule for the Stewardship Program for Packaging

The Household & Commercial Products Association (HCPA)<sup>1</sup> appreciates the opportunity to provide input on the implementation of Maine's Stewardship Program for Packaging.<sup>2</sup> We look forward to continuing to work with the Maine Department of Environmental Protection (DEP) on establishing and implementing rules and regulations to carry out the requirements of the Stewardship Program for Packaging.

## **Background**

HCPA represents approximately 240 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into Maine or otherwise have a presence in the state and are committed to ensuring that all residents have access to high-quality products with reduced environmental impacts.

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<sup>1</sup> The HCPA is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

<sup>2</sup> Public Law 2021, Chapter 455.

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellent, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

HCPA's comments below address both areas of Maine's draft rules that are generally applicable to household and commercial products and items specific to aerosol products.

### **More Stakeholder Input Needed**

HCPA is broadly concerned that, by developing detailed rules and associated goals and fee structures without first conducting a needs assessment or selecting a stewardship organization (SO), Maine has designed an EPR program that will be impossible to implement in practice. It is HCPA's view that, like programs in other packaging EPR states such as Colorado and Oregon, the goals and fee structure should be *developed by the SO* based on an in-depth exploration of the current state of waste management in Maine and subject to *review and approval by the department*.

Maine's packaging EPR program is of considerable size and is expected to have a substantial impact. A program of this level of complexity should be developed based on detailed research and input from interested parties, including on-the-ground knowledge of Maine's municipal recycling systems. Further, the SO responsible for working through the practicalities of interpreting fee structures and collecting and paying the appropriate amounts should be engaged from the beginning to design a fee system that is effective and equitable.

Despite the inclusion of numerous criteria, there is a considerable lack of clarity in the current draft rules on the specifics of what materials are and are not "readily recyclable" or what fees will need to be paid by the SO on behalf of producers, how much they will amount to, and on what timelines. That is, the practicalities that producers will need to understand in order to prepare for compliance with this program are not specified and the proposed process for specifying them is complex.

HCPA encourages the Department to consider delaying finalization of the draft rules until after an SO has been selected and a needs assessment conducted. If this is not possible, HCPA strongly recommends that the Department update the draft rules so as to remove many of the details in the current draft and leave as much as possible, particularly regarding fee structure, to be updated and finalized with the SO once an SO is in place and a needs assessment has been conducted.

### **Overly Broad Definition of “Consumer”**

HCPA is concerned that the definition of “consumer” is inordinately broad, particularly as the definition has been broadened from previous drafts. Combined with the expansive definition of “product,” we are concerned that this could result in many products used exclusively by businesses, as well as raw materials and items used exclusively in industrial and institutional settings to produce new products for later sale, getting pulled into the scope of Maine’s EPR program.

HCPA does not believe this is consistent with legislative intent in passing LD 1541, the bill that established Maine’s stewardship program for packaging. Packaging for products used exclusively by businesses often have established take-back, reclamation, or recycling systems in place and do not typically end up in curbside recycling and disposal systems. The law reflects this understanding by specifying that reimbursable costs associated with the collection, transportation, and processing of covered packaging material incurred by municipalities “may include costs associated with the management of covered packaging material collected in public spaces and schools.”<sup>3</sup> There is no mention of costs associated with the management of covered packaging material collected in other non-residential spaces such as workplaces. If a product is not typically managed through municipal systems, those products should not be included in determining which producers are obligated to pay to support municipal systems.

HCPA recommends that DEP revise the definition of “consumer” and/or the definition of “product” to clarify that only products which are intended to be used by entities for personal, family, or household purposes and/or are sold via retail including e-commerce are within the scope of the law.

### **Overly Broad Definition of “Toxics”**

HCPA remains concerned that the lists of toxic chemicals included in the draft rules are broad and not applicable to all packaging types, making it effectively impossible for any producer to appropriately certify using all of these lists as a basis. HCPA cautions the Department about broadly applying all lists of toxic chemicals referenced in the statute to all types of packaging.

For example, food contact packaging is manufactured according to U.S. Food & Drug Administration (FDA) regulations, which are designed to account for and protect consumers from the specific, often higher, types of exposures to a chemical they may experience from food contact materials. In contrast, packaging used to contain or transport a household product such as a floor polish or cleaner is primarily designed for the rigors of commerce and product protection, taking into account the differing exposures that consumers may have (*e.g.*, consumers do not typically drink their cleaner and are thus unlikely to have oral exposure to chemicals that

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<sup>3</sup> 38 MRS § 2146(10)(A)(1)

may leach from the packaging). Maine itself recognized this distinction in 2022 when Public Law c. 277 was signed into law, which put in place requirements for food packaging that go far beyond Maine’s requirements for other types of packaging. Similarly, the presence of certain chemicals can pose a risk to children that is notably greater than the risk to an adult, and existing Maine law also recognizes this by setting additional requirements for children’s products.

These lists were developed for use in particular contexts to proactively address identified risks and should not be taken out of context and generally applied to all types of packaging sold into Maine. Requiring producers to certify, or to ask their suppliers to certify, all packaging according to a list of thousands of chemicals based on stringent food contact and children’s product requirements would create a significant time and cost burden for companies without adding meaningful human health and environmental protection.

HCPA recommends that the Department apply the relevant lists to the types of packaging they were developed to refer to (*e.g.*, apply the “toxic chemicals in food packaging” list to food contact packaging), rather than a blanket application of all lists to all packaging. HCPA additionally recommends that DEP remove the penalty fee provision in 10(A)(3)(b) that would apply to manufacturers unable to present supplier certifications of no intentional addition of toxics.

### **Federally Regulated Products Should Be Exempt from Goals Which Conflict**

Packaging that is not allowed to contain post-consumer recycled (PCR) material due to federal regulatory requirements should be clearly exempt from the PCR content goal in 3(A)(9) and, similarly, packaging that is not allowed to be reused due to federal regulatory requirements should be clearly exempt from the reuse goal in 3(A)(5). For example, the Pipeline and Hazardous Materials Safety Administration (PHMSA) sets specifications for plastic aerosol containers that do not allow for any PCR content to be used in the containers.<sup>4</sup> As another example, the Poison Prevention Packaging Act requires some household substances, such as furniture polish and mouthwash to be packaged in “special packaging” that meets stringent child-resistant standards, one of which is that the special packaging must not be reused.<sup>5</sup>

HCPA recommends that the Department clarify that:

- Packaging which cannot contain PCR material according to federal regulations is exempt from the goal in 3(A)(9) and not included in the total weight of packaging used to calculate the percentage that is PCR material, and
- Packaging which cannot be reused according to federal regulations is exempt from the goal in 3(A)(5) and not included in the total weight of packaging used to calculate the percentage that is reusable

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<sup>4</sup> 49 CFR § 178.33b-6(a)

<sup>5</sup> 16 CFR § 1700.15(c)

Additionally, packaging that is not allowed to contain PCR material due to federal regulatory requirements should be clearly exempt from the PCR material incentive fee without needing to go through a process to request an exemption. As mentioned above, PHMSA sets specifications for plastic aerosol containers that do not allow for any PCR content to be used in the containers.<sup>6</sup> HCPA recommends that the Department clarify that packaging which cannot contain PCR material according to federal regulations is exempt from the PCR material incentive fee without needing to go through the process described in this section. The request for exemption process should be reserved for circumstances where federal regulations include content or construction standards that may make use of PCR content difficult or impossible, *not* for circumstances where federal regulations clearly state that use of PCR content is not allowed.

### **PCR Material Verification Process**

HCPA is concerned about Maine's addition to producer reporting in 9(B)(6) of a requirement to verify PCR material through a third-party audit. Third-party certification of PCR content is standard practice for material recyclers and processors of recycled material, but not typically done at the end product/brand level. Certification at the brand level would be duplicative of work done by material suppliers and packaging manufacturers earlier in the supply chain. HCPA recommends that the Department allow producers to certify by submitting one or both of an independent third-party certification and self-certification. Manufacturers would be relying on the third-party certification of their suppliers to develop the self-certification, so allowing for self-certification would not mean lessening the role of third-party evaluation in the recycled content supply chain, but rather avoiding duplicative payment of third parties and additional burdensome reporting requirements.

### **More and Clearer Incentivizes for Refill and Reuse Needed**

In general, HCPA's view is that refillable and reusable packaging should have *at least* the same level of incentives as recyclable packaging and refillable packaging should have *the same* level of incentives as reusable packaging.

HCPA remains concerned that "refill" and "reuse" are separated into two distinct definitions instead of combined into a single definition. As described by the Ellen MacArthur Foundation, an international charity whose mission is to accelerate the transition to a circular economy, there are four broad models of reuse/refill systems: return from home, return on the go, refill at home, and refill on the go.<sup>7</sup> All of these models are important to incentivize in order to move Maine forward on the path to a circular economy. To prevent a policy conflict between the various concepts of reuse and refill, other states with EPR programs, such as California, have combined reuse and refill into the structure of a single definition.<sup>8</sup> Such an approach provides

<sup>6</sup> 49 CFR § 178.33b-6(a)

<sup>7</sup> [https://emf.thirdlight.com/file/24/\\_A-BkCs\\_aXeX02\\_Am1z\\_J7vzLt/Reuse%20%E2%80%93%20rethinking%20packaging.pdf](https://emf.thirdlight.com/file/24/_A-BkCs_aXeX02_Am1z_J7vzLt/Reuse%20%E2%80%93%20rethinking%20packaging.pdf)

<sup>8</sup> Cal. PRC § 42041(a)

clear guardrails without unintentionally excluding important reuse/refill pathways from either definition or from provisions of the stewardship program that reference reuse or refill. HCPA recommends that the Department take a similar approach to California and combine “refill” and “reuse” into a single definition that encompasses return from home, return on the go, refill at home, and refill on the go.

Relatedly, HCPA is concerned that the program goal for reuse does not take into account refill at home systems, which are not managed by municipalities or alternative collection programs. Reusable and refillable packaging can be owned and refilled by consumers or be part of a system where the consumer returns the package for reuse.<sup>9</sup> HCPA recommends that the Department revise the “reuse” goal in 3(A)(5) to clearly account for consumer refill systems along with reuse through return systems. This could be done by, for example, adding language that includes the percent by weight of packaging material reported by producers that is “**demonstrated to be refillable by the consumer**” to the total percent considered in evaluating whether the goal is met, with the specifics of this later determined by the SO in consultation with and subject to approval by the Department. HCPA additionally recommends that the Department update the goal in 3(A)(6) to include the “percent of packaging material that is readily recyclable, reusable, **refillable**, or compostable.”

Based on the above, HCPA also recommends that the Department add in a reference to refillable packaging in the following places:

- Producer benchmarking in 3(B)(2)(a)
- Producer reporting of labeling in 9(B)(10)
- Incentive fees for labeling in 10(A)(3)(d)

HCPA is also concerned that packaging material fees detailed in 10(2)(a)-(b) are based only on whether the material is readily recyclable and do not include consideration of whether the material is reusable or refillable. Reusable and refillable packages need to be sufficiently durable to be used multiple times and thus may require being made from less readily recyclable materials but still have a lower environmental footprint overall and contribute more to waste reduction overall. To incentivize reuse and refill, reusable and refillable packages should be exempted from the fees in 10(2)(b).

Packaging designed to be refilled at home should be clearly exempt from municipal reimbursement for costs associated with managing reuse and refill systems.

### **Normalize Reduction Goal Against Sales Volume**

HCPA thanks the Department for removing the reduction goal for packaging units, which would have incentivized producers to reduce sales of products into the state.

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<sup>9</sup> The Sustainable Packaging Coalition has developed guidance on successful reusable packaging programs, including a description of the different types of reusable packaging: <https://sustainablepackaging.org/wp-content/uploads/2023/07/Guidance-for-Reusable-Packaging.pdf>

HCPA remains concerned that, unless the reduction goal is normalized against sales volume, this will unintentionally limit new sales of products into the state as the population grows and penalize companies for market growth. HCPA recommends that the Department base the reduction goal solely on packaging weight and normalize the goal by number of packaging units reported. We recommend the following: “This goal measures the ~~total units and~~ total weight of packaging material reported by producers, collectively, per ~~capita packaging material unit~~, relative to the first reporting year. The ~~total units and~~ total weight should be reduced by...”

### **Litter Goal and Fee Units**

HCPA questions why the litter reduction goals are expressed as percentage measured in items rather than as percentage of total weight. It is likely that litter will degrade or break apart while in the environment prior to collection and assessment by the SO or contractor, making it difficult to sort litter into discrete units. Further, all other program goals are described as percentage of total weight, making the litter goal as written inconsistent with other goals. HCPA recommends that DEP base the litter goals on the percent of litter that is packaging by total weight.

HCPA thanks the Department for revising the reduction of litter fee in 10(A)(3)(c) to be based on brand instead of packaging material type but is concerned that it may be difficult to distinguish the particular brand any given piece of litter is associated with. Certain products may be more likely to be littered than others and thus targeted incentive fees, education campaigns, and other anti-litter strategies may be more effective if applied to highly littered product types rather than the packaging material type more generally. Specifically targeting brands, however, could result in companies with a more recognizable brand name or logo being penalized simply because it is easier to distinguish their brand on littered material than others. HCPA recommends that the Department base the reduction of litter fee on product type rather than specifically by brand or clarify how the Department will proceed if the brand is unable to be identified on a signification portion of the litter collected in an audit.

### **“Recycling Facilities” Clarification**

HCPA is concerned that the draft rules reference “recycling facilities” multiple times when detailing criteria for determining if a packaging material will be considered readily recyclable without defining this term in either the draft rules or the underlying statute. For example, 4(B) states that for multi-material packaging, the Department will identify cases where the separation and recycling of more than one base material is routine at *recycling facilities* that accept the packaging material type. Additionally, 4(C)(3) refers to materials that are routinely separated and sorted at *recycling facilities* that accept the packaging material type as a way to determine the weight of material targeted for recycling to total weight.



Given that producer fees and program requirements are directly tied to what is or is not considered readily recyclable, it is important to have a clear understanding of what the readily recyclable criteria are. HCPA recommends removing references to recycling facilities and instead aligning 4(B) and 4(C)(3) with the language in section 5(A)(2), which states that packaging material types designated as readily recyclable must be “collected and sent for recycling by participating municipalities”, as this is a clear and measurable data point that relates to the program goals. If the Department chooses to retain the reference to recycling facilities, HCPA recommends that the Department clearly define this term.

### **Producer Reporting and Fees Clarifications**

HCPA recommends that the Department align the language for reporting “packaging material type produced” in 9(B) with the statutory language on the scope of the stewardship program: “packaging material sold, offered for sale or distributed for sale in or into the State.”<sup>10</sup> HCPA recommends that the Department make this change throughout the proposed rule to align with the statute (*i.e.*, replace packaging material type “produced” with “sold, offered for sale or distributed for sale in or into the state”).

HCPA remains concerned that the requirement in 9(B)(3) to report by UPCs or brick codes introduces additional complexity not required by the statute that may result in inaccuracies or inconsistencies in producer data. Producer data is organized in different ways. Not all producers use brick codes and it is not required to be included in reporting by the statute. Additionally, UPCs may not always change when a package changes. In order to simplify reporting obligations to focus on allowing for calculation of fees against statutory obligations, HCPA recommends that the Department remove the reference to brick code in 9(B)(2) and instead structure reporting by stock-keeping unit (SKU) and other codes that represent the various SKU versions sold during the reporting year as needed.

HCPA thanks the Department for providing a process for producers to estimate weight and number of units in cases where they are not able to obtain sufficient information on the weight or units of their packaging material sold into Maine. To improve the efficiency of this process, HCPA recommends that the Department include clear language to allow for producer reporting using national data prorated for Maine’s population.

HCPA thanks the Department for updating the payment due date for producer fees to be at least two months after the invoice is received from the SO.

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<sup>10</sup> 38 MRS § 2146(7)

**Inclusion of Disposal Costs Disincentivizes Waste Reduction**

HCPA remains concerned that the draft rules appear to require producers, through the proposed fee structure, to effectively reimburse municipalities for the costs of landfilling or otherwise disposing of packaging material. Requiring producers to reimburse for disposal costs, even if limited to not readily recyclable materials, does not give municipalities a clear incentive to work with other stakeholders on ways to recycle more materials instead of landfilling them, as municipalities receive funds either way. Other similar packaging Extended Producer Responsibility (EPR) programs incentivize producers to incorporate more circular packaging through eco-modulated fees and/or source reduction requirements and incentivize municipalities to recycle or recover said packaging through recycling reimbursement. HCPA recommends that the Department limit reimbursement to material managed for recycling, reuse/refill operations, or other pathways that reduce waste.

**Conclusion**

HCPA appreciates the opportunity to provide input on the Department's proposed rule for the implementation of Maine's Stewardship Program for Packaging and appreciates the care that the Department is taking to solicit and incorporate stakeholder input. HCPA looks forward to continuing to engage with the Department to support successful implementation of Maine's Stewardship Program for Packaging. We invite any questions about this submission and look forward to the Department's response.

Sincerely,



Molly R. Blessing  
Vice President, Sustainability & Product Stewardship

**Nadeau, Jessica**

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**From:** Nancy Babcock <babcock@megalink.net>  
**Sent:** Saturday, August 10, 2024 10:21 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my enthusiastic support for the EPR for Packaging rules. The DEP has developed a well-structured plan that will improve Maine's recycling efforts and reduce the wasteful packaging. We must get this program started to provide much-needed support to our municipalities. We know it'll work because it's been effective in many other places including Canada and the European Union – all while not increasing costs for consumers!

To ensure fairness, I recommend revisiting the reimbursements for non-readily recyclable materials and consider the varying capacities of different communities. This adjustment will help manage the costs more equitably and encourage more municipalities to participate in the program. Let's implement these rules now and continue refining them to achieve our 50% recycling goal.

Sincerely,  
Nancy Babcock  
66 Nordic Knoll Rd  
Newry, ME 04261



SENT VIA E-MAIL TO: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

August 26, 2024

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

RE: Chapter 428: Stewardship Program for Packaging Draft Rule Comments

Dear Mr. Beneski:

HospitalityMaine appreciates the opportunity to submit comments regarding the “Chapter 428: Stewardship Program for Packaging” rule proposal. We are a trade association representing restaurant and lodging establishments of all sizes across the state, and our comments reflect the perspective of both operators and the businesses that support them. While we recognize the importance of environmental stewardship and commend the progress businesses are making towards sustainability, we have significant concerns about the current draft of this rule and its potential effects on the hospitality community. Certain revisions are necessary to ensure the rule is both balanced and workable.

Our comments will focus on the proposed definitions, associated costs and fees, and exemptions. Many of these concerns are similar to those we expressed in our March 2024 submission, but we will concentrate on the areas that most impact the hospitality industry.

### **Definitions & Rule Concepts**

- **Consumer:** We reiterate our concern that including business-to-business (B2B) packaging within the program raises questions about its alignment with the law's original intent. We interpret the law as targeting packaging that directly reaches end consumers, not intermediaries removed from the consumer transaction. Therefore, B2B packaging should be excluded from any final rule.
- **Manage:** As currently proposed, the definition of "manage" extends beyond the parameters outlined in the statute, particularly with regard to educational requirements for producers and litter mitigation efforts. It was understood during the legislative process that the Stewardship Organization (SO) would handle

recycling and packaging-related educational outreach. We maintain that packaging producers have little to no impact on consumer decisions to litter.

