



JANET T. MILLS  
GOVERNOR

001  
STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**To:** Board of Environmental Protection

**From:** Susanne Miller, *Director of Bureau of Remediation and Waste Management*  
Carla Hopkins, *Director of Division of Materials Management*  
Brian Beneski, *Supervisor of Recycling Programs*  
Jessica Nadeau, *Product Stewardship Specialist*  
Kayla Michaud, *Product Stewardship Specialist*

**Date:** September 18, 2025

**Re:** Chapter 428: *Stewardship Program for Packaging*

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Existing Department rule Chapter 428, *Stewardship Program for Packaging*, provides details for implementing the Stewardship Program for Packaging pursuant to 38 M.R.S. § 2146, with the goals of reducing the burden to municipalities of managing packaging material and improving the design and management of packaging material. The rule characterizes packaging material, provides a method for determining municipal reimbursement and producer fees, provides a method and criteria for investing in infrastructure and education, details alternative collection programs, establishes a cap for the packaging stewardship fund, and provides mechanisms for ongoing assessment and updates to the program.

The Department proposes to amend the existing rule to add Appendix A – *The Packaging Material Types List* (the proposed List). The proposed List defines packaging material and designates packaging material types that are readily recyclable, as applicable. Additionally, the proposed List may further designate a packaging material type as compostable or reusable.

Prior to initiating rulemaking, Department staff solicited input from the public and organizations that would be potentially affected by the proposed List. The Department's outreach effort which began in March 2025 generated 77 comments and engaged approximately 300 entities.

Department outreach included:

- Development and circulation of a preliminary proposed List to the over 868 members in the program to submit written comment on the draft List;
- Coordination of three public meetings (two hosted by the Department and one hosted by the Maine Resource Recovery Association), which were recorded and later transcribed and posted on the [Stewardship Program for Packaging website](#) followed by an additional two-week comment period.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

As a result of this outreach, some commenters requested:

- Alignment of the preliminary proposed List with the lists established in Colorado and Oregon;
- Greater transparency in the evaluation of readily recyclable designations; and
- Re-evaluation of paper-based packaging materials, particularly those developed through Maine-led innovation.

In response, the Department:

- Aligned the majority of proposed packaging material types with the producer reporting categories used in the Colorado and Oregon programs to facilitate producer compliance;
- Developed a readily recyclable scoring designation sheet to demonstrate how packaging material types were evaluated under the program criteria; and
- Revised descriptions and re-evaluation of Maine-led paper-based packaging materials.

The Department also proposes the following changes to Chapter 428 to incorporate changes made to 38 M.R.S. § 2146 by the 132<sup>nd</sup> Maine Legislature, First Special Session. L.D. 1423, *An Act to Improve Recycling by Updating the Stewardship Program for Packaging* (P.L. 2025, ch. 383) is attached. Pursuant to the Constitution of Maine, Article IV, Part Third, Section 16, the general effective date for nonemergency laws passed in the First Special Session of the 132<sup>nd</sup> Legislature, which includes P.L. 2025, ch. 383, is September 24, 2025. This proposed rulemaking action will extend beyond the effective date of the new legislation and therefore incorporates the necessary changes to align the rule with statute.

- Update the definition of “consumer” and “producer” in Chapter 428(2) to match the definitions of those terms in amended statute;
- Remove language requiring participating municipalities to collect and recycle *all* packaging material designated readily recyclable because participating municipalities are now permitted to collect and recycle *any* packaging material designated readily recyclable; and
- Remove the requirement for producers to report on UPCs of products sold by packaging material type during annual producer reporting.

Additionally, the Department proposes:

- To eliminate the existing definition of “alternative management” in Chapter 428(2)(A) because that definition is no longer relevant;
- To correct a cross-reference in Chapter 428(4)(A)(3) from Chapter 850, *Identification of Hazardous Wastes*, to Chapter 800, *Identification of Hazardous Matter*; and

Staff memorandum to Board  
Re: Chapter 428 rulemaking  
September 18, 2025

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- To remove the phrase “designed for direct food contact and is” from the definition of “compostable packaging material” in Chapter 428(2)(F) to clarify that packaging material that is not designed for direct food contact but is capable of being composted as demonstrated by third-party certifications qualifies as a compostable packaging material.
- To clarify in Chapter 428(9)(E) that, although the Legislature removed the requirement for a producer to report on the UPCs of its products in annual reporting, if audited, a producer may still be required to report on the UPCs of its products.

