**Background information for stakeholder meetings on producer payments and reporting**

The department will hold stakeholder meetings on the topic of *producer payments and reporting* on July 11th and July 25th, from 1:00 pm to 5:00 pm EST. As a reminder, Meeting 1 provides stakeholders an opportunity to share prepared comments, and Meeting 2 will allow for discussion of those comments. Comments will be posted on the department’s website and made available prior to Meeting 2. Meetings will be held in room 101 of the Deering Building at 90 Blossom Lane in Augusta and will also be available virtually. Please use [Maine’s EPR Program for Packaging website](https://www.maine.gov/dep/waste/recycle/epr.html) to RSVP for a meeting.

The central task for the July meetings is to collect comments speaking to section 13(A)(1) of 38 MRS §2146 *Stewardship program for packaging*, which requires the department to create a process for annually determining payments from **producers** that “[…sets] forth the manner in which such payments should be calculated […]”. The producer payment schedule must,

* Provide a flat fee option for low-volume producers that does not exceed $500 per ton or $7500 annually;
* For producers other than **low-volume producers**, be based on, and cover the cost of managing, each type of packaging material sold, offered for sale or distributed for sale in or into the State;
* Incentivize readily recyclable material, the use of recycled content, increased recyclability, lower **toxicity**, reduction of material, reduction of litter, increased reuse, and labeling to reduce consumer confusion;
* Identify the information that producers other than low-volume producers need to report;
* Identify the information that low-volume producers need to report;
* Provide an option for producers that cannot fulfill the reporting requirements to estimate the amount of packaging material placed on the market using unit quantities and pay based on the least favorable adjustment criteria; and
* Identify the timing of annual payments and annual reporting from producers.

Please note that the related subject of alternative collection programs will be covered during the August 8th follow up meeting.

Included below are relevant excerpts from statute, contextual information, and questions for consideration. All excerpts are from 38 MRS §2146 unless otherwise noted. Words and phrases in bold font are statutory terms, and their definitions can be found at the end of this document.

1. Flat fee option

Subsection (13)(A)(1)(a) states,

*The payment schedule adopted under this subparagraph must provide for a flat fee option to be assessed on a tiered basis such that a low-volume producer is required to pay no more than $500 per ton of packaging material and no more than $7,500 in total annual fees to the stewardship organization under this section.*

Questions:

* Should there be tiers for low-volume producers with less than 5 or 10 tons of packaging?
* Should there be tiers for packaging material that is readily recyclable?

1. Base payment

Subsection 6 states—

*[…] a producer shall make payments to the stewardship organization […] based on the net 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 and not managed by the producer under an approved alternative collection program.*

Subsection 13(A)(1)(b) states—

*[…] the payment schedule adopted under this subparagraph must be based on and cover the cost of managing the amount of each type of packaging material sold, offered for sale or distributed for sale in or into the State by a producer and not managed under an approved alternative collection program […].*

These two pieces of the statute appear to require a per ton base payment that reflects the municipal per ton cost of managing each packaging material type. When each producer is charged the per ton cost of managing each packaging material type for every ton of packaging material that it sold, offered for sale, or distributed for sale into Maine, then payments from producers cover the cost of municipal reimbursements.

Subsection 12 establishes the packaging stewardship fund which is funded by producer payments. The four purposes of the fund are:

*A. To reimburse participating municipalities […]*

*B. To cover the operating costs of the stewardship organization […]*

*C. To pay to the department all applicable fees required under subsection 13, paragraph B […], and*

*D. To support investments in education and infrastructure […]*

If payments from producers are limited to the per ton cost of managing packaging material, there will be less money available to cover other purposes of the fund as municipal recycling rates approach 100%. However, the S.O. and the department will always have administrative costs that must be covered by the fund.

Question: How should administrative and department costs be divided among producers?

1. Incentives

Section 13(A)(1)(b) and reasoning included above require that all incentives be structured as penalties, meaning they result in additions to the base payment as opposed to deductions from it. Otherwise, a producer’s per ton payment might not cover the cost to manage its packaging material.

Subsection 6 states—

*[…P]ayments must be calculated for packaging material that is readily recyclable and packaging material that is not readily recyclable, […and] must be designed to incentivize the use by producers of packaging material that is readily recyclable and disincentivize the use by producers of packaging material that is not readily recyclable.*

Question: How much more should producers pay for material that is not readily recyclable?