- **Toxics:** The definition of "toxics" as proposed may place an unreasonable burden on small businesses across Maine. We request that this definition be made more balanced, considering the difficulties businesses would face in screening for thousands of toxins unrelated to packaging. Specifically, the challenges producers face in certifying their products as free of certain toxins, as seen in PFAS compliance, should be taken into account.
- **Readily Recyclable:** We have previously commented on the concept of "readily recyclable," emphasizing the need for clear and understandable guidelines. Businesses need to fully understand this concept before implementation. The current proposal remains ambiguous and risks putting Maine out of step with how other states make similar determinations. We recommend limiting criteria that would be difficult for many of Maine's small businesses to meet and instead suggest determining "readily recyclable" based on an honest evaluation of Maine's recycling capabilities.

### **Costs & Fees**

We continue to hear concerns from restaurants and lodging establishments across Maine about the costs associated with Extended Producer Responsibility (EPR). While this draft provides more information on fees, it remains unclear how much individual businesses will be required to pay. This uncertainty is largely due to the lack of clarity around what is considered "readily recyclable." We support the idea of providing businesses with cost estimates, which would allow them to plan and budget appropriately. Unanticipated or surprise costs could be a significant financial setback for many, especially as the cost of doing business continues to rise.

- **Disposal Costs:** Maine should not be the first state to require producers to cover disposal costs. We urge the Maine Department of Environmental Protection (DEP) to adhere to statutory intent and exclude disposal costs from the rule.
- **Management Costs:** As stated in our previous comments, we support the idea that any additional costs should be borne by the SO.
- **Goals & Penalties:** We encourage DEP to adopt more flexible timelines based on realistic goals, taking into account the challenges often associated with novel regulatory changes such as EPR. We are concerned that businesses making good faith efforts to comply with new regulations could be penalized heavily for

noncompliance. Businesses that demonstrate efforts to comply should not face exorbitant financial penalties.

### **Program Exemptions**

We continue to advocate for DEP to issue exemptions for packaging products that are federally regulated and in cases where no readily recyclable alternatives exist. The process for qualifying for an exemption should be straightforward and streamlined, without the need for public input on each exemption. Federally regulated products are already subject to strict oversight and compliance standards, and adding state-based restrictions could discourage new business and complicate matters for those already operating in Maine.

HospitalityMaine appreciates the opportunity to provide input on the latest draft of Chapter 428. To ensure the program's success, it is crucial that it enhance sustainability while also considering the impact on businesses and consumers. We remain committed to engaging constructively with DEP and the SO throughout the program's development. Thank you for considering our perspective as you refine the rule before its adoption.

Sincerely,  
Nate Cloutier

Nate Cloutier  
Director of Government Affairs  
HospitalityMaine  
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Augusta, ME 04330

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## THE MAINE LEGISLATURE

Board of Environmental Protection  
17 State House Station  
28 Tyson Drive  
Augusta, ME 04333-0017

August 26, 2024

Dear Commissioner Loyzim and members of the Board of Environmental Protection:

We are writing in support of the proposed rules regarding Chapter 428: Stewardship Program for Packaging, pursuant to 38 M.R.S. 2146 passed by the 130th Maine Legislature. As proponents of the enabling legislation, LD 1541, *An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money*, we are writing to thank you for working through the details of this transformative policy, guided by the staff experts at the Department of Environmental Protection (DEP) and informed through the thorough stakeholder process that they conducted and comments received.

As you know, Maine's cities and towns are in urgent need of help to manage and pay for the growing amount of packaging waste in our communities. Once implemented, the Extended Producer Responsibility (EPR) for Packaging program will ensure that communities can access needed funding and provide more access to waste reduction and recycling programs without raising taxes. EPR for Packaging programs have been in place in 45+ jurisdictions all over the world for more than 30 years and have led to drastic increases in recycling and less waste. The cost-internalization by producers has also led to better packaging and overall less cost.

Maine lawmakers have proudly led the way for this policy to come to the United States; and we've since been joined by Oregon, Colorado, California, and Minnesota. Here is a brief legislative timeline to emphasize the rigor to which Maine lawmakers evaluated this policy over three years leading to its passage:

- In 2019, the first piece of legislation that enabled the development of Maine's EPR for Packaging law was LD 1431, A Resolve To Support Municipal Recycling Programs, which passed the Legislature with unanimous support and was signed by the Governor. It required the DEP to present statutory language to the Committee on Environment and Natural Resources (ENR) that would establish a stewardship program for packaging.

- In 2020, Maine DEP presented the statutory language to the ENR Committee, which they reported out as a bill, LD 2104, An Act to Support and Increase the Recycling of Packaging. The bill had a public hearing that lasted more than 8 hours and received 181 pieces of testimony, 73% of which were favorable. That bill ultimately passed the Committee, but the pandemic led to an abrupt adjournment of the Legislature.
- In 2021, bipartisan co-sponsors Representative Nicole Grohoski and lead co-sponsor Senator Rick Bennett refiled the EPR for Packaging bill, LD 1541, An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money. Plastic manufacturers and producers of packaging also filed a competing bill, LD 1471, that would have been largely ineffective.

There were 70 testimonies in support of LD 1541 from a wide diversity of stakeholders including large and small local business owners; municipal staff, local elected officials, and local recycling committee volunteers; solid waste professionals and transfer station managers; state lawmakers; nonprofit and religious institutions; taxpayers; middle and high school students; undergraduate and graduate school students; and University of Maine faculty. Thirty-one Maine municipalities representing more than 346,000 people passed municipal resolutions in support of an EPR for Packaging law. The law passed with bipartisan support and was signed by the Governor on July 12, 2021.

For these reasons, we urge you to support the proposed rules so that the program can provide necessary relief to Maine taxpayers and reduce waste, as the Legislature intended. However, before you do, we encourage you to provide for more equitable reimbursement to towns for the management of material deemed non-readily recyclable (pages 51 and 52) and not penalize rural communities or others who have no other feasible option but to landfill these materials due to transportation, capacity constraints, or existing contractual arrangements.

On behalf of our constituents, we appreciate your consideration of this request.

Sincerely,

Senator Nicole Grohoski (lead sponsor of LD 1541)

Senator Rick Bennett (lead cosponsor of LD 1541)

Senator Donna Bailey

Senator Stacy Brenner

Senator Anne Carney

Senator Craig Hickman

Former Senator Cathy Breen

Former Senator Brownie Carson



Representative Arthur Bell  
Representative Kristen Cloutier  
Representative Vicki Doudera  
Representative Lori K. Gramlich  
Representative Allison Hepler  
Representative Christopher Kessler  
Representative Scott Landry  
Representative Maggie O'Neil  
Representative Melanie Sachs  
Representative Sophie Warren  
Representative Stanley Paige Zeigler  
Former Representative Seth Berry  
Former Representative Lydia Blume  
Former Representative Patrick Corey  
Former Representative Patty Hymanson  
Former Representative Ralph L. Tucker

Submitted via Email: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

August 26, 2024

Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

RE: Request to Amend "Part 2: Conceptual draft rules for Stewardship Program for Packaging"

The undersigned organizations are providing comments on the reposted draft rule §2146, a measure "[Stewardship program for packaging](#)." We are reiterating our prior request to exempt medical foods,<sup>1</sup> foods for special dietary use (FSDU),<sup>2</sup> and infant formula from the rule. We acknowledge that the draft rule outlines a process for requesting an exemption from the post-consumer recycled material incentive fee. However, other states have included exemptions from similar extended producer responsibility programs. The Colorado legislature made this exemption for "medical foods, and fortified nutritional supplements" in their [House Bill 1355](#) section 25-17-703 Definitions (13)(b)(XIV). Similar exemptions were also included in Oregon SB 582 and California SB 54.

Our proposed amendment is noted in **bold language** below:

(D). Producer includes a low-volume producer and a franchisor of a franchise located in the State but does not include the franchisee operating that franchise. Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3). **Producer does not include manufacturers of medical foods, foods for special dietary use, or infant nutrition formula.**

Medical foods and FSDU are often medically necessary and thus prescribed by a healthcare provider, may provide sole-source nutrition for vulnerable populations, and may be paid for by government programs such as Medicare and Medicaid. Medical Foods, FSDU, and infant formula can be required to meet specific nutrient levels and are often used under the direction of a medical professional. The Food & Drug Administration published an industry guidance document clarifying that medical foods are intended to meet distinctive nutritional requirements of a disease or condition and are used under direction or supervision of a medical professional. Specialized packaging is often used for these products to protect their quality and safety as well as ensuring nutrient delivery through product shelf life. Including them in this program could negatively impact patients and potentially limit their access to these important and at times lifesaving products.

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<sup>1</sup> A **medical food** as defined in section 5(b)(3) of the Orphan Drug Act, 21 USC 360ee(b)(3): "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**."

<sup>2</sup> 21 CFR Part 105

These products are regulated differently than other foods and beverages and are often prescribed by a healthcare provider to serve a specific purpose when nutrition needs cannot be met through other foods. Our goal is to ensure patients and families continue to have access to affordable nutrition products that are life-sustaining and provide required nutrition to promote health and wellbeing.

Thank you for considering the amendment to exempt medical foods, FSDU, and infant formula manufacturers from §2146 and ensuring patients and families can have continued access to affordable specialized nutrition products. If you have any questions, please contact Peter Sahagian, Healthcare Nutrition Council, at [psahagian@healthcarenutrition.org](mailto:psahagian@healthcarenutrition.org) or 202-207-1120.

Sincerely,

American Partnership for Eosinophilic Disorders  
HCU Network America  
Healthcare Nutrition Council

# reuse MAINE

August 9, 2024

Brian Beneski  
17 State House Station  
Augusta, ME 04333

## **RE: Maine EPR for Packaging Updated Proposed Rules**

Dear Mr. Beneski and team,

Thank you for the opportunity to submit comments regarding the updated proposed regulations for Maine's packaging EPR law. The following comments are submitted on behalf of Reuse Maine - a volunteer coalition of business, municipal, environmental and sustainability leaders in Portland, South Portland, and beyond who are actively working to catalyze and launch reuse systems in our state.<sup>1</sup> **Maine's packaging EPR law represents a crucial opportunity to accelerate packaging reduction and reuse throughout the state, and we strongly support the Department's incorporation of reuse and refill throughout the program.** Outlined below are our detailed suggestions regarding changes to the reuse and refill provisions of the proposed rules.

The two most significant elements of the updated rules as they pertain to reuse are the updated definition of reusable packaging and the updated incentives embedded into producer fees, especially for non-readily-recyclable reusable packaging.

### **Reusable Packaging Definition**

The updated rules amend the previously published definition of reusable packaging material as follows: "*packaging material that is designed to be reused ~~several times for the same purpose and without a change in format~~*"

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<sup>1</sup> Please note: Our prior comments to [DEP](#) and [BEP](#) were submitted under the name of Reuse Portland. While our coalition has expanded and rebranded, our core membership and shared vision remain the same.



*after initial use, the return and the reuse of which is facilitated ~~made possible~~ by an alternative collection program collecting the reusable packaging material in every county in which it is produced. ~~adequate logistics and infrastructure as part of a reuse system.~~"*

These changes will mean the *only* way to qualify as a reusable packaging system is to register as an alternative collection program. We appreciate that some producers may choose to register unique returnable reusable packaging systems as alternative collection programs, especially for formats that do not lend themselves to commingled collection with other types of packaging, such as returnable pressurized gas cylinders. However, **we advise against requiring all reusable packaging systems to register as alternative collection programs.**

As currently structured, alternative packaging programs occur outside of the purview of the Stewardship Organization and do not interact with existing recycling infrastructure or programs. We do appreciate that the Department has included a set of relatively low fees (\$1k for a single producer, \$5k for a group of producers, plus annual report fees) to propose alternative collection programs for reusables. This structure will incentivize groups of six or more producers to work together for the lowest possible costs to implement an alternative collection program for reuse. We also appreciate that non-reuse-related alternative collection programs cost more, as these will not deliver as many environmental benefits as reuse programs. But requiring all reusable packaging systems to be managed independently - even by a group of producers acting together - removes the opportunity for the highest and best use of the EPR program as a catalyst for scaled reuse in the Consumer Packaged Goods sector.

The [best outcome for scaling reuse under packaging EPR](#) is for producers, via the SO, to *pool* their resources and create a *shared, interoperable* reuse infrastructure throughout the state. This system should leverage existing and new recycling infrastructure to collect and sort reusables - exactly the type of system outlined for study in the upcoming needs assessment. When siloed as alternative collection programs, reuse systems are unlikely to integrate into existing collection for recyclables, meaning we may end up with parallel reuse



and recycling programs that overall cost more than one efficient, integrated system. **Please allow flexibility for producers and the SO to decide whether or not an alternative collection program or a pooled system is best for each type of reusable packaging.**

**We also strongly urge the Department to reinstate the clause “*several times for the same purpose and without a change in format after initial use*” as part of the definition of reusable packaging material.** Each of these phrases is essential for preventing loopholes and greenwashing. Under the amended definition it will be too easy to claim packaging is reusable without ensuring it is properly reused:

- “Several times” ensures that reusables are sufficiently durable to withstand multiple use cycles. While we understand this is vague as it does not provide a clear numeric threshold for the minimum number of reuse cycles, we believe that such flexibility is good for the program and better for producers, as it avoids arbitrary restrictions on reusable packaging design and innovation. However, it is still crucial to specify that reusables must be designed for multiple use cycles - otherwise bad actors may claim they are using reusable packaging when in fact the materials are far too flimsy to withstand reuse.
- “Same purpose” ensures that reusable packaging is not redirected to another application, but continues to cycle through the system fulfilling its original purpose. This *does not* mean it must contain the exact same product in every cycle - for instance, [pooled reusable glass packaging systems in Germany](#) use a standardized set of glass containers in various shapes and sizes across an array of products, so a small jar might contain peanut butter on one loop and raisins on another. But this packaging is still fulfilling the same purpose - as primary packaging for consumer goods within the packaging EPR program. The idea is to prevent bad actors from marketing packaging as reusable when in fact there is no system to recover it and the expectation is actually for consumers to find creative ways to reuse it at home, like turning the glass jar into a pencil holder. Even producers repurposing the same jar for another application, such as a business-to-business delivery, should disqualify the package from credits or incentives as reusable under the



program. In both of these scenarios, the jar remains in use but is no longer completing multiple cycles as primary consumer packaging.

- “Initial format” ensures that reusable packaging is not heavily reprocessed before it reenters the market, defeating the purpose of design for durability. As we have previously submitted in comments to DEP, we are aware of examples of companies purporting to “reuse” materials when in fact they are actually recycling them (i.e., flaking plastic from used products and recycling it into new formats). The environmental benefits of reuse come primarily from the prevention of new manufacturing. Reprocessing or remanufacturing packaging - beyond cleaning and minor repairs - is not reuse.

Every other packaging EPR law in the country enacted to date has specified these provisions when defining reusable packaging.<sup>2</sup> **We urge DEP to align the definition of reusable packaging as closely as possible with [Upstream’s recommended definition](#)** (see also [accompanying fact sheet](#)), which harmonizes across all five packaging EPR laws. This model definition was carefully considered based on best practices and emerging global consensus among policymakers, advocates, and reuse practitioners, including the ongoing development of global reuse standards.

### **Producer Fees**

Changes in Section 4C requiring all covered materials to be designated as either readily recyclable or not readily recyclable have implications for reusable packaging across many aspects of the program, most notably producer fees (Section 10).

Boiling reusable packaging down to whether or not it is readily recyclable leaves room for non-readily-recyclable reusables or serviceware to be disincentivized, despite the fact that they are still a superior choice environmentally (for instance, [this reusable mailer](#) offers immense carbon savings, but is highly unlikely to meet the criteria for readily recyclable under Maine’s packaging EPR regulations). We understand that, as updated, the

<sup>2</sup> See: [MN Packaging Waste and Cost Reduction Act, Sec 2 Subd. 33](#); [CA Plastic Pollution Prevention and Packaging Producer Responsibility Act, Sec. 42041\(af\)](#); [ORS 459.005 Sec. 45\(24\)](#); and [CO Producer Responsibility Program for Statewide Recycling Sec. 25-17-703 \(43\)](#).



proposed rules would direct most if not all reusable packaging into alternative collection programs that will likely offset most or all producer fees. However, given our above suggestion to allow flexibility for reusable packaging programs to fall more directly within the purview of the SO, **we strongly urge the Department to include a provision clarifying that reusable packaging, whether or not it is readily recyclable, shall pay the lowest possible fees into the program. We suggest including language specifying that reusables shall pay only once, upon first market entry.** This aligns with global best practices for reusable packaging in EPR programs as well as language in both Oregon's and Minnesota's laws (in California and Colorado, reusables are exempt and thus pay no fees):

- [Oregon Recycling Modernization Act](#): Sec. 2(6)(b)(J) (J) clarifies that a covered product does not include *“any item that is not ultimately discarded inside this state, whether for purposes of recovery or disposal.”* The Oregon Department of Environmental Quality has interpreted this to mean that reusable materials are exempt from paying fees into the program as covered products until and unless they are ultimately discarded inside the state - in other words upon their exit from the marketplace after numerous reuse cycles.
- [Minnesota Packaging Waste and Cost Reduction Act](#): Sec. Sec. 14. [115A.1454] Subdivision 1(4) outlines that producer fees must *“prioritize reuse by charging covered materials that are managed through a reuse system only once, upon initial entry into the marketplace.”*

In previous comments, we have recommended including an incentive (likely in the form of discounted program fees) for high-performing reusable packaging that achieves a 90% or higher return rate. Adding language to clarify that reusables only pay upon first market entry (whether recyclable or not) will inherently incentivize higher return rates, as each additional cycle of a reusable package will result in reduced costs for producers. There can still be a fee reduction for readily recyclable reusables compared to non-readily recyclable reusables.

**If the Department is determined to direct the majority of reusables through alternative collection programs, consider specifying a minimum**





**return/refill rate threshold - ideally 90% - for reusables to qualify as alternative collection programs.** This provides an avenue for reusable packaging programs to launch within the program and “graduate” out to alternative collection program status once they are mature. This way, high performance is still incentivized within alternative collection programs. In the meantime, reusables will only pay fees once to the SO upon first market entry, regardless of their recyclability, providing incentives to choose reuse and build high-performing reuse systems within the program itself - ideally leveraging new and existing recycling infrastructure for simplified collection and sorting.

### **Additional Comments**

#### Program Goals

We continue to strongly support the packaging reduction and reuse targets proposed in the rules, and thank the Department for including these ambitious yet achievable goals. Thank you also for clarifying the language in section 3A pertaining to requirements for producers in the event that reuse and source reduction targets are not met. The increased specificity here, requiring the SO to evaluate how existing reductions have been made, the percent of producers contributing to that reduction, and suggestions as to where reuse and refill systems could be established or expanded will help ensure a more robust response should the program not meet its targets.

We note that units have been removed from the measurements for the source reduction target, which will make it trickier to accurately measure or estimate waste prevention from refill and reuse programs. As we have noted in previous comments, including unit-based metrics in addition to weight-based metrics for source reduction will better align with California’s [packaging EPR program](#) (see 42057(a)(1)), which requires a 25% reduction by weight as well as a 25% reduction by packaging component for single-use plastic packaging. This structure better reflects the realities of switching to reusable and refillable packaging, allows a more comprehensive analysis of the waste reduction impacts of the program, and avoids potential unintended consequences from a purely weight-based metric, which may disincentivize highly reusable yet heavy packaging formats, such as glass. It also may be easier for producers to report given that sales are typically tracked in units, rather than weight.



Additionally, the adjustment of the baseline measurements for source reduction by five years - and a delayed deadline to meet initial reduction targets by 10 years - may weaken the overall program. We appreciate that the 2040-2049 and 2050-2059 deadlines and targets are intact, but do advise that the Department restore at least the baseline measurement timeframe so as not to give the impression that these targets are less important than recycling, participation, and other targets - after all, source reduction is at the absolute top of Maine's waste management hierarchy.