Regulatory Framework:

Pursuant to 38 M.R.S. § 2146(13), the proposed amendment of Chapter 428 is a routine technical rulemaking that requires the Board to solicit public comments and to hold a public hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. § 8001, *et seq.*

Requested Action:

The Department staff recommend that the Board vote to post the proposed amendments to Chapter 428 for a public comment period of not less than 30 days and to hold a public hearing on the proposed amendments at a later date to be coordinated by Department staff and the Board Executive Analyst.

Estimated time of agenda item:

60 minutes

Attachment: P.L. 2025, ch. 383

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FIVE

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S.P. 579 - L.D. 1423

**An Act to Improve Recycling by Updating the Stewardship Program for  
Packaging**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §2146, sub-§1, ¶C-1** is enacted to read:

C-1. "Consumer" means a single-family or multifamily residence, school, municipal or state government facility, public space or commercial business that uses or partners with a municipal or state waste management service.

"Consumer" does not include a person that manufactures products if the packaging material for those products is managed and the costs of that management are paid for by the person or by a producer, and that packaging material:

- (1) Is used solely for transportation of the products to persons that are not consumers; or
- (2) Is used for or generated by the person as part of the manufacturing process for the products.

**Sec. 2. 38 MRSA §2146, sub-§1, ¶N**, as enacted by PL 2021, c. 455, §2, is amended to read:

N. "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally intended to be sold for consumption. ~~"Post-consumer recycled material" does not include post-industrial material or pre-consumer material.~~

**Sec. 3. 38 MRSA §2146, sub-§1, ¶O**, as enacted by PL 2021, c. 455, §2, is repealed and the following enacted in its place:

O. "Producer" means:

- (1) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold or offered for sale at a physical retail location in the State:

- (a) The person that manufactured the product if the product is sold or offered for sale in the State under the manufacturer's brand or the packaging material does not identify the brand;
  - (b) If there is no person to which division (a) applies, the person that is licensed to manufacture and sell or offer the product for sale to consumers in the State under the brand or trademark of another manufacturer or person;
  - (c) If there is no person to which division (a) or (b) applies, the person that has legal ownership of the brand of the product;
  - (d) If there is no person to which divisions (a) to (c) apply that has a physical presence in the United States, the person that is the importer of record into the United States for the product for use in a commercial enterprise and that sells, offers for sale or distributes the product for sale in or into the State; or
  - (e) If there is no person to which divisions (a) to (d) apply, the person that first distributes the product for sale in or into the State;
- (2) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State through an Internet-based or remote sales transaction and not at a physical retail location in the State:
- (a) With respect to the packaging material that is used to directly contain or protect the product, a person identified pursuant to subparagraph (1), divisions (a) to (e); and
  - (b) With respect to the packaging material that is not used to directly contain or protect the product, a person that packages the item for delivery, presentation or distribution to the consumer; or
- (3) For a product contained, protected, delivered, presented or distributed in or using packaging material and sold, offered for sale or distributed for sale in the State in a manner not described in subparagraph (1) or (2), the person that first distributes the product for sale in or into the State.

"Producer" includes a low-volume producer but does not include a nonprofit organization exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3).

Notwithstanding subparagraphs (1) to (3), if the person that would otherwise be considered a producer under this paragraph is operating a business wholly or partially as a franchise, the producer is the franchisor if that franchisor has franchisees with a commercial presence in the State.

Notwithstanding subparagraphs (1) to (3), if a person that would otherwise be considered a producer under this paragraph enters into a signed agreement with another person to assign the responsibility to act as producer for the product or products of the person for the purposes of this section, that other person is considered the producer of the product or products for the purposes of this section if that other person registers with the stewardship organization to participate in the program under this section on behalf of the person and written certification of the assignment of responsibility is provided to the stewardship organization.

**Sec. 4. 38 MRSA §2146, sub-§1, ¶U**, as enacted by PL 2021, c. 455, §2, is amended to read:

U. "Toxicity" means, with respect to packaging material, the ~~presence in~~ intentional addition to packaging material or the intentional use in the manufacturing, recycling or disposal of packaging material of ~~intentionally introduced~~ metals or chemicals regulated or listed pursuant to Title 32, chapter 26-A; food contact chemicals of high concern or priority food contact chemicals regulated or listed pursuant to Title 32, chapter 26-B; or chemicals of concern, chemicals of high concern or priority chemicals identified pursuant to chapter 16-D.