Subsection 13(A)(5) states that program goals should be used to inform the producer payment schedule.

Question: Should payments from producers of packaging material that is not readily recyclable change if recyclability goals are not met? Should payments from producers of packaging material that is not readily recyclable change if any other program goal is not met? How might this change be made to the payment schedule?

Subsection 13(A)(1)(c) states—

*The payment schedule adopted under this subparagraph must delineate criteria to be used to adjust producer payments in a manner that incentivizes: the use of recycled content in and increased recyclability of packaging material, lower toxicity in packaging material, a reduction of the amount of packaging material used, a reduction of litter from packaging material, increased reuse of packaging material and labeling of packaging material to reduce consumer confusion and creates other incentives consistent with generally accepted industry standards.*

Questions:

* Should the payment schedule prioritize any of these incentives? Which incentives should be prioritized? Should priorities change if relevant program goals are not being met? How might the payment schedule reflect this?
* Should Maine’s payment schedule look to prioritize the criteria being prioritized in other jurisdictions?
* Are there additional characteristics that should be incentivized in the payment schedule?
* How might the payment schedule incorporate Title 32, chapter 26‑A; Title 32, chapter 26-B; and Title 38, chapter 16-D? Summaries of statutes defining toxicity are provided at the end of this document.

1. Reporting for low-volume producers

Subsection (13)(A)(1)(d)(ii) states,

*For low-volume producers, the rule must require the reporting of only the information necessary for a calculation of the flat fee described in division (a) and a determination of the producer's compliance with the requirements of this section.*

This appears to require that a low-volume producer report only the tons of packaging material placed on the market, its **brands**, and the **universal product codes** (UPCs) of the products associated with the packaging material. If tiers were established for readily recyclable material, producers using readily recyclable packaging material would also need to report on packaging material types.

Questions:

* Under what circumstances should low-volume producers be asked to provide their methodology for determining reported tonnage?
* Should low-volume producers have an incentive to indicate whether packaging material is readily recyclable or otherwise provide information on packaging material characteristics?

1. Reporting for producers other than low-volume producers

Subsection (13)(A)(1)(d)(i) states,

*For producers other than low-volume producers, the rule must require the producer to provide a description of the methods it used to determine the amount reported for each type of packaging material associated with its products, a description of the characteristics of each type of packaging material that are relevant to the adjustment criteria adopted pursuant to division (c) and a list of the producer's brands and the UPCs of the products associated with each type of packaging material.*

It appears that packaging material should be reported by UPC and that reporting for each UPC must include brand, units, weight of each packaging material type, and characteristics with respect to each incentive included in the payment schedule.

Questions:

* What are acceptable methods for producers to use to determine the amount of packaging material they report? How, and to what extent, should acceptable methods be defined?
* What parts of annual producer reporting require verification? Are there certain circumstances that should prompt verification?
* What parts of annual producer reporting will be most difficult? How might annual producer reporting be designed to facilitate compliance?
* How can we promote consistency in producer reporting across jurisdictions?

1. Estimates in reporting

Subsection (13)(A)(1)(d)(iii) states—

*[…A] producer that is unable to fully satisfy the reporting requirements due to a failure to obtain sufficient information regarding the characteristics of the packaging material of products […may provide] an estimate of the total amount of that packaging material based on unit quantities as long as such alternative reporting includes a description of the methods used by the producer to calculate the estimate. When a producer alternatively reports an estimate in accordance with this subdivision, unless otherwise determined by the department, the estimate must be adjusted using the least favorable adjustment criteria […].*

Questions:

* What are acceptable ways of estimating the amount of packaging material shipped into the state? Keep in mind that some products and brands are national or regional and, as a result, formulas using national or regional counts may overestimate the prevalence of some products while underestimating the prevalence of others.
* Is there any reason that a producer other than a low-volume producer that does not provide information on one or more characteristics of its packaging should not incur a payment obligation that assumes the least favorable adjustment criteria?
* How should unit quantities be translated into weights?

1. Timing

Questions:

* When do producers have data needed to fulfill annual reporting requirements?
* Producer payment must be received before participating municipalities receive reimbursement. When should participating municipalities receive reimbursement?