### Annual SO Reporting

The updated rules have amended reporting requirements for the Stewardship Organization by removing the requirement to report reusable packaging by brand, instead asking each producer to report an overall percentage of its packaging that is reusable and, separately, a list of brands registered to each producer. This will create a data gap in the program such that there is no direct visibility into which consumer brands are offering reusable packaging to consumers in Maine. We recommend addressing this gap by requiring producers to list the percentage of each of their own brands' packaging that is reusable. This will provide the greatest clarity for the Department and the general public - as well as internally for the SO - to track the expansion of reusable packaging and progress toward reduction and reuse targets for the program. We further suggest including a separate requirement for producers to report the percentage of *refillable* packaging across each of their brands, since refill is defined separately in the statute (as it should be) and will also help producers with progress toward source reduction targets.

We also continue to suggest requiring producers to report to the SO the average return rates (and, separately, refill rates) for any reusable (or refillable) packaging they put onto the market. This will provide further incentives for high-performing reusable packaging as well as greater transparency for the general public as to whether producers' reuse programs are achieving their fullest potential in terms of environmental benefits. High return rates are [\*the most important driver\*](#) of environmental benefits from reuse. We must ensure producers do not put reusable packaging onto the market without



optimizing for the highest possible return rates. Without transparency into actual return rates for reusables on the market in Maine, we will not have true insights into the environmental benefits achieved by these programs. As reuse gains market share, this transparency will also be critical to building and maintaining the public's trust in producers and in the packaging EPR program.

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**Reusable and refillable packaging is the future of consumption in Maine, across the country, and around the world.** We applaud the Department for incorporating reuse and refill into our state's packaging EPR program, and we strongly encourage strengthening the proposed provisions as outlined above to ensure this program catalyzes robust, statewide reuse and refill systems that support Maine's local economies. **Reuse will mean an overall reduction in waste and improved environmental outcomes across the state.** We thank you for your dedication to this effort and look forward to continuing to work with you to address any questions.

Sincerely,



Sydney Harris, Policy Director, Upstream



Renee Lassow, Communications & Engagement Manager, CLYNK

**SUZ OKIE**

CONSULTING

Suz Okie, Circularity Strategist  
Suz Okie Consulting



Laura Marston, Owner & CEO  
GoGo Refill



Luke Truman, Strategic Partner  
BetterBev

Sarah Nichols

**Nadeau, Jessica**

---

**From:** Robert Knight <bob@knightarchitect.com>  
**Sent:** Wednesday, August 7, 2024 12:08 PM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my strong support for the proposed Extended Producer Responsibility (EPR) for Packaging rules. Maine's municipalities urgently need this program to cut costs and help manage recycling effectively. The Department of Environmental Protection has done a great job developing these rules.

As you finalize these rules, I urge you to ensure equitable reimbursements for Maine communities, particularly for non-readily recyclable materials. This consideration will enable towns to manage packaging materials they cannot control.

Let's get this proven solution started now so we can bring the benefits to Maine communities and work on improvements as needed to achieve our longstanding goal of 50% recycling.

Sincerely,  
Robert Knight  
59 Drury Lane  
Brooksville, ME 04617

**Nadeau, Jessica**

---

**From:** Rosario Vitanza <rosamy@tidewater.net>  
**Sent:** Monday, August 12, 2024 10:58 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I strongly support the proposed EPR for Packaging rules and commend the DEP for their comprehensive and flexible approach. This program is crucial for helping Maine municipalities manage recycling and reduce the burden of packaging waste. We must start this program immediately and work on continuous improvements.

To enhance the program's effectiveness, I suggest ensuring equitable reimbursements for managing non-readily recyclable materials. This will address varying capacities by town and support communities in meeting our recycling goals.

EPR for Packaging is a logical next step in creating a cleaner, more sustainable Maine. I urge the Board to move forward with implementation of these rules without delay. Thank you!

Sincerely,  
Rosario Vitanza  
19 biscay lake shore  
Bristol, ME 04539



August 26, 2024

Ross Bergman – Director, Recycled Material Standard  
GreenBlue  
PO Box 1114  
Charlottesville, VA 22902

Commissioner Melanie Loyzim  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Dear Commissioner Loyzim,

Promulgating the rules for Maine's new extended producer responsibility (EPR) program is a major step, and we applaud the DEP team for providing the reposting to allow additional time for comments. Statute 2146 has very clear goals that collectively aim to advance the circularity of packaging. Our team is offering comments on the regulation relating to the use of certification systems to verify the post-consumer recycled content in packaging as outlined in Goal #9. Third-party certification is a valuable tool that can support the rules in multiple methods; however, certification standards are not all created equally, and by ensuring the correct systems are adopted in regulation, the better that the PCR goals can be delivered for Statute 2146.

Section 9.B.(6). mentions weight of post-consumer recycled content requiring verification by third-party audit. We hope to provide insight and clarity on guidelines that should be further defined about the standards and processes for achieving third party certification, as improper guidance will create confusion and consumer doubt around the credibility of PCR claims.

#### About GreenBlue and the Recycled Material Standard

The [Recycled Material Standard \(RMS\)](#) is a project of [GreenBlue](#), an environmental nonprofit dedicated to the sustainable use of materials in society. The standard establishes requirements necessary to assure the accuracy and transparency of claims with the support of a robust third-party certification system. The RMS serves as a voluntary, market-based tool to address the challenges that brands, their suppliers, and the recycling industry face in trying to incorporate higher amounts of recycled content into packaging or finished products.

### Independent Third-Party Verification for Postconsumer Recycled Content

As the regulations are currently written, DEP could allow any third-party audit, certification, or group to provide attestation of post-consumer recycled content use in covered products. It would be prudent to require third-party certification standards to be utilized in the process and require auditing by ISO 17065 compliant certification bodies. At just a very high level, standards are developed to create consistency in measuring performance. Certification bodies are then accredited to audit against those standards. This creates consistency in the auditing process from certification body to certification body. The draft regulations do not propose any guidance on the criteria for third party audits or requirements for the organizations providing certification decisions.

This approach may prove to be more challenging for the Stewardship Organization (SO) to manage, as inconsistency of methods and levels of traceability will allow companies to obtain low-quality audits confirming only part of the supply chain. If consumers have uncertainty as to whether products are attributed the recycled content they're claiming, the credibility of the whole program is brought into question. Additionally, the SO will have to manage incoming reports from many different groups with no alignment of auditing criteria or quality of assessment. Requiring certification standards and having specific standards approved for use by DEP or the SO would simplify management of information and credibility of reporting.

### Resin-level certification vs. Chain of Custody Certification

There are currently two strategies in the marketplace for the certification of recycled materials. The first is simply an audit of the recycler to verify the resin manufactured at the beginning of the supply chain is, indeed, sourced from post-consumer and/or post-industrial sources. No further auditing occurs with these certifications, and companies communicate with a simple passing of letters. This leaves many opportunities for material to be switched, mixed in different percentages than claimed originally, or sent to an incorrect customer.

The second certification method is a chain-of-custody certification system. Chain of custody ensures the claim of recycled materials offered by the recycler is appropriately conveyed through the manufacturing supply chain. Each organization taking ownership of the recycled material must be audited, with shipping documentation of every material transfer between organizations required to contain specific declarations to identify recycled content. This provides a means of certainty that final products containing material with specified claims can be traced back to the original source.

The risk of not specifying the use of chain of custody means that the claim of recycled content offered by the recycler could get miscommunicated in the compounding, converting, filling, and labeling phases of manufacturing. Chain of custody certification has been widely embraced in the paper industry (being the core of FSC and SFI certification standards) and should be similarly embraced in plastics manufacturing. Chain of custody certification means that brand claims can be authenticated through every step of the

supply chain, which could be two or three steps removed from the recycled material supplier.

GreenBlue recommends DEP adopt a requirement for chain of custody certification where third-party validation is referenced and for any other reporting of post-consumer content

The rulemaking text specifically mentions reporting must be specific to the producer's packaging material. This would be containers for products sold to consumers, not the resin produced by a recycler. The only method to provide assurance of the claim at the end of the manufacturing process by producers is chain of custody certification.

GreenBlue also recommends that DEP require chain of custody standards that have been developed through a voluntary consensus standard process, as defined by the Federal Trade Commission (FTC) Green Guides. Voluntary Consensus Standards are developed with transparent governance, stakeholder feedback, and public comment. We also recommend DEP reference standards that meet the US Plastics Pact PCR Certification Principles, requiring chain of custody and ISO 22095-compliant accounting methods.

We are including an educational document outlining benefits of proper certification definition in rulemaking and additional was certification can support regulatory reporting.

#### Responsible End Market Certification

Requirements outlined in the rules mirror those in other EPR states, which are implementing a certification process for reclaimers called *Responsible End Markets (REM)*. For REM, MRF's and reclaimers must receive audits confirming facilities meet criteria of legal compliance, transparent disposition reporting, environmental soundness, and yield. Requirements in Chapter 428 such as determining weight and volume of material types, calculating tons of material recycled, defining the point at which recycling occurs, and confirming no intentional addition of toxic chemicals would be items verified in the REM auditing process.

As these components have not been audited together before, RMS has created a REM certification standard and procedure that should be recommended for SO implementation. It will provide a standard methodology to confirm when materials are in fact processed as recycling, that each municipality can account for proper amounts of packaging collected and effectively managed, identify contamination volumes, and check for addition of intentionally added toxics in the recycling process. Standardizing certification of criteria for municipalities and reclaimers will also reduce effort required by the SO, as third-party standards can manage the process, and efforts from other states will not be duplicated. Combined with chain of custody certification, it is possible to verify the transformation of material all the way into new packaging. The RMS team is hopeful to discuss this new program and help the DEP streamline the audits and reporting for critical program criteria.



### Certification Standards Supporting Alternative Compliance

During enforcement of Statute 2146, there are many opportunities for third party recycled certification to provide the DEP alternative compliance methods that support producer adoption of post-consumer recycled material and scaling availability of PCR for use in packaging. Mass balance certification and Book and Claim certificates offer action-based solutions when direct compliance may not be possible.

Section 10.A.3.(a). outlines the incentive fees for producers not meeting minimum PCR goals. Where the 10% per ton fee is applied, other options may be available to cover the balance of PCR content not contained in packaging. DEP should seek to allow mass balance PCR claims to be applied to packaging. Mass balance is a chain of custody method defined in ISO 22095 for accounting specific material characteristics through a supply chain. It applies a longer time window for accounting PCR input into an organization and allocation of claims to outgoing rather than following the specific physical blend contained in the material. When supported by third party certification, mass balance is a widely recognized method for providing claims in end products – sustainable forestry, fair trade, and sustainable palm oil certifications employ the method regularly.

DEP could allow mass balance claims (properly outlined in certification standard guidelines) across all PCR reporting or for instances when minimums cannot be met through direct material incorporation (also known as Controlled Blending), such as lack of availability of food-safe PCR for food and beverage packaging. The US Plastics Pact certification principles outline reputable methods for utilizing mass balance, including using Proportional Allocation and requiring any material converted to fuel to be treated as a loss.

Additionally, when producers can't meet PCR goals, solutions may be provided as replacement or in conjunction with per ton fees. Certain certification standards like the RMS enable the creation, transfer, and retirement of tradable commodities called Book and Claim certificates. This ISO 22095 accounting method is the same system upon which Renewable Energy Credits (RECs) are founded. Instead of Megawatt-Hours of electricity, tons of recycled material processing are verified in an audit and allowed for trading to third parties. RMS employs a certificate called Attributes of Recycled Content (ARCs). ARCs provide quantified validation of taking accountability for additional recycled processing in new investments beyond the status quo. Should producers not meet their PCR goals, DEP could recommend producers procure and retire ARC certificates for matching resins in their packaging.

This way, instead of simply paying fines, companies can directly support investments in capacity expansion by recyclers and scale the system to provide more PCR for their uses in the future. Similarly to how energy utilities must maintain minimum renewable portfolios through REC procurement, producers could be asked to maintain PCR portfolios when they are unable to add enough directly into their own packaging. Book and claim applications

could be applied to Litter Audit responsibilities in 10.A.3.(c). or in support of exemption requests from PCR fees in section 21.

Mass balance accounting and book and claim guidelines are explained in our minimum PCR rulemaking education guide.

Conclusion

GreenBlue appreciates the opportunity to weigh in on the draft rules as part of the Statute 2146 rulemaking process. We are happy to be a resource to DEP as it moves through this process and look forward to future input opportunities as it relates to certification standards to enable the circular economy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ross Bergman', with a long horizontal line extending to the right.

Ross Bergman  
Director, Recycled Material Standard  
GreenBlue

In November 2023, the U.S. Plastics Pact — an alliance of NGOs, brands, and manufacturers committed to the Ellen MacArthur Foundation’s vision of a circular economy for plastics — released approved Principles for Certification of Post-Consumer Recycled Content for companies reporting to their 2025 Roadmap. Target 4 of the Roadmap is to achieve an average of 30% PCR or Responsible Bio-Based Content in Packaging, and the Pact is advising Activators to begin utilizing third-party certifications to validate reporting and increase traceability to the value chain.

The Certification Principles (aka “The Principles”) do not specifically endorse any particular standard – but they do provide a method for companies to evaluate the certification landscape. There is a wide variance in the structure, methods, governance and technical requirements of different standards. To cut through the clutter, the Principles have established an unbiased, consensus driven mechanism for evaluating third party standards. They remove confusion, help guide companies to adopt standards, and enable them to prioritize the use of different chain of custody methods for reporting progress..

# The Recycled Material Standard is the most comprehensive and best-aligned certification program for US Plastics Pact reporting.

*The Recycled Material Standard (RMS) was developed to provide a flexible, system-level solution that certifies the use of PCR without sacrificing responsibility.*

*This guide has been created to highlight how well RMS aligns with the USPP CP and to highlight the ways in which the RMS provides companies the tools to validate their reporting and expand their use of recycled material to reach their 30% target. The Principles provide guidance on general requirements, mass balance accounting, and the use of book & claim systems*



## Target 4 of 2025 Roadmap

# 30%

**Post-Consumer  
Recycled Content  
or Bio-Based  
Content in  
Packaging**

*when used for USPP reporting. The RMS is the only certification program that provides all USPP approved accounting methods for both mechanical and chemical recycling processes – supported by a system-level chain of custody. This guide illustrates how the RMS addresses each of these important aspects of a certification program.*



[www.rmscertified.com](http://www.rmscertified.com)



[rms@greenblue.org](mailto:rms@greenblue.org)

RECYCLED MATERIAL  
STANDARD ALIGNMENT  
WITH U.S. PLASTICS  
PACT CERTIFICATION  
PRINCIPLES

In line with the Ellen MacArthur Foundation's vision of a circular economy for plastics, the U.S. Plastics Pact brings together businesses, not-for-profit organizations, research institutions, government agencies, and other stakeholders to work toward scalable solutions tailored to the unique needs and challenges within the U.S. landscape, through vital knowledge sharing and coordinated action.

To support companies in meeting this need, the Pact recently issued PCR Certification Principles – to help eliminate ambiguity and to highlight key requirements that are pertinent to the plastics recycling value chain. This is a critical step in support of a vision where all recycled material claims (whether post-consumer or pre-consumer) will be substantiated by third-party chain of custody certification.

Overarching Principles		
The Highest Standard	✓	The RMS fully embodies the Pact's basic principles- requiring legal compliance, a science based approach, and adaptability to geographic differences
Competent Certification Bodies	✓	Audits are conducted by accredited certification bodies that must uphold the principles of impartiality, consistency and confidentiality
Chain of Custody	✓	The RMS relies on a continuous, system level chain of custody - ensuring the preservation and accuracy of claims as materials move through the entire plastics supply chain.
Transparent Management	✓	RMS is developed and managed as a Voluntary Consensus Standard - with multi-stakeholder transparent decision making, conflict resolution, and continuous improvement processes
Mass Balance + Book & Claim	✓	RMS matches the Pact's requirements for fuel exclusion in Mass Balance and is the only Chain of Custody standard to support Book & Claim accounting (through the ARC Certificate program)

While often associated with chemical recycling, the **mass balance** accounting method can also be applied to mechanical recycling. This approach tracks the use of materials beyond a single batch, over a longer time frame, and allows manufacturers the flexibility to allocate recycled material claims to products – as long as the claims do not exceed the amount of processed material. The outputs must balance with the inputs after accounting for losses. This is a holistic, system-based approach where the market receives the full amount of recycled material, however the actual physical content in a given batch may not be known.

Mass Balance		
ISO 22905 Compliant	✓	The RMS uses ISO 22095 methods for Chain of Custody Certification, ensuring no double counting of claims. Mass Balance is tracked by resin-specific product groups.
Fuel Exclusion	✓	The RMS relies on proportional allocation. The standard allows for non-proportional allocation for chemical recycling processes as long as all fuel output is treated as a system loss.
Up-Front Accounting	✓	Only output quantities are tracked in RMS, accounting for yield losses in processing. Material tracking is defined over a specified time period and reconciliation is done on a quarterly basis. Credit balances require rationale for going below zero.
ISO Compliant Third-Party Certification	✓	Certification audits are provided by third-party independent certification bodies, using ISO 14021 definitions of Post-Consumer and Post-Industrial Recycled Material

**Book & Claim** certificates are plastic credits created from processing of recycled materials. This new method of recycled accounting allows recyclers to transfer recycled material claims completely independent from any material. Strong certification systems enable trust and prevention of double counting.

RMS is the only Chain of Custody certification that also provides for transfer of B&C certificates (referred to as ARCs).

Book & Claim		
No offsetting or neutrality	✓	RMS Guidelines strictly prohibit any claim of plastic-neutrality or offsetting plastic production related to ARC transactions.
Additionality Requirements	✓	ARCs are able to be generated based on additional expansions of recycling processing. Multiple additionality tests are required, including newness, quality improvement, financial incentive, and production efficiency increases.
Based in Actual Processing	✓	ARCs are tied to the RMS Chain of Custody and can be generated based on physical processing of material into resin or flake.
Strict Requirements	✓	ARCs meet strict requirements to prevent compromises: yield losses are tracked, credits have a vintage year and expiration date, and sales of material tied to ARCs must communicate no claim of recycled content.

The Recycled Material Standard provides the most options to build your PCR portfolio – all under a single certification program.

Start your Path to Certification today and go beyond 2025 targets!





# The right certification details ensure successful outcomes in rulemaking for PCR legislation.

To ensure minimum post-consumer recycled (PCR) content policies fulfill their intent, policy elements detailing third-party certification requirements are critical to enabling transparency and creating assurance of compliance. *What are these considerations and how should they be defined to ensure successful legislation?*

## WHAT IS THIRD-PARTY CERTIFICATION?

Third-party certification is the process of an independent organization verifying a company's claim of recycled materials utilized in products or packaging. Certification is verified according to standards (such as GreenBlue's *Recycled Material Standard*), creating shared, transparent guidelines for companies and auditors to follow.

While there are many recycled content standards, it is important to recognize that all are not created equally, and improper definition of certification in policy can create unintended ambiguity in reporting or constrain companies' abilities to meet mandated targets - ultimately undermining the goals these PCR bills are created to achieve.

## SUCCESSFUL PATHS FOR SPECIFYING CERTIFICATION IN RULEMAKING

Rulemaking by environmental agencies allows more specificity for defining actual program requirements and implementation methods than the complex legislative process. Agencies and stakeholders should consider these details for inclusion. Properly outlining certification requirements will remove gray areas in reporting, streamline the review process for agencies, and support brands with opportunities to scale use of PCR.