**Sec. 5. 38 MRSA §2146, sub-§2**, as enacted by PL 2021, c. 455, §2, is amended to read:

**2. Producer exemptions.** Notwithstanding any provision of this section to the contrary, a producer is exempt from the requirements and prohibitions of this section in any calendar year in which:

A. The producer realized less than \$2,000,000 in total gross revenue during the prior calendar year, except that, for the period beginning one calendar year following the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3 and ending 3 years after that effective date, a producer that realized less than \$5,000,000 in total gross revenue during the prior calendar year is exempt from the requirements and prohibitions of this section;

B. The producer sold, offered for sale or distributed for sale in or into the State during the prior calendar year products contained, protected, delivered, presented or distributed in or using less than one ton of packaging material in total; or

C. The producer realized more than 50% of its total gross revenue in the prior calendar year from the sale of goods it acquired through insurance salvages, closeouts, bankruptcies and liquidations; ~~or,~~

~~D. 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.~~

~~As used in this paragraph, "perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions, including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.~~

Notwithstanding any provision of this section to the contrary, a producer is exempt from the requirements and prohibitions of this section with respect to the first 15 tons of packaging material used by the producer to contain, protect, deliver, present or distribute products that were perishable food and that were sold, offered for sale or distributed for sale in or into the State during the prior calendar year.

As used in this subsection, "perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions,

including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. "Perishable food" does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.

A producer claiming an exemption under this subsection shall provide to the department sufficient information to demonstrate that the producer meets the requirements for an exemption under this subsection within 30 days of receiving a request from the department to provide such information.

**Sec. 6. 38 MRSA §2146, sub-§3, ¶A**, as enacted by PL 2021, c. 455, §2, is amended by amending subparagraph (7), division (c) to read:

(c) The processing capacity, market conditions and opportunities in the State and regionally for recyclable material; ~~and~~

**Sec. 7. 38 MRSA §2146, sub-§3, ¶A**, as enacted by PL 2021, c. 455, §2, is amended by enacting a new subparagraph (7), division (e) to read:

(e) The producer payments schedule adopted by the department pursuant to subsection 13 and the anticipated effect of that schedule on incentivizing the use by producers of readily recyclable packaging materials and supporting the solid waste management hierarchy under section 2101; and

**Sec. 8. 38 MRSA §2146, sub-§4, ¶B**, as enacted by PL 2021, c. 455, §2, is amended to read:

B. The stewardship organization shall provide to the department a list of producers that are participating in the program and a list of the UPCs of products or a list of all producers and brands for which the producer has complied with the program's requirements and, if known to the stewardship organization, a list of producers that are not participating in the program and are not compliant with the program's requirements. The stewardship organization shall provide to the department regularly updated producer compliance information described in this paragraph.

**Sec. 9. 38 MRSA §2146, sub-§4, ¶C**, as enacted by PL 2021, c. 455, §2, is amended to read:

C. Based on information provided to the department under paragraph B and any other information considered by the department, the department shall make available on its publicly accessible website a regularly updated list of ~~UPCs of products~~ producers and brands for which the department has determined the producer has complied with all applicable requirements of this section and a list of producers and, where applicable, specific products and the ~~UPCs~~ brands of those products for which the department has determined the producer has not complied with all applicable requirements of this section.

**Sec. 10. 38 MRSA §2146, sub-§6, ¶A** is enacted to read:

A. Notwithstanding any provision of this section to the contrary, a producer may not be required to pay an increased fee or penalty for packaging material that is not composed of post-consumer recycled material if the packaging material is subject to state or federal laws, rules or regulations that effectively prohibit the use of post-consumer recycled material in that packaging material.



**Sec. 11. 38 MRSA §2146, sub-§6, ¶B** is enacted to read:

B. Following the execution of a contract between the selected stewardship organization and the department pursuant to subsection 3, the stewardship organization, based on the statewide recycling needs assessment conducted pursuant to subsection 3, paragraph A, subparagraph (7) and other available information, may recommend to the department that the producer payments schedule adopted by the department by rule pursuant to subsection 13 be modified to better incentivize the use by producers of readily recyclable packaging materials and support the solid waste management hierarchy under section 2101 and the department may, in its discretion, initiate rulemaking in accordance with this section to implement any modifications to that schedule.

**Sec. 12. 38 MRSA §2146, sub-§7**, as enacted by PL 2021, c. 455, §2, is amended to read:

**7. Annual reporting by producers.** In accordance with rules adopted by the department, 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. Notwithstanding any provision of this section to the contrary, a producer may not be required to report annually to the stewardship organization regarding its products or the associated packaging material using the UPCs of those products.

**Sec. 13. 38 MRSA §2146, sub-§9, ¶A**, as enacted by PL 2021, c. 455, §2, is amended to read:

A. Provide for the collection and recycling of any packaging material that is generated in the municipality and is readily recyclable; and

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