BEST PRACTICE	IMPACT
Identify and approve certification standards allowed for reporting. Approve standards first, not certification bodies (CBs). CBs are companies that perform independent third-party auditing for standards and could potentially utilize multiple methods.	Recognizing certification standards ensures alignment of methodology and credible assessment of claims across many different brands and suppliers. Certification standards eventually select CBs to perform verification through rigorous evaluation criteria.
Enable brands to use mass balance accounting paired with strong certification.	Standards that offer mass balance accounting enable scaling and drive investment where current capacity and capability may be lacking.
Any mass balance accounting approach should only allow the accounting of materials that become inputs for other manufacturing processes. Fuels should not be carried forward in the accounting process.	In chemical recycling, it is possible for waste plastic inputs to be converted into fuel while claimed as recycled credits for new plastic via mass balance accounting. This is deceptive per the Green Guides.
Be cautious of standards managed by industry associations, the FTC GreenGuides require these to have additional external support for valid consumer claims.	Industry standards are developed fully in the private sector and are not fully consensus based. Companies' claims can create confusion as to whether their certified by an independent organization.

ADVANCING THE USE OF  
RECYCLED MATERIALS





## ALTERNATIVE COMPLIANCE

Because capacity and quality continue to scale in recycling, particularly for plastics, sufficient volumes may not be available to enable compliance for every brand at the time of policy implementation.

BEST PRACTICE	IMPACT
Regulatory agencies should consider how alternative compliance can be achieved if brands can demonstrate suitable materials are not available.	While fines are an effective method to drive change, outlining alternative compliance pathways (ACP), drive companies to take action building PCR supply.
Enable purchase of book & claim certificates (also referred to as plastic credits) as an ACP. With proper additionality requirements, similar financial instruments have supported expansion of sustainable practices like renewable energy.	These tradable environmental commodities (similar to renewable energy credits) allow brands to support expansive investments in recycling and take accountability for responsible stewardship.
	Allowing targeted investment in the recycling system as corrective action today ensures full compliance in the future.

## MATCHING THE VOLUNTARY SPACE

NGOs have made significant progress establishing consensus criteria for certification in the voluntary reporting space. Aligning these efforts with regulatory requirements can truly accelerate demand for PCR. The **US Plastics Pact PCR Certification Principles** offer guidance on criteria certification standards should contain. Legislators and regulators should refer to these as a baseline for evaluating comparative standards or setting requirements in text. The *Recycled Material Standard* aligns with these principles, and is an example of a transparent, comprehensive third-party certification to trust in PCR regulation.



## OTHER OPTIONS TO CONSIDER IN ALTERNATIVE COMPLIANCE OR CORRECTIVE ACTION PLANS

BEST PRACTICE	IMPACT
Mandating formal requests to suppliers to increase certified recycled content	Suppliers respond to customers' requests, and forcing the discussion eventually increases supply or adoption of certification.
Explore availability of mass balance attributed material	Companies may not be able to find PCR usable for direct use in their packaging (possibly due to food contact requirements), but suppliers may be able to attribute recycled claims via mass balance. PCR can command a higher price premium if it can be attributed to products that do not physically contain it.
Source certified post-industrial recycled content	While not driving growth of PCR markets, post-industrial content is material diverted from other waste streams and supports the transition away from virgin resources.

## ADDITIONAL RESOURCES

**US Plastics Pact PCR Certification Principles:** A consolidated set of criteria defining essential PCR certification requirements for voluntary reporting, developed by a joint industry-NGO coalition. The Certification Principles provide guidance to companies on identifying quality standards and can be used as a reference for defining TPC requirements in policy.

**RMS Guidance on Principle Alignment:** Analysis of the US Plastic Pact Principles and detail of how the Recycled Material Standard meets those criteria. RMS is the only certification to meet the compliance guidance and offer all approved accounting methods - segregation, controlled blending, mass balance, and book and claim.

**Mass balance explanation video:** Short video explaining mass balance accounting and how it supports expansion of PCR utilization when paired with third party certification. Widely accepted in other manufacturing certification systems, mass balance tracks the inputs of PCR at a facility over a specified time and allows a company to more allocate claims to output products while ensuring there is no double counting or improper activity.

**CONNECT WITH THE RECYCLED MATERIAL STANDARD TEAM TO ENSURE YOUR POLICY DETAILS SUPPORT YOUR DESIRED OUTCOMES. TO LEARN MORE, VISIT [RMSCERTIFIED.COM](https://rmscertified.com).**

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August 26, 2024

Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017

**RE: Revised Draft Rule Chapter 428; EPR Program for Packaging, Routine Technical**

To Whom It May Concern,

AdvaMed, the Medtech Association, submits these comments for the Draft Rule of the EPR Program for Packaging to the Department of Environmental Protection ("the Department"). AdvaMed is the largest association that represents over 500 of the world's leading innovators and manufacturers of medical devices, diagnostic products, digital health technologies, and health information systems.

AdvaMed appreciates the opportunity to provide these comments in conjunction with our comments on the exemption request for FDA regulated healthcare products that the Department received. We look forward to working with you on this matter in a future major substantive rulemaking where an explicit exemption for FDA regulated healthcare products (such as that appended below), including medical devices and their packaging, can be fully considered and promulgated.

AdvaMed is engaged on legislative and regulatory EPR efforts nationwide working with state regulators so that broad EPR laws account for the complexity and strict Food and Drug Administration (FDA) regulation of packaging for medical devices, and medical products, and their components. In 2024, Minnesota passed a comprehensive product stewardship law that created a robust exemption for packaging of FDA regulated healthcare products. In 2023, Colorado's broad EPR law also provided for such an exemption. We urge the Department to mirror these exemptions, as explicitly encouraged by the Maine legislature in Section 13(D) of 38 M.R.S. 2146, for FDA regulated healthcare products for better alignment and standardization across the country.

The purpose of EPR regulations is to provide an incentive for producers to reduce packaging volume and improve circularity. However, producers of FDA regulated healthcare products are obligated to create packaging according to certain specifications to maintain safety and functionality of life-saving medical devices and medical products used in thousands of routine and complex healthcare procedures every day. Without



making a clear exemption under “packaging material”, medical device manufacturers will be subject to the material goals and fees of this EPR law, effectively penalizing them for using packaging that must first comply with FDA regulations to keep patients and healthcare providers safe.

Thank you for the opportunity to provide this comment. In addition, we ask for a dedicated meeting with the Department of Environmental Protection to discuss the issues with this draft rule and provide technical assistance for major substantive rulemaking where possible. Please contact me at [rkozyckyj@advamed.org](mailto:rkozyckyj@advamed.org) if you have any questions.

Sincerely,



Roxy Kozyckyj  
Senior Director, State Government and Regional Affairs  
AdvaMed

**MN EPR for packaging law (passed 2024) – HF3911(omnibus bill – EPR language p.108**

Exempt materials. "Exempt materials" means materials, or any portion of materials, that:

- (4) are packaging for a product regulated as a drug or medical device by the United States Food and Drug Administration, including associated components and consumable medical equipment;
- (5) are packaging for a medical equipment or product used in medical settings that is regulated by the United States Food and Drug Administration, including associated components and consumable medical equipment;
- (6) are 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 United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 301 et seq., by the United States Department of Agriculture under the federal Virus-Serum-Toxin Act, United States Code, title 21, section 151 et seq.;
- (7) are packaging for products regulated by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, United States Code, title 7, section 136 et seq.;







**Solutions  
for a Toxic-Free  
Tomorrow**

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*President and CEO*

August 26, 2024

Maine Department of Environmental Protection

17 State House Station

Augusta, ME 04333

Dear Commissioner Loyzim,

Thank you for the opportunity to provide comments on the draft rules Revised Chapter 428: Stewardship Program for Packaging Draft Rule. Defend Our Health works to create a world where everyone has equal access to safe food, safe drinking water, healthy homes, and toxic-free and climate-friendly products. The Extended Producer Responsibility (EPR) law is an important law that will help address Maine's waste crisis and protect consumers from toxics in packaging.

It is essential that we take swift action to adopt the actions proposed in the draft of the EPR recycling program to meet Maine's waste and environmental health goals. Our current system of waste management has been shown time and time again to not work – polluting our land, water, and air, and making taxpayers fund recycling programs throughout the state. Maine has had recycling goals since [1989](#) that still have not been reached almost 40 years later. And while we continue to recycle the same percentage of material each year, our total waste generation has been steadily on the rise, leading to an impending waste problem we are already beginning to feel the effects of and need real solutions to manage. Casella is asking the state to allow them to expand the Juniper Ridge Landfill (JRL) to deal with increased waste generation. A better solution is implementing policies like EPR that reduce waste instead of putting the burden on fenceline communities near our landfills.

It is time to move the cost burden of recycling from taxpayers to the producers who should be held accountable for the waste their products generate through poor packaging systems and materials. This “*The Polluter Pays*” principle is the key to revolutionizing waste in Maine and igniting systemic change in packaging and waste production throughout the country. With this principle, polluters will be forced to pay more for layers and layers of nonrecyclable packaging material we still often see these days on products.

Shifting the burden to producers will be economically favorable for Mainers without harming small Maine businesses. This is backed by evidence from similar past programs, such as in British Columbia, Canada, where, as a result of adopting the polluter pays principle, the wealthiest 5% of businesses funded over 80% of the EPR program. There is similarly no evidence that EPR programs increase the cost of goods. Thus, recycling

and better packaging costs will fall onto wealthy corporations, while citizens will be able to recycle more of their packaging without paying more for everyday products. When fully implemented, this system is projected to save taxpayers \$16-17 million annually.



It is critical for these rules to be enforced as soon as possible to limit the economic stress on communities and hold corporations accountable. The longer these new rules are delayed, the more waste is piled into landfills at the expense of the taxpayer. Delaying implementation of the new rules would hurt impacted communities who need economic help to manage their recycling programs. Our municipalities need this help as soon as possible and the pollution producers are standing in the way of that help.

Turning to the toxics language in the draft, the Department has edited the definition of toxics to align with the definition of toxicity that already exists under statute. While we have no issue with aligning the definitions to make compliance easier and more uniform, as we mentioned in previous comments, we do want to see the Department provide a pathway to add other toxic chemicals and non-recyclable materials to this list moving forward. As scientists continue to study the health impacts of chemicals used in our packaging, they are finding more and more of them are harmful to human health. An international study found that there are more than 3,000 harmful chemicals in food packaging alone<sup>1</sup>. If you look at all packaging, that number will most assuredly be larger. The Department needs to make sure that, as scientific information becomes available about the detrimental health impacts of toxic chemicals in packaging, there is a pathway to add them to the law.

The Department should also provide a pathway for additional packaging that should not be included on the “readily recyclable” list. The U.S. Plastics Pact<sup>2</sup> provides a detailed list of problematic plastics that industry has already agreed are not recyclable and shouldn’t be utilized including plastic packaging; this includes toxic chemicals such as per and poly fluoroalkyl substances (PFAS), polyvinyl chloride including PVDC (Polyvinylidene Chloride), Non-Detectable Pigments such as Carbon Black, polystyrene, and many other materials. We urge the Department to make sure there is a process in place to add these materials.

Thank you once again for the opportunity to provide these comments. We look forward to continuing discussions with the Department on its implementation of this critical law. Please feel free to contact Sarah Woodbury, Vice President of Policy and Advocacy, at [swoodbury@DefendOurHealth.org](mailto:swoodbury@DefendOurHealth.org) if we can provide additional information.

Sincerely,

Sarah Woodbury  
Vice President of Policy and Advocacy  
Defend Our Health

<sup>1</sup> Krupnick, M. (2022, May 19). *More than 3,000 potentially harmful chemicals found in food packaging*. The Guardian. Retrieved December 6, 2022, from <https://tinyurl.com/mr4yec83>

<sup>2</sup> *U.S. Plastics Pact’s problematic and Unnecessary Materials List - The U.S. Plastics Pact*. The U.S. Plastics Pact -. (2023, February 15). <https://usplasticspact.org/problematic-materials/>



*August 26, 2024*

Maine Department of Environmental Protection  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333

**Comments on Revised Version of Chapter 428: Stewardship for Packaging**

Dear Maine DEP:

On behalf of the Glass Packaging Institute (GPI), I am pleased to provide **comments on the revised version of Chapter 428: Stewardship for Packaging**.

GPI is the North American trade association for the glass food and beverage manufacturing companies, glass recycling processors, raw material providers and other supply chain partners within the industry. GPI and its members work closely with local and state governments throughout the country on issues surrounding sustainability, recycling, packaging manufacturing and energy use.

**Chapter 428: Stewardship for Packaging**

GPI is concerned that glass, as a material, is caught in a place where the general purpose of the law and regulations were meant for more problematic and harder to recycle materials. The vast majority of consumer packaging glass in Maine is covered by the bottle deposit return program and therefore the only glass remaining for the EPR program is food or personal care products not otherwise in the bottle bill.

Glass is a core feedstock and beverage packaging material and a core recyclable. Glass is used by some of the largest food and beverage products made in Maine, and already well recycled in Maine, both by the bottle deposit program and for the non-deposit recovery that existed prior to Chapter 428. Glass clearly was not the primary focus of the regulations, and we are concerned that these draft regulations could potentially increase the cost of glass recycling.

There are some inconsistencies in the way the material is treated under different sections of the proposed rules, and producers who use glass packaging should not be penalized with higher fees, nor should the glass have to pay for the design flaws of

the existing commingled material recovery facility industry that creates far higher contamination levels in the glass stream than any other commodity.

Specifically, we have several concerns with the following sections as it relates to glass:

- 1) Target Material
  - a. (1) Filtration media for use in a manner that does not constitute disposal, abrasive materials, glass fiber insulation, or construction materials for use in a manner that does not constitute disposal;
  - b. (2) Smelter or furnace-ready metal;
  - c. (3) Pulp;
  - d. (4) Recycled plastic pellets ready for use in an extrusion or molding operation or recycled plastic flakes that do not require further processing before use in a final product; or
  - e. (5) A commodity for sale to a market with a set of accepted materials that share the same base material.
- 2) Alternative Collection Program – Not currently under consideration
  - a. We have no significant issues with this section. GPI recommends the creation of glass producers collective to help manage the collection.
- 3) The recycling access goal outlined on Pg. 7; 3.A(1) is outside of the control of the PRO because municipalities are not required to participate in the program.
- 4) Changes made to the collection goal on Pg. 8; 3.A(3) are unnecessarily confusing.
- 5) The reduction goal on Pg. 9; 3.A(4) does not allow looking back at recent reductions. The encouraged baseline is higher, creating a falsely easier goal to meet.
- 6) Producer reporting refers to statewide packaging recycling rate (pg. 13; 3.B (5)) which is calculated differently than the goals (pg. 10 –11; 3.A (7) and (8)). The goals are based on a calculation of recycling in participating municipalities, while the report relates to the total recycled in the state.
  - a. GPI recommends that they be calculated the same way. Producers should also be required to report progress toward the goal, rather than only explaining why their goal hasn't been met.
- 7) Readily recyclable / marketable standard related to cost per ton (pg. 18; 4.C.(1)(c)).
  - a. GPI believes it is unwise to establish a regulatory standard for how much is too much to pay for recycling a particular material. Furthermore, the language is contradictory with the first sentence saying the cost per ton must be two times the most expensive material type recycling costs, the next saying it's the average of current participating municipalities where currently collected, and the third saying the Department will determine the cost per ton for things not currently collected.

- b. In the next section (pg. 19; 5.A.1) it notes that this criterion doesn't apply to the initial list. This should be removed.
- 8) Compensation for non-readily recyclable costs on Pg. 50; 13.D. Pays 1/3 of cost of recycling readily recyclable materials for landfilling, 2/3 for waste to energy, and average recycling cost for recycling.
  - a. Reimbursing for landfilling and waste to energy is counterproductive.

Thank you for your consideration of our comments. We look forward to continuing our support for Maine DEP's Chapter 428: Stewardship for Packaging and remain committed to working with all stakeholders to enhance glass recovery and recycling in the state.

Sincerely,



Scott DeFife  
President

**Nadeau, Jessica**

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**From:** Shirley Davis <sldavis@maine.edu>  
**Sent:** Wednesday, August 7, 2024 11:09 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my strong support for the proposed Extended Producer Responsibility (EPR) for Packaging rules. Maine's municipalities urgently need this program to cut costs and help manage recycling effectively. The Department of Environmental Protection has done a great job developing these rules.

As you finalize these rules, I urge you to ensure equitable reimbursements for Maine communities, particularly for non-readily recyclable materials. This consideration will enable towns to manage packaging materials they cannot control.

Let's get this proven solution started now so we can bring the benefits to Maine communities and work on improvements as needed to achieve our longstanding goal of 50% recycling.

Sincerely,  
Shirley Davis  
64 Gardner Road  
Orono, ME 04473



***Via Electronic Mail***

August 26, 2024

Ms. Kerri Malinowski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

**Re: PLASTICS Comments on the Definition of “Toxics” in Maine’s Stewardship Program for Packaging Statute Implementing Rule**

Dear Ms. Malinowski:

On behalf of the Plastics Industry Association (“PLASTICS”),<sup>1</sup> we are writing to submit comments on the draft update to the Chapter 428 draft rule implementing Maine’s Stewardship for Packaging statute.<sup>2</sup> On February 5, 2024, Maine’s Department of Environmental Protection (DEP or Department) proposed an updated definition of “toxics” in the Stewardship for Packaging statute to include chemicals listed in the Toxic Chemicals in Children’s Products,<sup>3</sup> Reduction of Toxics in Packaging,<sup>4</sup> and the priority chemicals listed by the Department in the Toxic Chemicals in Food Packaging.<sup>5</sup> We are concerned by the breadth of this expansion in the definition, and anticipate that the proposed definition will significantly increase the burden on industry stakeholders as well as DEP itself. Such a substantial change could lead to the removal of many packaging materials from the market. In addition, the Department may face a considerable administrative burden in determining whether thousands of listed compounds may be contained in packaging materials for hundreds of thousands of food products. PLASTICS’ members fully support effective, science-based policies that protect public health and the environment, and we believe that such efforts can be successfully advanced in ways that do not inhibit the use of safe packaging and allow for innovations that benefit consumers.

We appreciate the opportunity to comment on Maine’s Stewardship for Packaging rule. Our members have extensive knowledge about food packaging substances and assessments of

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<sup>1</sup> PLASTICS was founded in 1937, as the Society for the Plastics Industry (SPI) and is the trade association that represents one of the largest manufacturing industries in the United States. PLASTICS’ members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers, and raw material suppliers.

<sup>2</sup> See 38 MRS § 2146; *see also* Maine Department of Environmental Protection, “Chapter 428 Proposed Rule Draft” Feb. 5, 2024, <https://www.maine.gov/dep/bep/2024/03-07-24/Chapter%20428%20Proposed%20Rule%20Draft.pdf>.

<sup>3</sup> See 38 M.R.S. § 1694.

<sup>4</sup> See 32 M.R.S. § 1732.

<sup>5</sup> See 32 M.R.S. § 1743.



their safety, and we believe that our organization can provide unique insight into the proposed update to the rule. However, the proposed rule should not encompass an overly broad range of chemicals to be effective, particularly listings that may not have direct relevance to food-contact applications. A targeted definition of “toxics” would foster a high level of compliance without being unduly burdensome on industry or create adverse impacts on the consumers it aims to protect. For these reasons, we respectfully request that DEP carefully consider our comments below.

**I. The proposed definition of “toxics” is overly broad as it lacks sufficient scientific evidence to justify the inclusion of the named substances and therefore creates unnecessary regulatory burdens.**

**A. A broader definition of “toxics” could lead to unintended consequences.**

The expanded definition of “toxics” in the proposed rule is concerning due to its reliance on separate listings for chemicals that may lack sufficient scientific evidence to justify their classification as “toxics” at the concentrations found in packaging. This overbroad definition could include substances that present little or no risk to human health or the environment. Although the state’s policy rationale aligns with the goal of protecting public health and the environment, a more targeted approach is essential to avoid market disruptions to both the packaging and food supply chains. We urge DEP to take a risk-based approach, which encompasses both hazard *and* exposure. By focusing on chemicals with demonstrated *risks* rather than mere hazards – a distinction that is often unappreciated by those lacking in scientific expertise – regulators can prioritize their efforts and resources to address substances that may pose a safety concern.

A risk-based approach is essential for determining which chemicals should be considered “toxics” under Maine’s Stewardship Program for Packaging. While certain chemicals may pose a hazard, the actual risk to human health or the environment depends on a number of factors (e.g., exposure levels, routes of exposure, and the inherent toxicity of the substance). In the plastic packaging industry, many chemicals that have identified hazards are used at exceedingly low levels and are entirely safe under such circumstances, as they result in minimal or negligible risk at typical exposure levels. A focus on chemicals that pose a significant *risk*, rather than the proposed definition of “toxics,” would have more robust scientific support and better ensure that these regulatory efforts are targeted and effective.

**B. The impact of the proposed “toxics” definition on the packaging industry.**

The expanded definition of “toxics” in the proposed Stewardship Program for Packaging presents a significant challenge for businesses in the packaging industry. The increased scope of regulated substances will necessitate additional testing, documentation, and compliance efforts leading to increased costs and operational burdens. Moreover, the expanded definition will likely diverge from existing federal and international standards, thereby creating complexities in





global supply chains. Businesses will face challenges in sourcing materials that comply with Maine's stringent requirements while maintaining competitiveness in the global marketplace.

The potential for regulatory burden is also a major concern. A broader definition of "toxics" could lead to an unnecessarily complex compliance effort, overwhelming businesses with requirements that would cause problems in the supply chain. A more targeted, risk-based approach, focusing on chemicals with demonstrated hazards and significant exposure risks, would be a more effective and efficient means of protecting public health and the environment. A similar approach was adopted during the implementation of Maine's Toxics in Packaging law.<sup>6</sup> Although the initial proposal sought to ban the use of intentionally added PFAS in *all* food packaging, the final regulation adopted an approach that targeted priority applications. By focusing the proposed prohibition to food packaging primarily composed of paper, paperboard, and plant-based materials, Maine's DEP properly balanced public health protections and practical considerations for the industry to take corrective measures. We see value in taking a similar approach to Maine's draft update to the Chapter 428 draft rule implementing Maine's Stewardship for Packaging statute.

Accordingly, we urge DEP to reconsider the expanded definition of "toxics" and adopt a more focused approach. We believe that such an approach would achieve the intended policy implications. The Department can better accomplish its goal of identifying chemicals of concern through a targeted approach that ensures citizens still have access to safe and suitable packaging.

\* \* \*

We appreciate this opportunity to comment on this proposed rule and wish to continue to work with Maine's Department of Environmental Protection to ensure that food packaging is safe for all populations. If you have any questions or concerns regarding this letter, or if we can provide additional information regarding any of our comments provided above, please do not hesitate to contact us.

Cordially yours,

A handwritten signature in black ink that reads "Stacy Tatman". The signature is fluid and cursive, with the first and last names clearly legible.

Stacy Tatman, MS, JD  
[statman@plasticsindustry.org](mailto:statman@plasticsindustry.org)  
202.875.4352

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<sup>6</sup> See 32 M.R.S § 1732.

**Nadeau, Jessica**

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**From:** Stephanie Nelson <stephanie@heliakos.com>  
**Sent:** Wednesday, August 7, 2024 10:16 AM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my full support for the EPR for Packaging rules. The Department of Environmental Protection has crafted a solid framework that will improve Maine's recycling efforts and reduce waste. It is important that we implement this program now to provide the necessary support to our municipalities.

To create a more equitable system that supports all towns in managing packaging rates, I recommend ensuring fair reimbursements for non-readily recyclable materials and considering the capacities and situations of different communities. I urge the Board to adopt the EPR for Packaging rules, setting an example for other states and contributing to a cleaner, more sustainable Maine. Thank you.

Sincerely,  
Stephanie Nelson  
10 Pleasant St.  
Newcastle, ME 04553

August 26, 2024

Attn: Mr. Brian Boneski  
Maine Department of Environmental Protection  
Supervisor, Recycling Programs  
Division of Materials Management  
Bureau of Remediation and Waste Management  
17 State House Station  
32 Blossom Lane  
Augusta, Maine 04333-0017  
Sent via email: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

**RE: Comments on Revised Draft Rules Chapter 428: Stewardship Program for Packaging**

Dear Mr. Boneski,

Circular Action Alliance (CAA) is pleased to submit comments on Maine's revised draft rules for Chapter 428: Stewardship program for packaging.

Circular Action Alliance (CAA) is a U.S. Producer Responsibility Organization (PRO) dedicated to implementing effective Extended Producer Responsibility (EPR) laws for paper and packaging. As a nonprofit, producer-led organization, CAA is committed to delivering harmonized, best-in-class compliance services to all producers to advance an efficient and effective circular economy.

CAA is the only organization approved to implement U.S. EPR laws for paper and packaging and is operating as the single PRO in California and Colorado. CAA has submitted an initial program plan to operate as the PRO in Oregon and has also been selected to represent producer interests as the PRO on the State Producer Responsibility Advisory Council in Maryland. The attached submission outlines our detailed comments, including key recommendations pertaining to:

- Definition of producer;
- Producer reporting requirements; and
- Timing of producer reporting, invoicing, and payments to municipalities.

We appreciate the opportunity to provide feedback and would be happy to answer any questions you might have.

Sincerely,



Susan Bush  
Maine Program Manager  
Circular Action Alliance (CAA)

## Circular Action Alliance Comments on Maine Revised Draft Rules (“Reposting Draft”)

### Section 2: Definitions

1) The word “Plan” is mentioned frequently throughout the rules but is never defined. We request that the phrase “Program Plan” be defined and that the Stewardship Organization (SO) update the Program Plan every five years. This approach would add clarity and reduce confusion with other types of plans such as the investment savings plan. We request simplifying the request for proposals (RFP) process and contract to the greatest extent possible by focusing on meeting statutory requirements and providing DEP with adequate information to make an informed decision. The SO’s Program Plan would include more detail on the SO’s approach.

2) We request that the perishable food exemption in statute be clarified in the rules to indicate that the exemption only applies to the packaging associated with the perishable food, not to other products the producer may sell or supply into the state. The current wording appears to make a producer exemption, not a product exemption. Therefore, this should be clarified in the definitions section of the rules.

3) The definition of “Manage,” as presented in the revised draft rules, includes “to educate consumers about packaging material, or to pick-up litter.” This definition is unclear because these activities are not described as reimbursable activities in Section 13 and do not seem to be part of what is described elsewhere in the draft rules (e.g., Section 17); therefore, that portion of the definition of “manage” should be removed, and those activities could be outlined where appropriate.

4) “Producer” is defined in statute and in rules. We encourage DEP to clarify the definition of producer to ensure that there is a tiered structure, such that it is clear who has obligation to report and pay fees. Under the current wording, a tiered structure is alluded to, in that subsection (2) states “and has no physical presence in the United States”; implying tier (1) would require a physical presence in the U.S. We also request that the importer described in (2) be required to be located in Maine. The current definition is as follows:

*V. Producer. “Producer” means a person that:*

*(1) Has legal ownership of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material;*

*(2) Is the sole entity that imports into the State for sale, offer for sale or distribution for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material branded by a person that meets the requirements of Section 2(VW)(1) and has no physical presence in the United States; or*

*(3) Adds packaging material to another producer’s product for distribution directly to a consumer. This person is only the producer for the packaging material it adds.*

*Producer includes a low-volume producer, as defined in 38 M.R.S. §2146(1)(G), and a franchisor of a franchise located in the State but does not include the franchisee operating that franchise.*

*Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).*

We suggest broadening responsible entity to the first tier as including an entity licensed to sell the brand and including that the entity has a physical presence in the U.S.” in (1) and having (2) be restricted to an importer located in Maine. We also suggest removing “sole importer,” as there may be several entities importing a product into the State.

Additionally, the description of added packaging to another producer’s product and low-volume producer elements are not part of the tiered approach but belong at the end of the definition as clarification

language, as is the franchisee language. We present preferred revised language below. It is important that the definition clarifies who is the obligated party. If there are several possible obligated parties, identifying the obligated producer in the packaging supply chain will be more difficult and time-consuming. Additionally, there is the potential that no entity will step forward as the obligated producer. We also believe it is unlikely that there will be one sole importer into the state in many cases; therefore, the definition should not say “is the sole importer.” It is also important that the definition of producer be as harmonized as possible among states to reduce confusion and enhance compliance.

5) Toxics – In Section 2 DD “Toxics” is defined to mean chemicals of concern, chemicals of high concern, or priority chemicals listed by the Department in accordance with *Toxic chemicals in children’s products*, 38 M.R.S. §1694; PFAS and phthalates as defined in *Reduction of toxics in packaging*, 32 M.R.S. §1732; and food contact chemicals of high concern or priority food contact chemicals listed by the Department in accordance with *Toxics chemicals in food packaging*, 32 M.R.S. §1743.

We believe the DEP has expanded the scope of the laws addressing children’s products and food packaging by applying these limitations to all packaging, instead of the children’s products and food packaging the laws were intended to address. We suggest the chemicals in the children’s products law be removed, and the food contact chemicals of concern only apply to food contact packaging.

Further, we request that DEP publish a list of chemicals that cannot be included in packaging on their website, as this definition relies on Maine laws, and therefore is unique relative to toxics addressed in other states.

#### CAA Comments Pertaining to Section 2 of Chapter 428 Revised Draft Rules

Section 2	Add a definition to clarify what a Program Plan is and broadly, when it is due/updated.	Add a definition for the Program Plan to the definitions section to clarify that there is a Program Plan (and is not being used interchangeably with RFP or confused with other types of plans), and that it is to be updated every five years. We also suggest DEP simplify the RFP as is practicable and instead obtain details in the Plan.
Section 2	Add a definition to clarify the producer of perishable food exemption in statute	Statute – §2146 (2) (D) Producer Exemptions The producer sold, offered for sale or distributed for sale in or into the State during the prior calendar year to retailers or direct to consumers products that were perishable food and that were contained, protected, delivered, presented or distributed in or using less than 15 tons of packaging material in total. Perishable food exemption – If a producer sells, offers for sale, or distributes for sale in or into the State during the prior calendar year to retailers or direct to consumers products that were perishable food and that were contained, protected, delivered, presented or distributed in or using less than 15 tons of packaging material in total. <b>The exemption applies only to the less than 15 tons of packaging associated with the perishable food, not other products the producer may sell or distribute into the State.</b>
Section 2	Define import	It appears that in this Chapter import includes interstate trade. A definition should be developed to clarify this.
Section 2 (P)	Amend the definition of Manage	“Manage” means to collect, transport, process, or otherwise prepare a packaging stream for recycling, reuse, composting, or disposal; <del>to educate consumers about packaging material, or to pick-up litter.</del>
Section 2 (V)	Amend the Definition of Producer	V. Producer. “Producer” means a person that: <b>(1) Has legal ownership the rights to market the product either as the legal owner or licensee</b> of the brand of a product sold, offered for sale or distributed for sale in or into the State contained, protected, delivered, presented or distributed in or using packaging material <b>and</b>

		<p><b>has a physical presence in the United States; or, if no such entity exists;</b></p> <p><b>(2) Is <del>an-the sole</del> entity with a physical presence in Maine</b> that imports into the State for sale, offers for sale or distribution for sale in or into the State a product contained, protected, delivered, presented, or distributed in or using packaging material branded by a person that meets the requirements of Section 2(V)(1) and has no physical presence in the United States.</p> <p>Producer includes a low-volume producer as defined in 38 M.R.S. §2146(I)(G)</p> <p><b>(3) <del>is a</del> Producer includes a A-franchisor</b> of a franchise located in the State but does not include the franchisee operating that franchisee.</p> <p><b>A non-exempt entity that adds</b> packaging material to another producer's product for distribution directly to a consumer <b>is also a producer This person is only the producer</b> for the packaging material it adds. Producer includes a low-volume producer, as defined in 38 M.R.S. § 2146(1)(G). Producer does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).</p>
Section 2 (DD)	Amend the definition of Toxics	<p>"Toxics" means <del>chemicals of concern, chemicals of high concern, or priority chemicals listed by the Department in accordance with Toxic chemicals in children's products, 38 M.R.S. §1694;</del> PFAS and phthalates as defined in <i>Reduction of toxics in packaging</i>, 32 M.R.S. §1732; and <b>for food contact packaging</b>, food contact chemicals of high concern or priority food contact chemicals listed by the Department in accordance with <i>Toxics chemicals in food packaging</i>, 32 M.R.S. §1743.</p> <p><b>We request the Department publish a list of toxics that should not be in packaging or food-contact packaging on their website.</b></p>

### Section 3: Assessment

- 1) Program Goals –Targets should be, measurable, achievable and based on robust data. Ideally, goals would be established after the Needs Assessment is complete, and there is more data available. We suggest DEP consider establishing goals through the Program Plan process, after data is available.
- 2) Program Goals – There should be a method to update the goals over time as more data is obtained through program reporting and Needs Assessments.
- 3) Litter goal – If DEP continues to include specific goals in the rules, the ramification of not achieving the litter goal should be revisited. If the litter goal is unmet, current draft rules indicate that the SO is to report on the feasibility of a deposit program for the five packaging material types that are most littered. Food and beverage containers are generally the most littered items. Many beverage containers are in the Maine deposit-return system, so those are exempt from the program. Food packaging, however, is generally not suitable for a deposit program, as it is not practical, cost-effective, or sanitary. We suggest DEP remove that requirement.
- 4) Annual SO Reporting (B)(6) requires the SO to provide an update list of toxics in an appendix. We suggest the DEP provide and update the list of toxics on their website, as they are based on Maine laws.
- 5) Disposal Audits (D)(3) – We suggest relaxing the statistical standard for disposal audits from 90% confidence +/- 5% to either 85% +/- 5% or 90% +/- 10% to enhance the cost effectiveness of the studies.
- 6) Litter audits (E) -- We request that litter audits involve sorting covered packaging by packaging material type only, and not by brand. Sorting by brand is time consuming and will make such studies costly, without benefit to the expense. Brand owners have no control over consumer behavior or other actions (i.e., haulers

allowing materials to blow away, municipalities and other service providers using uncovered recycling containers, etc.).

### CAA Comments Pertaining to Section 3 of Chapter 428 Revised Draft Rules

Section 3 Assessment (A) Program Goals	Ensure goals are based on data and are achievable but drive improvement.	Develop targets after the Needs Assessment is complete and more data is available through the Program Plan.
(A) Program Goals	Introduce a method to adjust goals over time.	Develop a process for goals to be adjusted over time as more data becomes available.
(A)(10) Litter goal	Program Goals – Litter. (If DEP includes goals in rules)	If a litter goal is unmet, the SO must identify the five packaging material types that are most littered, <del>evaluate the feasibility of a deposit system for those packaging material types</del> , evaluate any location patterns with respect to littering of packaging material, and include this information and any suggested <b>education approaches</b> or mitigation methods in the following year's annual report, unless it did so for one of the past three annual reports.
(B)(6) Annual SO Reporting – Toxics	Eliminate the SO requirement to provide an updated list of toxics as part of its annual report.	<del>An updated list of toxics provided in an appendix:</del> DEP should develop and update this list as needed, as it is based on Maine laws, and provide it on their website.
(D) Disposal Audits (3)	Relax the statistical standard associated with disposal audits.	For each audit the SO must collect and analyze samples until results estimate the relative weight of packaging material, by packaging material type, with 90% confidence +/- <del>610%</del> for the 15 most prevalent packaging material types. <b>[Alternatively with 85% confidence +/- 5%]</b>
(E) Litter Audits	Adjust the litter audit methodology.	The SO must conduct litter audits to identify the percent of litter that is comprised of packaging material, <b>and</b> the percent of litter belonging to each packaging material type, <del>and the percent of packaging material that can be attributed to a brand.</del>

## Section 5: Process for Defining Material Type List

- 1) The criteria for defining packaging material types should take into consideration the criteria in other EPR states to the extent possible in order to reduce producer reporting burden. The list of readily recyclable material should be determined outside of the rulemaking, such as in the development of the Program Plan.

### CAA Comments on Section 5 of Chapter 428 Revised Draft Rules

(A) Defining Packaging Material Types	Revisit methodology and criteria for developing Appendix A	The criteria for defining packaging material types should take into consideration the criteria in other EPR states to the extent possible to reduce producer reporting burden.  Develop the readily recyclable list outside of the rulemaking process, e.g., in the Program Plan development.
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## Section 7: Calculation of the Per Ton Cost by Commodity

- 1) The title and description in this section should clarify that the section describes the calculation of the net cost per ton.
- 2) The Contractor Cost Per Ton should be net cost per ton. This is described in the equation, but not in the description.



**CAA Comments Pertaining to Section 7 of Chapter 428 Revised Draft Rules**

Section 7 Calculation of the Per ton Cost by Commodity	Clarify in the title and the description that this is to calculate the net cost per ton.	7. Calculation of the <b>Net</b> Per ton Cost by Commodity Section 7(A) through (F) below should be calculated with respect to a participating municipality's costs <b>and revenues</b> , as defined in Section 6.
Section 7 (D) Contractor Cost Per Ton	Clarify this is to calculate net cost.	D. Contractor <b>Net</b> Cost The contractor <b>net</b> cost is the <b>net</b> cost of a service agreement, as allocated to a commodity. (1) When a service agreement is for the management of one commodity stream, the contractor <b>net</b> cost per ton is the contractor <b>net</b> cost divided by the tons managed, in accordance with Section 17. The contractor <b>net</b> cost must be reported annually to the SO. (2) When a service agreement is for a mixed packaging stream, more than one packaging stream, or includes additional services beyond the management of packaging streams, the contractor must participate in a cost study, and Section 7(A) through (F) must be calculated for the contractor or subcontractor in order to assign the contractor <b>net</b> cost/ton to a commodity. ... Subcontractor <b>net</b> cost per ton is figured in the same was as contractor <b>net</b> cost per ton.

**Section 8: Start-Up Registration with the SO**

- 1) According to the current rules, if the producer does not know and cannot estimate the total tons produced, in order to estimate the start-up registration fees, the producer may report the total tons of packaging material distributed nationally. The SO will then estimate the total tons of packaging material produced by multiplying the national tons by Maine's share of the population of the United States. This method of estimating is only acceptable for start-up registration. We suggest the producer be the entity responsible for estimating the tons of packaging sold and distributed into Maine, not the SO. Producers will be responsible for reporting their supplied packaging in pounds to CAA in EPR states where we are operating as a PRO. We also suggest that this method of estimating the quantity of packaging sold or distributed into Maine be acceptable for annual reporting, and we suggest some clarification language.

**CAA Comments on Section 8 of Chapter 428 Revised Draft Rules**

Section 9 (A) Start-Up Registration with the SO	Have the producer, not the SO, determine the amount of packaging sold into state. Allow methodology to be used for annual reporting.	...This registration must include the information in Section 9(A) and an estimate of the total tons of packaging material produced during a timeframe identified in the SO's contract with the Department. If the producer does not know and cannot estimate the total tons produced in accordance with Section 9(D), the producer may report the total tons of packaging material used to contain, protect, deliver, present, or distribute a product that is sold, offered for sale, or distributed for sale nationally. In such cases the <b>SO-producer</b> will estimate the total tons of packaging material <b>produced supplied into Maine</b> by multiplying the national tons by Maine's share of the population of the United States. <b>This method of reporting and estimation is only acceptable for start-up registration.</b>
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## Section 9: Ongoing Producer Registration and Payment

- 1) Producers are to report data to the SO by May 31 annually. This is in alignment with reporting in other states: therefore, we support this date. If the producer were reporting in 2025, the producer would be reporting 2024 supply data, which would be used to establish fees for the 2026 program year.
- 2) The introduction to producer reporting indicates that producers must assume packaging material is received by the consumer of the product unless the producer can verify that the packaging material is not received by the consumer of the product, in which case that material is not packaging material, as defined by 38 M.R.S. §2146, and should not be reported. We suggest the rules clarify that this does not pertain to transport packaging, which routinely does not go with the consumer.
- 3) Reporting obligations (as described in (B)(2) and (3) should be simplified to reduce unnecessary complexity, which could introduce inaccuracies given producer data may be organized in different ways. The Draft Rules present reporting requirements that are more stringent than statute requires. We suggest the reporting requirements be simplified, such that packaging material data does not have to be reported by UPC or brick code, which can change frequently. We request reporting requirements minimize the administrative burden on producers. Listing packaging materials by UPC will be onerous and is a unique requirement to Maine that would take significant effort and time for producers to meet. Also, we request the removal of the language requiring that “in cases where one producer adds packaging material to another producer’s product for distribution directly to a consumer, a description of the sales pathway resulting in the addition of the addition of packaging material.” It is administratively burdensome and unusual for producers to have to describe their sales pathway.
- 4) The revised draft rules indicate that producers are to report the total weight of the packaging material type [(9)(B)(4) and (5)], as well as the base material, or, “if routinely separated and recycled according to Appendix A,” and that weighs at least 0.1 gram.” We suggest that the draft rules stipulate that additional reporting requirements are to be provided in the SO’s Program Plan or guidance documentation, and will, to the extent possible, harmonize reporting among the states to minimize administrative burden, while still providing data required to support the intent of the statute. These details would be developed in collaboration with DEP. We suggest that the producer not be required to provide a short description of the methodology used to determine the measurement in (4) and (5). This, again, is administratively burdensome to producers and is not required in other states. We would be happy to discuss examples and their complexity with DEP.
- 5) Producers should not report on the weight of the package that is “targeted for recycling.” They should simply be required to report weights of the package and/or components. What is targeted for recycling can vary in different regions and can change over time with market conditions and innovation.
- 6) Producers should not be required to report about refill and reuse options the producer is aware of beyond their own packaging [(9)(B)(8) and 9(B)(9)]. This is of marginal benefit and a reporting request unique to Maine.
- 7) We request that in Section (9)(B)(10), the producer reporting packaging “in a way that suggests” it is recyclable, reusable, or compostable, be rephrased to state “in a way that indicates it is,” which is less ambiguous and subjective.
- 8) The methodology for estimating units produced in Maine is overly complex. Producers should be able to estimate based on allocation of national sales estimated by percent of U.S. population in Maine. Distribution networks are rarely based on state lines, with products shipped to distribution centers being solid in state or shipped across state borders. As a result, many producers will rely on estimates through this method, as well as the method suggested.

### CAA Comments on Section 9 of Chapter 428 Revised Draft Rules

9(B) Annual Reporting for Producers	No suggestion.	<b>We support the May 31 date for producer reporting.</b>
	Clarify that transport / tertiary packaging is not	Producers or reporters must assume packaging material is received by the consumer of the product unless the producer can verify that the packaging material is not received by the consumer of the product, in

Other than Low-Volume Producers	included in this requirement.	which case that material is not packaging material, as defined by 38 M.R.S. §2146, and should not be reported. <b>This requirement does not pertain to transportation/tertiary packaging which is assumed to not go with the consumer.</b>
	Reduce reporting burden on producers.	We request that reporting details beyond overall packaging weight and packaging material type be developed with DEP input and provided in the Program Plan or guidance documentation. We suggest adding this text before (1) <b>Producers are to annually report brands they sell into the state, and list UPC codes of the products they sell.</b>
9(B)(1)		<del>(2) Brand or brands of products sold with this packaging material, or in cases where one producer adds packaging material to another producer's product for distribution directly to a consumer, a description of the sales pathway resulting in the addition of packaging materials.</del> <del>(2) The quantity of packaging material sold into the state by packaging material type.</del> <del>(3) The UPCs of products sold with this packaging material. Brick codes may be provided instead of UPCs in cases where all products with a given brick code are associated with the same packaging material type;</del>
9(B)(4)	Simplify reporting requirements described in draft rules.	The total weight of the base material <del>or, in cases where separation and recycling of more than one material is determined to be routine as designated in Appendix A, the sum of the weights of the materials that are routinely separated and recycled, and a short description of the methodology used to determine this measurement. Any material present that is neither the base material nor another material that is routinely separated and recycled according to Appendix A, and that weighs at least 0.1 gram, should not be included in this weight, only in Section 9(B)(5).</del> and other packaging components, in a manner to be described in the Program Plan or guidance documentation, to be decided upon with DEP input, to harmonize, to the extent possible, with reporting requirements of other states.
9(B)(5)	Simplify reporting requirements.	Total weight of the packaging material type. <del>and a short description of the methodology used to determine this measurement.</del>
9(B)(8) and 9(B)(9)	Remove reporting requirements that provide little benefit.	<del>(8) Whether the producer provides, or is aware of, refill options for the product sold with for the packaging material in State, either in the State or elsewhere;</del> <del>(9) Whether the producer provides, or is aware of, reuse systems for the packaging material in the State or elsewhere;</del> and
9(B)(10)	Delete the phrase "in a way that suggests it is" to reduce ambiguity	(10) Whether the packaging material is labeled <del>in a way that suggests it is as being:</del> a. recyclable; b. reusable; or c. compostable, and for a packaging material type that is labeled <del>in a way that suggests it is</del> as reusable, the counties in which it is produced.
(9)(D)(2)	Provide a simpler way for producers to estimate the quantity of	Estimating units produced. If a producer cannot obtain information on the number of units produced, as used by the producer to quantify sales to distribution networks, it <del>must</del> <b>may</b> estimate the number of units produced as follows:

	products they sell in Maine	<p>(a) A producer <del>must</del><b>may</b> estimate the number of units produced for each distribution network that may sell, offer for sale, or distribute for sale in or into the State;</p> <p>(b) Estimates must assume equal per capita sales throughout the distribution area, and distribution areas must be defined along state lines; and</p> <p>(c) A producer <del>must</del><b>may</b> report for each distribution network, the distributor, the distribution area, and the total number of units distributed through that network.</p> <p><b>Alternatively, a producer may estimate the units produced by allocating national sales data to the portion of the U.S. population that Maine comprises.</b></p>
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## Section 10: Producer Fees

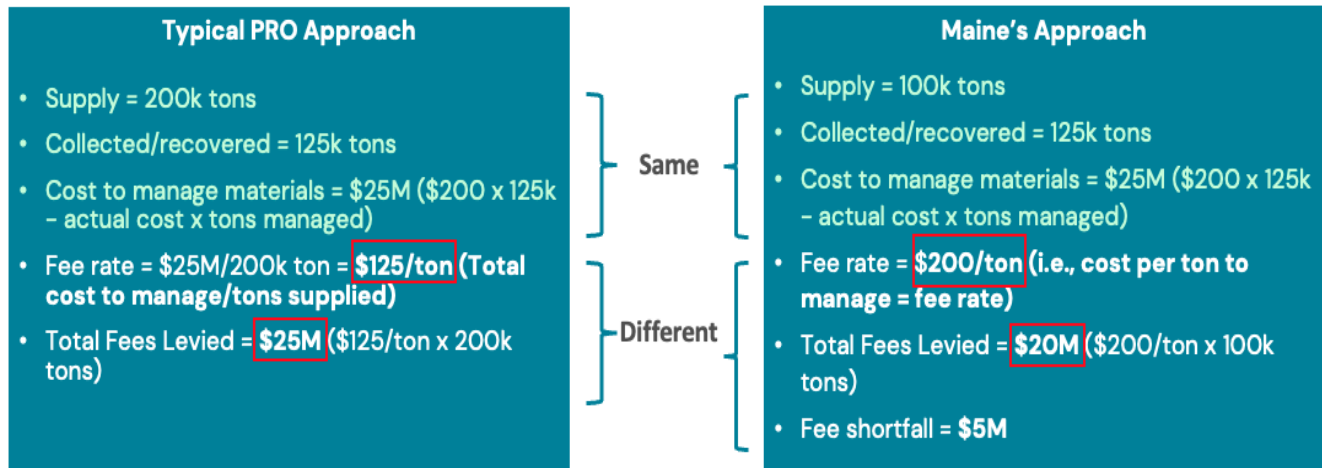
- 1) According to the current revised draft rules, the SO must invoice the producer by July 1 of each year, and the producer must pay fees by September 1 of each year. CAA is working toward the harmonization of reporting and fee-setting timelines across states to support producer compliance. Our objective is to have a May 31 deadline for reporting, and then to publish the fee schedules on Oct. 1, so producers can make fee payments in the following year. There needs to be more time to calculate fee rates, develop invoices, and have producers pay, if it is to be for the same data reported in May. The SO will need several months to review data, ensure accuracy, and determine fees, with fee rates being determined by Oct. 1 and producers being invoiced by January 1. We suggest the DEP work out the exact schedule with the SO and that this schedule be included in the SO's Program Plan.
- 2) The manner in which producer fee rates (and in particular packaging material type fees) are estimated is problematic. It introduces financial volatility, as the per-ton cost of material managed in the prior year is applied to a current year's quantity being supplied – not to the quantity being managed and reimbursed to municipalities under the program. This could produce surpluses in revenues over costs (particularly in a state where not all municipalities are expected to be participating, initially). However, it can also result in shortfalls. The examples below show how a surplus or shortfall could occur in the material base fee portion of producer fees given this methodology.

Typical PRO Approach		Maine's Approach
<ul style="list-style-type: none"> <li>Supply = 200k tons</li> <li>Collected/recovered = 125k tons</li> <li>Cost to manage materials = \$25M (\$200 x 125k - actual cost x tons managed)</li> <li>Fee rate = \$25M/200k ton = <b>\$125/ton</b> (Total cost to manage/tons supplied)</li> <li>Total Fees Levied = <b>\$25M</b> (\$125/ton x 200k tons)</li> </ul>	<p>Same</p> <p>Different</p>	<ul style="list-style-type: none"> <li>Supply = 200k tons</li> <li>Collected/recovered = 125k tons</li> <li>Cost to manage materials = \$25M (\$200 x 125k - actual cost x tons managed)</li> <li>Fee rate = <b>\$200/ton</b> (i.e., cost per ton to manage = fee rate)</li> <li>Total Fees Levied = <b>\$40M</b> (\$200/ton x 200k tons)</li> <li>Fee surplus = \$15M</li> </ul>

The mathematical example above shows the unintended outcome of a fee surplus under Maine's approach, as the fee rate applied to supplied tons is the actual cost to manage collected tons. This results in greater revenues than needed to manage the tons collected.

A fee shortfall may occur, however. If reported supply declines from year to year or is low compared to the tons of material collected/ recovered. Another scenario that could cause a shortfall is if other revenue sources into the system, like revenue shares for commodities, decline. The example below shows a circumstance where reported supply into the market is reduced, and how applying the actual cost to manage materials as a fee to all materials

supplied can result in a fee shortfall. This scenario may occur in programs where there is underreporting of supply tons.



Allowing flexibility in the setting of fee rates to be based on the required budget, not solely on quantity supplied, would alleviate volatility. Taking this approach would align with other states and CAA's plans to help harmonize services for producers. It would also allow to plan better to accumulate funds for investments (as is also mentioned in Section 18). The stewardship reserve funds will help manage volatility, but more stable fees help producers budget with greater accuracy.

- 3) The fee structure should allow for the charging of producers for investments as part of their packaging material type fees. Ideally investments are paid for by the material types that that will benefit from them.
- 4) We suggest introducing the structure of incentive fees in the Program Plan, rather than in the rules, so that there can be flexibility to harmonize with other states, such that producers can have clarity on which packaging attributes are desirable, without conflicting messaging among states. They should also be phased in over time, so that producers can understand their obligations and budget for them. The rules could broadly describe the attributes to be addressed using incentive fees.
- 5) CAA does not support the implementation of a litter reduction fee, as producers cannot control behaviors that result in littering. Penalizing producers for behaviors undertaken by consumers and others is not equitable. We request eliminating this goal and fee. Instead, as part of the investment in education, efforts can be made to educate consumers and others on ways to prevent litter, and on the importance of not littering. Additionally, if packaging litter is found to be an identified issue in a certain location, a community could apply for an investment to be made in litter cleanup. These would be more direct approaches to address litter.
- 6) If eco-modulation remains in Rules, we suggest the following changes:
  - Include a mix of incentive and malus fees - not just maluses. We suggest the toxicity fee be changed to be an incentive fee (reward producers for seeking attestation of no toxics).
  - We suggest relaxing standards for the "labeling fee" - currently 100% of state must have access to management pathway (recycling, composting, reuse) or the producer faces fee for mislabeling. This is not realistic, especially as reuse and composting systems and other alternative collection programs are developed - they will likely not be available statewide immediately. We suggest this percentage be 60% of the counties.
  - As was mentioned in Section 3, we request removing the "in a way that suggests it is" language regarding labeling, as this is subjective language that introduces ambiguity. Instead, the language should read "is labeled as recyclable," "is labeled as compostable," and "is labeled as reusable."

**CAA Comments on Section 10 of Chapter 428 Revised Draft Rules**

Section 10 (A)(2) Packaging Material Type Fees	Delay when producers must pay fees.	Producer fees should be paid by January 1 of the next calendar year.
	Reconsider how fees are calculated.	We suggest allowing fees to be based on the budget, not solely on quantity of packaging material supplied, would reduce revenue volatility. Fees would still be based on the cost of recycling each material type. This would also allow for more certainty in the budgeting of investments.
Section 10 (A)(2)	Adjust packaging material type fees to allow for the inclusion of investment funds as needed.	Packaging material type fees should include/have the ability to include funds that will go toward investments. This should be added as (A)(2)(c).
Section 10 (A)(3) Incentive Fees	Change the approach for implementing malus fees such that there is harmonization among states.	Have the SO provide details regarding eco-modulation fees in the Program Plan instead of rules to allow the SO flexibility to harmonize among states to the extent possible, so that producers are clear on which packaging attributes are most desired.  Phase in implementation of all eco modulation criteria over time so producers have a clear understanding of potential financial impacts of malus fees and are able to budget for them.
Section 10 (A)(3) Incentive Fees	Eliminate the litter reduction incentive fee.	Eliminate the litter reduction fee and brand-level goal as producers have little to no ability to influence behaviors that result in litter.
Section 10 (A)(3) Incentive Fees	Make certain changes if incentive fees remain in rules.	Implement a mix of incentive and malus fees. The toxicity fee could be an incentive fee, rewarding producers that provide a certificate of compliance that there are no added toxics in their packaging.  Relax the requirement that programs be available throughout the entire state. We suggest a threshold of 60% of the counties.  Remove the "in a way that suggest it is" language for (d) (i)(ii) and (iii), replacing it with "labeled to be" to reduce ambiguity.

## Section 11: Alternative Collection Programs

- As is currently structured, there is little incentive for a producer or group of producers to operate an alternative management program, as producers have to pay in on all covered packaging material produced and report to the SO, and also have to develop a proposal, pay a proposal fee, pay for the operation of the program itself, and report to DEP annually, as well as pay an annual fee to DEP. The DEP then reviews annual reports and confirms or adjusts tons to be credited to the producers for covered packaging material that is managed through the program. These requirements place a higher burden on producers that operate an alternative collection program, even if that system is more robust and more effective and efficient than the common collection system. This results in little to no incentive for a producer or group of producers to develop an alternative collection program. We suggest the DEP consider ways to incentivize alternative collection programs for materials that should not or cannot safely be managed in municipal curbside and drop-off recycling programs.
- We suggest that for hard-to-manage materials that are already being managed, at least in part, through an established alternative collection program, be exempt from the program. Examples include the Agricultural Container Recycling Council (ACRC) packaging, automotive fluid containers, and pressurized cylinders. Such packaging:
  - Is generally, not managed through municipal curbside and drop-off recycling programs, which are the primary means of collecting most consumer packaging;

- Is costly to manage, often having unique handling needs;
  - Can introduce safety risks at municipal or other facilities; and
  - Many of these material types are federally regulated, and are therefore unable to meet many of the packaging attributes desired, or are unable to do so without risking safety.
- 3) In Section A (4), replace “The Department may wave...” with “The Department may waive...”
  - 4) In Section B, Approval Conditions, clarify that the program is at no cost to generators (producers will be covering the costs).
  - 5) We suggest that the draft rules clearly state that that alternative collection programs are approved for a five-year period, which would help producers and groups of producers budget and more cost effectively manage their programs. This is consistent with Section 8(A) of the statute, which states, “The department may approve an alternative collection program for a term of 5 years.”
  - 6) In Section (B)(1)(d), Credit for regional programs, we suggest there be other defensible means for allowing regional programs beyond county-level sales data. Such data can be costly to obtain and may not reflect where the material is generated. Examples might include employment data for specific business sectors, land use data, business location data, etc.
  - 7) We suggest that deficiencies that require a change to collection or processing operations have more than 90 days to correct the deficiency, or that there be a process for requesting more time to correct the deficiency. It can be time-consuming, for example, to spec and purchase needed equipment, make collection site changes, etc.
  - 8) In Section (E). Timeframes for Correcting deficiencies, we suggest there be a process whereby the producer or group of producers can apply for a deficiency that will require a change to collection or processing operations (2), upon approval by the Department.

**CAA Comments on Section 11 of Chapter 428 Revised Draft Rules**

Section 11 Alternative Collection Program	Make it less burdensome for producers to introduce and operate an alternative collection program.	Consider ways of making it more enticing for an entity to develop an alternative collection program where there is a need for one – such as when there is a need to manage materials separately from other packaging. Because there is duplicative reporting and program payment, and producers pay in on all produced to the SO, the current rules do not encourage the formation of alternative collection programs and are punitive to producers that are participating in effective programs.
Section 11	Exempt programs managing difficult-to-manage materials from the SO Program.	Exempt existing well-established alternative collection programs that collect hard-to-manage materials and/or materials not managed through traditional municipal curbside and drop-off recycling programs from reporting into and paying fees to the SO.
Section 11 (A) Proposal Fee (4)	Replace “wave” with “waive.”	The Department may <del>wave-waive</del> or reduce the proposal fee for a proposal modification to an alternative collection program if its review does not require significant staff resources.
Section 11 (B) Approval Conditions	Clarify free is at no charge to generators.	In order for an alternative collection program to be eligible for approval by the Department, it must provide collection that is <del>free-at no cost to generators</del> , available year-round, and convenient.
Section 11 (B) Approval Conditions	Clearly state that programs are approved for five years.	Alternative collection programs should be approved for five years, not “up to five years.” This would help producers and groups of producers be better able to budget for and cost effectively manage the program.



Section 11 (B)	Allow for revocation of alternative collection program under certain conditions.	We suggest the DEP be able to revoke an alternative collection program if they are underperforming in consecutive years.
Section 11 (B)(1)(d)	Allow for additional ways to defend regional programs beyond sales data by county.	If the producer or group of producers can provide defensible data other than sales data to justify a regional program, this should be allowed, as sales data by county can be costly to obtain.
Section 11 (E)(2)	Allow producers or groups of producers to request additional time to correct a deficiency.	If the Department identifies a deficiency that will require a change to collection or processing operations the Department will allow 90 days to correct the deficiency. If the Department identifies a deficiency that will require a change to collection or processing operations the Department will allow 90 days to approve a plan to address the deficiency in a timely manner". <b>If the Department identifies a deficiency that will require a change to collection or processing operations that will take 90 days to correct, the Department will request that the producer or group of producers submit a plan within 90 days describing how the deficiency will be corrected in a timely manner.</b>

### Section 13: Defining Municipal Reimbursement

- 1) Under the current draft rules, the SO must reimburse participating municipalities by October 1 of each calendar year and prior to dispensing funds for investments. We suggest this time frame be adjusted to harmonize with the schedule in other states. Fees will be developed in September or October, with invoices being issued in January. The municipalities would be reimbursed by March 1.
- 2) Throughout the section, clarify that it is the net cost of recycling being determined, not the cost.
- 3) In managing packaging that is not readily recyclable, we suggest that in (2), a participating municipality managing its solid waste through alternative management be reimbursed at ½ the median per ton net cost of recycling

#### CAA Comments on Section 13 of Chapter 428 Revised Draft Rules

Section 13 Defining Municipal Reimburse- ment	Extend the time that municipalities must be reimbursed.	The SO must reimburse participating municipalities by <del>October</del> <b>March 1<sup>st</sup></b> of each calendar year, for costs they incurred the prior year, and prior to dispersing funds for investments.
Section 13 (A) (D)(1) (D)(2)	Clarify that for recycling the net costs are being determined.  Change the cost of reimbursing for alternative management to ½ the median net cost of recycling from 2/3.	The SO must determine the tons of each packaging material type recycled, reused, or composted in accordance with Section 17 and the median per ton <b>net</b> costs <b>of recycling</b> in accordance with Section 16. (A) For a packaging material type.... At the median per ton <b>net</b> cost of recycling this packaging.... (D)(1) For a packaging material type that is not readily recyclable: .... This reimbursement is at one-third of the median per ton <b>net</b> cost of recycling readily recyclable packaging.... (D)(2) A participating municipality managing its municipal solid waste through alternative management must be reimbursed for managing its per capita share of packaging material that is not readily recyclable and is not recycled at <del>two-thirds</del> <b>one-half</b> the median per ton <b>net</b> cost of recycling readily recyclable packaging ....

		<p>(D)(3) For a packaging material type that is not readily recyclable, a .... at the median per ton <b>net</b> cost of recycling</p> <p>The median per ton <b>net</b> cost of recycling readily recyclable packaging material is the median of the reimbursements to be paid for each ton of readily recyclable packaging material being reimbursed to participating municipalities.</p>
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## Section 14: Obtaining Information for Municipal Reimbursement

- 1) Section (B)(2)(c) – Describes accuracy. We suggest this statistical standard be relaxed, in order to make the audits more cost effective.
- 2) Section (B)(3) describes site-specific audits. To be able to budget/allocate resources effectively, we suggest that there be an upper limit on the total number of site-specific audits that the SO is required to conduct in a year. We suggest this be 10 per year.

### CAA Comments on Section 14 of Chapter 428 Revised Draft Rules

Section 14 (B) (2)(c)(i)	Relax the statistical standard required for audits.	For audits conducted in accordance with Section 14 (B)(1)(a), samples only need to be collected and analyzed until results estimate the value of the most prevalent packaging material type with <del>90</del> <b>85</b> % confidence +/- 5%. <b>[Alternatively, 90% confidence +/- 10%]</b>
Section 14 Obtaining Information for Municipal Reimbursement (B)(3)(a)	Limit the total number of site – specific audits to be conducted annually.	Process. A request for a site-specific audit must be submitted to the Department in writing, and must describe....If the Department determines that the participating municipality should have a site-specific audit, the Department will approve the request and direct the SO to conduct a site-specific audit for the participating municipality within one year of the approval of the request, <b>up to 10 per year</b> . If the SO's auditing schedule does not allow for the completion of a site-specific audit within one year, <b>or if the SO has already agreed to conduct 10 site-specific audits in the year</b> , the Department may delay approval of the request for up to 12 months.

## Section 16: Determining the Median Per Ton Cost of Recycling, Reusing, and Composting Each Packaging Material Type

- 1) This section should make it clear that for recycling, it is the median net cost per ton of recycling that is being identified. For composting and reusing, it should be the median cost.
- 2) Clarification is needed in the description of 16(A)

### CAA Comments on Section 16 of Chapter 428 Revised Draft Rules

Section 16 Determining the Median Per Ton Costs	<p>Clarify that for recycling it is the median net cost.</p> <p>Clarify what is meant by "as the per-ton cost of the commodity with which it was sold as it pertains to compost and reuse, or describe differently for those pathways.</p>	<p>As data allows, the SO must determine a median per-ton <b>net</b> cost of recycling <b>and median per-ton cost of</b> reusing and composting each packaging material type for each group of similar municipalities. Only costs from participating municipalities that have a current complete cost study are used to determine the median per-ton cost.</p> <p>(A) For each participating municipality that has a current complete cost study, the SO must determine the per-ton <b>net</b> cost of recycling, <b>and the per-ton cost of</b> reusing, or composting each packaging material type as the per-ton cost of the commodity with which it was sold.</p> <p><b>The last part of this statement requires clarification, and it does not seem to apply to composting and reuse.</b></p> <p><b>The per-ton <u>net</u> costs for <u>recycling</u> need be clarified in (B), (B)(1), (B)(2), and (B)(3), also.</b></p>
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## Section 18: Investments

- 1) Investment proposal criteria should include that the proposal should expand capacity (if required) and /or result in cost efficiency of managing packaging material.
- 2) We suggest that proposal for new infrastructure not be required to designate ownership of the infrastructure to the entity types listed (municipalities, schools, nonprofits, and businesses that realized less than \$5,000,000 in total gross revenue during the prior calendar year. Instead, investments should be considered based on the merits of the proposal, including the ability to support the state's waste management hierarchy, expand capacity for recycling, composting, and/or reuse, and/or drive cost efficiency through the system.
- 3) We suggest that in (A)(5) the wording be changed such that "...operation of the proposed infrastructure drive value, as shown by projected revenues and/or savings in excess of the initial funding including cost of securing such funding."
- 4) We suggest that the wording regarding (A)(6)(c) be revised to indicate that the cost threshold pertains to total material collection and processing costs, not the investment cost.
- 5) We suggest deleting the requirement that major investments that will designate new infrastructure as property of the entities listed above be preferred. Infrastructure investments should be based on what is needed, the ability to expand capacity and/or improve the cost efficiency and effectiveness of the management of packaging material, as well as other merits of the proposal.
- 6) Preference for funding must be prioritized based on the value the proposal will generate balanced with other preferences (vs just other preferences)

### CAA Comments on Section 18 of Chapter 428 Revised Draft Rules

Section 18 Investments (1) (a)	Make the criteria for investments less ambiguous.	A proven solution for <b>improving expanding the capacity (if needed) and/or cost efficiency</b> of the management of packaging material.
Section 18 Investments (A)(2)	Delete the requirement of new infrastructure ownership.	<del>1(2) In the case of a proposal for new infrastructure, the proposal must designate the infrastructure as the property of a municipality, a group of municipalities, tribe, school administrative unit, career and technical region set forth in 20-A M.R.S. §8451, nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3), or a business that realized less than \$5,000,000 in total gross revenue during the prior calendar year. These conditions do not apply to proposals for investments in education, improvements to existing infrastructure, or major investment needs.</del>
Section 18 Investments (A)(5)	Clarify the investments should drive overall value.	In the case of proposals for infrastructure, operation of the proposed infrastructure <b>must drive value must be sustainable</b> , as shown by projected revenues <del>or other ongoing funding and/or savings, equal to, or</del> in excess of, <b>the initial funding including cost of securing such funding. funding required for the operation.</b> This criterion does not apply to pilot projects as described in Section 18(A)(1)(b). <b>In addition, the primary determinant of value creation should reside with the body providing the funding.</b>
Section 18 Investments (A)(6)(c)	Clarify that cost threshold pertains to total material collection and processing costs.	For proposals for infrastructure that facilitate recycling, an analysis of throughput demonstrating that <b>the investment will not result in a total collection and processing cost of more than for every \$2,000 of investment, expressed in January 2021 dollars and per ton, in 2021 dollars</b> adjusted according to the U.S. Bureau of Labor Statistics' Consumer Price Index. <del>there will be at least one ton of material recycled.</del>

Section 18 Investments (D)(2)	Allow for producer fees to include funding for investments, as described in the savings plan.	It will be necessary to add an investment component to producer fees to better budget for investments, as producer fees may not necessarily result in adequate surpluses to the stewardship fund to fund investments according to plan – see comments in Section 10. Investments should be funded by packaging material types that will be benefit from the investment.
Section 18 Investments (D)(4)	Remove the requirement that investment proposals designating new infrastructure as owned by specified types of entities be preferred.	...Proposals to fulfill a major investment need must follow the process described in Section 18(C). <del>and investment proposals that will designate new infrastructure as the property of a municipality, group of municipalities, tribe, school, administrative unit, or career and technical region set forth in 20-A M.R.S. §8451 must be preferred.</del>

## Section 19 – Packaging Stewardship Fund Cap

The Packaging Stewardship Fund Cap is excessive. In California, for example, the fund is to be capped at six months of operating expenses.

1) We suggest that excess funding in (A) be defined as follows:

- There is no excess funding during the first five years.
- After five years, the packaging stewardship fund has excess funding if after setting aside funding for municipal reimbursement for the prior calendar year and the amount being saved for major investment needs according to the savings plan, as well as the amount needed for other planned investments (including education), there is more than enough funding to cover one year of expenditures based on the highest of the prior three years.
- After 10 years, the packaging stewardship fund has excess funding if after setting aside funding for municipal reimbursement for the prior calendar year and the amount being saved for major investment needs according to the savings plan, as well as the amount needed for other planned investments (including education), there is more than enough funding to cover six months of expenditures based on the highest of the prior three years.

### CAA Comments on Section 19 of Chapter 428 Revised Draft Rules

Section 19 Stewardship Fund Cap (A)	<p>(1) There is no excess funding during the first five years.</p> <p>(2) After five years, the packaging stewardship fund has excess funding if, after setting aside funding for municipal reimbursement for the prior calendar year, there is more than enough funding to cover:</p> <p>(a) The sum of expenditures realized over <b>one year, based on the highest year of the prior three; the past five years, other than expenditures on major investment needs</b></p> <p>(b) The amount being saved for major investment needs according to the savings plan; <b>and</b></p> <p>(c) <b>Any additional anticipated expenditures for other investments and education beyond what would be included in (2)(a).</b></p> <p>(3) After 10 years, the packaging stewardship fund has excess funding if, after setting aside funding for municipal reimbursement for the prior calendar year, there is more than enough funding to cover:</p>
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		<p>(a) The sum of expenditures realized over <b>six months, based on the highest year of the prior three; <del>the past three years, other than the expenditures on major investment needs; and</del></b></p> <p>(b) The amount being saved for major investment needs according to the savings plan; <b>and:</b></p> <p><b>(c) Any additional anticipated expenditures for other investments and education beyond what would be included in (3)(a).</b></p>
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## Section 21: Requests for Exemption from the Post-Consumer Recycled Material Incentive Fee

- 1) We suggest that exemptions from having to achieve certain packaging attributes be called a waiver, not an exemption, to reduce confusion. Typically, an exemption means a producer or a packaging material type is exempt from having to report and pay into a program.
- 2) We suggest producers have the ability to apply for a waiver from all packaging attributes that they might not be able to achieve and that they could result in an incentive fee, not just recycled content.
- 3) We suggest that the ability to apply for a waiver should be expanded to include state-regulated products at a minimum and, ideally, non-regulated products as well, as there are many reasons that a producer might not be able to achieve a packaging attribute goal. For example, there may not be a letter of no objection from FDA to use a certain type of food contact material, there may not be enough recycled material available in the marketplace, etc.
- 4) When producers are granted waivers for achieving specific goals/attributes, the packaging weight needs to be deducted from the denominator of the assessment calculation. This should be stipulated in the rules.
- 5) When a waiver is granted, we request it be for a period of five years, not “of up to five years” as currently stated in the rules. This allows producers to plan and budget better.

### CAA Comments on Section 21 of Chapter 428 Revised Draft Rules

Section 21 Requests for Exemption from the Post- Consumer Recycled Material Incentive Fee	Change the term to waiver vs. exemption, as exemption generally refers to not being covered by the program.	<b>We suggest referring to granting the ability of a producer to not have to achieve a packaging goal or attribute to be called a “waiver,” not an “exemption,” to enhance clarity.</b>
Section 21	Expand the scope of waivers to different attributes/goals.	<b>Allow producers apply for a waiver from all packaging attributes/goals that they might not be able to achieve and that could result in an incentive fee.</b>
Section 21	Expand the scope of reasons that producers can apply for waivers.	<b>Allow state-regulated and non-regulated packaging to apply for waivers from achieving specific packaging goals and attributes that could result in incentive fees.</b>
Section 21	Clarify that packaging that receives waivers should be excluded in that goal's assessment calculation	<b>Stipulate in the rules that packaging granted waivers is to be excluded from the “denominator” of the calculation pertaining to applicable goals.</b>

Section 21(2)(a)	Grant waivers for five years, not "up to five years."	The Commissioner <del>shall</del> exempt the packaging material for a period of <del>up to</del> five years, beginning with the packaging material produced during the calendar year of approval and reported during the following calendar year.
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August 22, 2024  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

SUBJECT: EPR for Packaging Reposted Draft Rules

Dear Brian Beneski and Team:

Thank you for the opportunity to submit comments on the reposted draft rules for Chapter 428, the Stewardship Program for Packaging, established in MRS Title 38 §2146 (EPR rules). The following comments are submitted on behalf of the City of South Portland.

The City of South Portland is overall supportive of the updates to the EPR draft rules. It is clear that the Maine Department of Environmental Protection has incorporated changes based on feedback provided by the Board of Environmental Protection, stakeholders, and the general public, and we appreciate the hard work and attention to detail. Our only suggested amendment is in regard to disposal reimbursements for non-recyclable packaging. As written in Section 13(D), municipalities that send their non-recyclable municipal solid waste to a landfill will receive one third of the median cost of recycling readily recyclable material, as opposed to municipalities who send their municipal solid waste to an alternative management facility, such as a waste-to-energy incinerator, who will receive two thirds the median cost of recycling readily recyclable material. While we acknowledge that an alternative management system is preferred to landfilling, alternative management systems are not equally accessible throughout the state. Many municipalities are not within a reasonable distance of this type of facility, many are in long-term waste contracts, and some incineration facilities experience recurring maintenance challenges that prevent them from taking on new contracts. We recommend that reimbursements for non-recyclable materials be the same, regardless of end of life management.

At this time, it is the City of South Portland's primary concern that the rulemaking process move forward. While we appreciate the complexity of the topic, our concern is that a prolonged process of minor edits will result in a delay in program implementation. The EPR for Packaging program was created in large part to alleviate municipalities from the financial burden of managing packaging material. Many communities are depending on this financial support to continue or start their recycling programs and cannot afford to wait.

Thank you for your consideration of our comments in support of the reposted EPR rules.

Best regards,

Susan Parmelee  
Sustainability Program Manager  
City of South Portland



## AmericanCoatings ASSOCIATION<sup>SM</sup>

August 26, 2024

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

*Via email: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)*

**RE: ACA Comments on Maine's Reposted Draft Rule on the Stewardship Program for Packaging**

Dear Brian Beneski,

The American Coatings Association (ACA) submits the following comments to the Maine Department of Environmental Protection for consideration regarding Maine's Extended Producer Responsibility Program for Packaging. ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings.

The \$32 billion paint and coatings industry manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. Except for powder coatings, most paint and coatings products are in liquid form and utilize containers in a range of sizes. The sizes range from small containers of less than a liter or pint to large containers that hold several hundred gallons. These containers are typically either metal, plastic, or a hybrid of metal and plastic. With the increased adoption of packaging laws across the country, ACA members will be required to evaluate all of the packaging used by their products, where their products are shipped and sold, and then, determine which laws apply. Consequently, ACA has a significant interest in assisting our industry in compliance with any regulatory requirements.

ACA recognizes that Maine is one of several states that have passed extended producer responsibility (EPR) laws for packaging. Other states that have adopted similar EPR laws for packaging include California, Colorado, Oregon, and (most recently) Minnesota. Although these EPR laws are similar, there are notable differences within each of these states' EPR laws that will be extremely problematic and burdensome for the coatings industry. The coatings industry manufactures products for a nationwide customer base and routinely ships and transports these products across state lines. This requires these companies to comply with both federal and all the individual state laws where these products are being transported into or through. To add to that complexity of tracking shipments and

products on a state-by-state basis, the variance in state regulatory schemes can become overly burdensome and prohibitive for commerce.

To promote and streamline compliance within the paint and coatings industry, ACA proposes the following recommendations for Maine to adopt in its Stewardship Program for Packaging.

### **1. Amend the definition of “consumer.”**

In Maine’s proposed draft, the definition of “consumer” refers to “an entity that uses a product, including an entity that uses product to create a new product or includes its use in a service it provides. A consumer does not include an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.” ACA recommends Maine consider using a definition that aligns with another existing regulation. Under the Colorado regulations in 6 C.C.R. 1007-2 Part 1 Section 18.1.6, it defines consumers as “any person who purchases or received covered materials in the states and is located at a covered entity.” The term “covered entity” is then defined to mean “all single-family or multi-family residents and nonresidential locations, such as public places, small businesses, hospitality locations, and state and local government buildings.” By aligning Maine’s definition of consumer to an already existing EPR regulation would help to harmonize the regulatory requirements and promote compliance by the industry. ACA recommends that Maine use a definition that would align with Colorado’s definition in its recently promulgated regulations.

### **2. Amend the definition of “durable product.”**

In Maine’s proposed draft regulations, the definition of “durable product” refers to as a “product that wears out over an average lifespan of at least 5 years. A durable product is not depleted through use.” The last sentence stating “a durable product is not depleted through use” would contradict the purpose of a durable product. Paints and coatings are manufactured to be durable and can be stored up to 10 years.<sup>1</sup> The proper containment and storage of paint allows the product to be usable for years. As such, paints are expected to be used and therefore depleted as it is used.<sup>2</sup>

Aligning definitions to existing regulations would promote and streamline requirements for encouraging compliance. As mentioned previously, several states have passed EPR laws for packaging. Most recently, Colorado promulgated their EPR regulations on July 31, 2024. Colorado defines “durable product” to mean a product that remains useable for its intended purpose for at least five years. (see 6 C.C.R. 1007-2 Part 1 Section 18.1.6). Aligning Maine’s definition for durable product to Colorado’s definition, which is already been promulgated, would streamline requirements for industry. This helps ease the regulatory burden by reducing the complexity industry currently faces with each state passing their own version of EPR laws and regulations. Therefore, ACA recommends Maine only define “durable product” as simply a “product that wears out over an average lifespan of at least 5 years.”

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<sup>1</sup> Haniya Rae and Tanya A. Christian, *How Long Does Leftover Paint Last?*, Consumer Reports (March 23, 2022), <https://www.consumerreports.org/home-garden/paints/how-long-does-leftover-paint-last-a6297036499/>.

<sup>2</sup> ACA submitted comments to the Maine Department of Environmental Protection on October 31, 2023 that included this same argument to amend the definition of durable product. See <https://www.paint.org/advocacy/letters-comments/>.

### 3. Include the definition of “intentionally added.”

The term “intentionally added” is used in a few places throughout the redrafted rules on the Stewardship Program for Packaging. While this term of art is used in conjunction with toxics or specific chemicals and may be defined in those regulations that are referenced in the reposted draft rules. It would be beneficial to either include a citation to the other state regulation that defines this term or to include the definition here to minimize any potential misinterpretation. Thus, ACA recommends that the term “intentionally added” be added to the list of definitions.

### Conclusion

In conclusion, ACA appreciates the opportunity to provide comments on this issue, and we look forward to working cooperatively with the Maine Department of Environmental Protection to assist in implementing the Extended Producer Responsibility Program for Packaging. Please do not hesitate to contact us if you have any questions or require additional clarification.

Sincerely,

/s/

Heidi K. McAuliffe  
Vice President, Government Affairs

/s/

Suzanne Chang  
Counsel, Government Affairs

*\*\*Sent via email\*\**



**Nadeau, Jessica**

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**From:** Tatyana Eckstrand <tx22@tidewater.net>  
**Sent:** Wednesday, August 7, 2024 1:00 PM  
**To:** DEP Rule Comments  
**Subject:** Comment on Chapter 428: Stewardship Program for Packaging

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

DEP,

I am writing to express my full support for the EPR for Packaging rules. The Department of Environmental Protection has crafted a solid framework that will improve Maine's recycling efforts and reduce waste. It is important that we implement this program now to provide the necessary support to our municipalities.

To create a more equitable system that supports all towns in managing packaging rates, I recommend ensuring fair reimbursements for non-readily recyclable materials and considering the capacities and situations of different communities. I urge the Board to adopt the EPR for Packaging rules, setting an example for other states and contributing to a cleaner, more sustainable Maine. Thank you.

Sincerely,  
Tatyana Eckstrand  
514 Duck Puddle Rd.  
Waldoboro, ME 04572



**Comments in Support of Proposed Rules for the Stewardship Program for Packaging  
(Chapter 428)**

**To the Board of Environmental Protection  
by Vanessa Berry, Sustainable Maine Program Manager**

**August 22, 2024**

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to provide additional feedback on the proposed rules for Chapter 428, the Stewardship Program for Packaging, established in MRS Title 38 §2146.

NRCM advances practical policies and programs that help Maine communities make recycling more effective and reduce the amount of waste sent to landfills and incinerators. We strongly support Extended Producer Responsibility (EPR) for Packaging because it is a proven solution for increasing recycling rates and saving taxpayers money by holding producers accountable for the wasteful packaging they create.

The process of creating the rules for this program has been exhaustive, with the Department providing multiple opportunities for interested parties and the public to provide input and build consensus. **We look forward to seeing this program move into the implementation phase, which will provide municipalities with critically important financial support.**

The rules drafted by the Department are strong and effective. Not only do they provide a foundation for the program's success, but they will also set a good example for other states considering EPR for Packaging. Of course, we can anticipate that these rules – like many such rules – will likely be amended over time as we incorporate lessons learned to optimize the program's performance.

For these comments, we propose one minor amendment to the draft rules, which we believe is necessary to ensure equitable reimbursements and adequate incentives for municipal participation. **With that amendment, we urge the Board to approve the rules and direct the Department to proceed with implementation of the program.** Attached, for reference, you can find a copy of our previous detailed comments on the Department's initial draft rules.

**Reimbursement for Packaging Should be Equitable.**

In Section 13(D) of the proposed changes to the rules, municipalities throughout the state would be entitled to different rates of reimbursement for the management of non-readily recyclable packaging and would only be eligible for these funds under certain conditions. We agree with concerns expressed by some members of the Board at your June 20 meeting that this proposed approach would create an unfair advantage to those communities with existing access to incineration facilities and would penalize rural areas of the state where disposal options are far more limited.



Specifically, NRCM is concerned that municipalities will only be eligible for reimbursement of landfilling non-readily recyclable packaging if a landfill is closer in proximity than an incineration facility, and these communities would also receive a lower rate of reimbursement than those with access to incineration. This provision within the rules does not account for capacity at incineration facilities or potential acquisitions of processing facilities that may occur, which can force municipalities reluctantly into waste processing agreements that do not align with Maine's Solid Waste Management Hierarchy.

We recognize the Department's intent of the current proposal to utilize reimbursements in a way that incentivizes improved management of waste in accordance with the waste hierarchy, but we do not believe that the proposed language will have the intended impact for municipalities. To the contrary, it likely would create unintended consequences that would further delay or even completely discourage some communities from participating in the Product Stewardship for Packaging Program, especially in rural areas that desperately need financial support to manage their packaging materials more sustainably.

**Given these concerns, we request that the draft rules be amended so that all municipalities would be eligible for a two-thirds reimbursement for the management of non-readily recyclable materials, regardless of disposal method or distance from disposal facilities.**

We understand that some producers and interest groups might not support reimbursing municipalities for packaging that is disposed of in landfills. However, we feel strongly that producers, who have decision-making authority over the packaging they design and distribute in Maine, should be encouraged to focus on reducing non-readily recyclable packaging and designing more circular alternatives to support municipal diversion. Doing so would help increase participation and reduce environmental impacts for the packaging that they have produced.

With this suggested amendment to the drafted rule language, NRCM wholeheartedly supports the proposal for Maine's Stewardship Program for Packaging. We appreciate the thoughtfulness of the Board's deliberations of these rules, and look forward to partnering with communities, sustainable materials management entities, and businesses during the program's implementation to ensure its success. Thank you for your consideration of our comments.



**Comments in Support of Proposed Rules for the Stewardship Program for Packaging  
(Chapter 428)**

**To the Board of Environmental Protection**

**by Vanessa Berry, Sustainable Maine Program Manager**

**March 7, 2024**

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to comment on the proposed rules for Chapter 428, the Stewardship Program for Packaging, established in MRS Title 38 §2146.

In 2021, the 130<sup>th</sup> Maine Legislature passed LD 1541: An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money, a first-in-the-nation policy to ensure that manufacturers of packaging waste are required to help finance end-of-life costs for managing packaging waste that they have helped produce. Presently, these costs are covered by Maine communities and taxpayers—not the producers. This is an Extended Producer Responsibility (EPR) law that extends responsibility to producers beyond the point of simply providing consumers with an expanding volume of packaging materials.

EPR for packaging laws exist around the world and are helping those nations save money for taxpayers and achieve levels of recycling far beyond what has been achieved in the United States. Many countries with EPR for Packaging laws are achieving recovery rates above 60%.<sup>1</sup>

For decades, Maine taxpayers and municipalities have been responsible for finding solutions to packaging they have little or no control over. Even though packaging simply serves as a temporary vessel in which we receive our everyday items, according to the Maine DEP, about 30-40% of the materials managed by municipalities are packaging waste. Maine taxpayers pay *at least* \$16 million each year to manage packaging material through recycling or disposal.<sup>2</sup> In our current system, there is little incentive for large producers to create less waste or make their packaging easier to manage because they share no responsibility in taking care of it.

With limited options on the market for these materials, and rising costs for managing recycling programs, many Maine communities have been forced to suspend or cut back their recycling programs, sending these materials to landfills instead. With landfills throughout the state nearing capacity, this temporary cost-saving solution is creating another expensive problem for Maine people – expanding existing landfills. However, this waste crisis was created by producers, not by Maine people.

<sup>1</sup> Source: [Resource Recycling Systems Impact of EPR for PPP on Recycling Rates 2020](#)

<sup>2</sup> Source: [Maine Department of Environmental Protection's 2019 Annual Product Stewardship Report](#)



The Legislature enacted LD 1541 to address these problems, and the rules before you now will implement that law. The result will be a new system of producer responsibility for packaging that will benefit Maine taxpayers and municipalities, increasing Maine's rate of recycling, reducing pressure on landfills, and creating incentives to producers to reduce packaging waste and make their packaging more recyclable.

### **Extended Producer Responsibility for Packaging is Necessary to Meet Maine's Recycling Goals**

Extended-Producer Responsibility for packaging is designed to support municipalities in their efforts to manage the excessive barrage of single-use packaging by shifting the financial costs of managing these programs back onto the producers who make and distribute the packaging materials in the first place. With support from the Department and a third-party Stewardship Organization (SO), Maine communities who choose to participate will report the costs they incur while collecting, sorting, transporting, and processing eligible packaging materials to receive a reimbursement for those costs. The producers who make this packaging will share the responsibility of managing the waste they create, with strong financial incentives to make less packaging and make their packaging easier for Mainers to recycle. These programs create a system for managing packaging that is more efficient, more sustainable, and more equitable for Maine people and towns.

*More Efficient* - EPR programs incentivize producers to achieve waste reduction, reuse, and recycling of packaging materials through fees that are modified based on materials design (e.g., eco-modulated fees). Municipalities, reimbursed based on the median costs for similar communities, are encouraged to manage materials efficiently to maximize those funds across their solid waste budgets.

*More Sustainable* - By reimbursing participating municipalities for their recycling efforts, EPR makes Maine's community recycling programs more resilient by stabilizing costs for managing packaging materials. This financial incentive allows towns to recycle when costs would otherwise be a barrier and provides opportunities for long-term investments in recycling infrastructure.

*More Equitable* - With support from a third-party Stewardship Organization, Maine's EPR program will identify areas where recycling access is more limited and explore solutions to make recycling more widely available to all Maine communities.

EPR programs create accountability for the producers who create this packaging waste and require them to own part of the responsibility for these materials throughout their full lifespan. Producers have the choice to pay the true cost of their existing packaging, create alternative recycling pathways for their packaging, or make changes to the way they package and sell their products to reduce the negative impacts of the packaging.



Some large producers may voice opposition to these rules, request exemptions from the rules, and provide excuses to avoid the increased accountability, yet many of those same companies adhere to programs just like this in other nations, and Maine lawmakers have clearly established in passing LD 1541 that a similar approach is needed here. Maine municipalities should no longer be responsible for footing the bill for wasteful packaging created by producers. In this context, we support the Department of Environmental Protection's decision not to provide exemptions to certain categories of producers.

While Maine was the first state in the country to pass this legislation, many other countries have decades of experience operating a similar framework for packaging materials and can serve as role models for successful implementation of these programs. For example, there are five provinces in Canada that have existing stewardship programs for packaging materials. As part of an expert technical briefing to the Environment and Natural Resources (ENR) Committee on January 22<sup>nd</sup>, 2020, Resa Dimino, Senior Consultant at Resource Recycling Solutions, presented data showing that:

- Residential recycling rates in Canadian provinces immediately increased by an average of 8% following adoption of EPR for Packaging laws;
- Average recycling rates in these provinces after 2-4 years increased by 17%; and
- Average recycling rates after 8-10 years increased by 29%, with overall recycling rates exceeding 60% in some provinces.

Maine has been working toward a goal of recycling more than 50% of municipal waste for more than thirty years<sup>3</sup>, but has yet to achieve this goal. Our current municipal recycling rate is 34%. With proven examples from others around the world, EPR for packaging will put Maine on the right path toward better recovery of existing materials and allow us to be less dependent on our finite natural resources now and in the future.

### **EPR Programs Provide Much-Needed Financial Support for Participating Municipalities**

Maine's EPR for Packaging law contains reasonable, yet ambitious goals to reach full participation from Maine communities throughout the state and provides additional avenues for investments that will make recycling more accessible and affordable for everyone. We know that some municipalities are already well-positioned to begin fully participating in this program and currently operate highly effective recycling programs, but not everyone will start from the same place. These rules allow the Stewardship Organization to provide a thorough assessment of Maine's recycling landscape and identify areas where communities could use more support to get their programs operating efficiently and effectively.

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<sup>3</sup> Source: [Maine State Legislature Statutory History Title 38, Section 2132, 1989](#)





Once implemented, this law will provide major benefits for all Maine communities, regardless of their level of participation in the EPR for Packaging program. The DEP's proposed rules create strong financial incentives for producers to alter their packaging to reduce the use of unnecessary materials, make packaging from materials with lower toxicity, make packaging that is more easily reused and recycled, and provide more accurate labeling to avoid consumer confusion about the recyclability of materials. Even communities who need more time to successfully implement a full recycling program in their town will experience improvements in the design and collection of packaging materials.

## **Maine Communities and Maine People Support EPR for Packaging**

This law was passed with bipartisan support and was supported by dozens of communities around the state and thousands of Maine people. Twenty-three Maine municipalities, representing more than 280,000 Maine residents, adopted municipal resolutions urging Maine to adopt an EPR for Packaging law<sup>4</sup>, and about 2,500 Mainers signed a petition in 2021 urging lawmakers to enact an EPR for Packaging law.<sup>5</sup>

These communities supported EPR for packaging because it will provide critical financial support for recycling in Maine, relieve taxpayer costs for recycling programs, help boost recycling rates, and shift responsibilities for end-of-life management of packaging waste to the producers that are generating these materials that are filling up Maine's landfills.

## **Maine Has Over Forty Years of Experience with EPR Programs**

In addition to this program for product packaging, Maine currently manages product stewardship programs for beverage containers, rechargeable batteries, mercury auto-switches, electronics, mercury thermostats, cell phones, mercury lamps, unused paint, and unused pharmaceuticals. Many of these programs have been in place for decades and have resulted in high rates of recycling and reduced landfilling of problematic materials, including mercury-containing products.

For example, in 2022, Maine's product stewardship program for beverage containers resulted in an overall recycling rate of 78 percent.<sup>6</sup> This model for management of material provides more comprehensive collection and recycling compared to Maine's overall municipal solid waste (MSW) recycling rate of 33.8 percent, and a statewide recycling rate of 24.46 percent for MSW, construction debris, and organic waste combined.<sup>7</sup> With examples of success in management of

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<sup>4</sup> Source: [NRCM Municipal Resolutions for EPR](#)

<sup>5</sup> Source: [NRCM EPR Petition Signatures and Comments](#)

<sup>6</sup> Source: [Maine Department of Environmental Protection's 2024 Annual Product Stewardship Report](#)

<sup>7</sup> Source: [Maine Materials Management Plan: 2024 State Waste Management and Recycling Plan Update and 2022 Waste Generation and Disposal Capacity Report](#)



packaging abroad, coupled with examples of Maine's own success with product stewardship programs for other types of packaging, we know that this program will result in better materials management for Maine people, communities, and our environment.

### **Overall, NRCM Supports the Rules Proposed by the Department of Environmental Protection**

The management of packaging in Maine is a complex topic that requires a systemic approach to address the many unique ways that Maine communities collect, sort, process, ship, and dispose of these materials. Supporting the intent from the 130th Maine legislature, the DEP completed a comprehensive evaluation of this landscape and gave all stakeholders, from producers and material processors to municipalities and local governments, ample opportunity to provide comments and input. The rules extensively cover all avenues for municipal and producer management of packaging and provide a pathway for producers to reduce their overall fees through changes to the design and material makeup of packaging that support Maine's existing diversion and solid waste management goals.

Many states are looking at Maine as we finalize rules for this program. While NRCM is overall very supportive of the proposed rules and appreciates DEP's commitment of time and effort to incorporate feedback from stakeholders, we do have several recommendations that we would like the Board to consider.

*Reimbursements for Disposal Costs* - While NRCM supports the inclusion of disposal costs for non-readily recyclable packaging within the municipal reimbursement structure, the current rule language proposed only allows for reimbursement of per-ton costs for those municipalities that utilize "alternative management" to dispose of packaging in incineration facilities. We believe this creates an unfair financial incentive for those select communities with access to waste-to-energy incinerators, and specifically provides less financial support for management of packaging in rural and northern areas of our state. We would strongly encourage the rules to be amended so that the costs of management for all methods of disposal be reflected in the reimbursement framework or eliminate disposal reimbursements and instead refocus on the incentives for recovery of these materials and allocate those producer fees for the development of recycling and reuse infrastructure.

*Third-Party Accountability* - We recommend the rules be amended to include language to require third-party verification or specific certification requirements for use of post-consumer recycled content and lack of toxins within product packaging.

*Improved Auditing Metrics for Municipalities and Producers* - The need for improved collection of waste management data is imperative for establishing a baseline and measuring the success of the EPR for packaging program. Within the draft rules, the Department states that the Stewardship Organization will conduct disposal audits of the municipal waste stream every ten years, with three randomly selected municipalities, but we strongly recommend that





the rules be amended to require these audits to be either scaled in size to accurately reflect the municipalities participating in the program, or increase the frequency of these audits to create a more representative sample of the municipal waste stream.

Additionally, under this law, producers have a number of reporting requirements to provide information regarding units of packaging produced, material types, absence of intentionally-added toxics, their use of recycled content, their labeling, and other important details related to their packaging. To ensure consistent and effective data collection from producers, we recommend that the Department require the Stewardship Organization to have a third-party conduct producer auditing and require that at least two producer groups are subject to auditing annually. This is consistent with other product stewardship programs in Maine. We also suggest that the Department establish a mechanism for the reporting of any instances of underreporting from producers so that the Department can take steps to enforce compliance.

NRCM appreciates your thoughtful reflection of these rules and looks forward to the successful implementation of Maine's EPR for Packaging law, which will provide Maine communities with the support they need to maintain and strengthen their recycling programs. Thank you for your consideration of our comments on these proposed rules.

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MRRA Testimony for Chapter 428 under review

August 23, 2024

Dear Committee members:

I would like to submit comments about certain parts of the proposed rules. MRRA is committed to sound solid waste practices. This endeavor helps move this goal along in a very positive way and encourages more recycling in the State of Maine.

We just have a few comments and suggestions with regards to the rule making on Chapter 428.

**Page 2 Definitions A:** There is a penalty if a town or municipality uses a landfill for disposal for certain difficult to recycle packaging rather than an incinerator.

This is inherently unfair and places a burden on many of our member towns that do not have access to incinerators and when these facilities were built many towns were just too far to use them economically. So, there was and still is a question of uneven access. Accessibility is a serious issue.

Is there capacity at the currently at existing incinerators so all Mainers can use them? Indication is that all operating facilities are either at or over capacity with what waste they now handle.

Many towns especially in southern Maine, that used MERC in Biddeford before it closed must go to a landfill with their waste as nearby incinerators are at or over capacity. It seems that their revenue share is not addresses at all.

The goal of this program is to include all towns and help with disposal costs. If we don't change those rules to include them I fear they likely won't participate.

The Hierarchy states that disposal in a landfill is allowed under Maine Law. For these materials with little value in the existing marketplace, would it not be more equitable to direct disposal options based on distance, capacity, and contracts at the time of recycling or disposal?

**Page 52 Defining Municipal Reimbursement Section D. (1):** This page clearly states that if a town does not incinerate, they receive 1/3 of the revenue that towns that incinerate will receive. This relates to the previous comment on page 2 of the rules, and is inherently unfair to municipalities not within the economically feasible orbit of an incinerator and should be reconsidered. Perhaps use actual tip fees paid since, again, the point of this effort is to shrink the volume of material to zero.

Is the state willing to provide guaranteed and cost-effective access to incineration facilities to for all Maine towns so we may incinerate and save landfill space?

The punitive revenue reduction ignores the fact that we are far from this ideal and that achieving it is beyond the scope of individual municipal government. Under the proposed rule municipalities are being punished for circumstances beyond their control.

Respectfully submitted



Victor Horton  
Executive Director

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