Subsection 6 states—

*[…N]o later than 180 days after the effective date of the contract entered into by the department and the stewardship organization pursuant to subsection 3, and annually thereafter, a producer shall make payments to the stewardship organization […].*

There is a need to decide how this initial payment should be managed. The S.O. will need to determine the reimbursable cost of managing packaging material in order to determine the payment schedule to allow producers to report and provide payments. Even if 180 days is sufficient for this to occur, there is a need to fund the program’s operational costs during the initial start-up period. Section 3(A)(5) addresses what the S.O. must include in a proposed budget.

*A proposed budget outlining the anticipated costs of operating the packaging stewardship program, including identification of any start-up costs that will not be ongoing and a description of the method by which the bidder intends to determine and collect producer payments during the initial start-up period of program operation to fund the program's operational costs during that initial start-up period and to reimburse or require additional payments by those producers subsequent to that initial start-up period based on producer reporting of the actual amount of packaging material sold, offered for sale or distributed for sale in or into the State by each producer during that initial start-up period. The proposed budget under this subparagraph may overestimate the cost of operating the program during its initial start-up period of operation but must describe the method and basis for any overestimate;*

Questions:

* How can the program’s operational costs during the initial start-up period be covered prior to initial producer payments?
* Should producers be required to report on prior calendar year activities and provide an estimated payment within the 180 days?
* Should the initial payment just cover the department and the S.O. costs? If so, what reporting would be required at the time of payment?
* Should rule specify a penalty for producers who do not comply punctually?
* Is there a preferred “true-up” mechanism to account for any over or under payment that might occur if producer payments are estimated?

Definitions

**"Brand"** means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand.

**"Low-volume producer"** means a producer that 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 more than one ton but less than 15 tons of packaging material in total.

**"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; or

(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 that is branded by a person that meets the requirements of subparagraph (1) and has no physical presence in the United States.

"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).

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

**"Universal product code"** or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers for product identification purposes. "Universal product code" includes any industry-accepted barcode used for product identification purposes in a manner similar to a UPC, including, but not limited to, an EAN.

Summary of statutes defining toxicity

* [Title 38, chapter 16-D Toxics in Children’s Products](https://legislature.maine.gov/statutes/38/title38sec1691.html) provides the department with the regulatory authority to collect information on chemical use in consumer products (products sold for indoor use in a residence, childcare facility, or school or for outdoor residential use if a child under 12 may have direct contact with the item).

It requires the department to create and maintain a list of chemicals of concern, defined as those that—

*have been identified by an authoritative governmental entity on the basis of credible scientific evidence as being:*

*A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;*

*B. Persistent, bioaccumulative and toxic; or*

*C. Very persistent and very bioaccumulative*

It requires the department to create and maintain a list of chemicals of high concern. These are chemicals for which—

*there is strong credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor or human carcinogen, and there is strong credible scientific evidence that the chemical meets one or more of the following criteria:*

*A. The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine or other bodily tissues or fluids;*

*B. The chemical has been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; or*

*C. The chemical has been added to or is present in a consumer product used or present in the home*

It also allows the department to designate a chemical of high concern as a priority chemical. Manufacturers of children’s products that contain priority chemicals must report to the department, and the department can prohibit the sale of children’s products containing priority chemicals where safer alternatives are available.

Lists of chemicals of concern, chemicals of high concern, and priority chemicals can be found here: [Safer Chemicals in Children's Products, Maine DEP](https://www.maine.gov/dep/safechem/childrens-products/index.html).

* [Title 32, chapter 26-A Reduction of toxics in packaging](https://legislature.maine.gov/statutes/32/title32sec1731.html) prohibits the intentional introduction of lead, cadmium, mercury, or hexavalent chromium to packaging. It prohibits manufacturers with greater than $1,000,000,000 in annual, national sales of food and beverages from using food packaging to which phthalates have been intentionally introduced. It requires that the department write rules to prohibit the intentional introduction of PFAs to food packaging by manufacturers with greater than $1,000,000,000 in annual, national sales of food and beverages if and when safer alternatives for use in a particular application have been identified. It allows the department to request certificates of compliance that attest to a package’s compliance.
* [Title 32, chapter 26-B Toxic chemicals in food packaging](https://legislature.maine.gov/statutes/32/title32sec1741.html) requires that the department create and maintain a list of 10 food contact chemicals of high concern. This list may only include chemicals meeting the following criteria:

*A. The chemical is included on the list of chemicals of concern published by the department in accordance with Title 38, section 1693 or the chemical has been identified by an authoritative governmental entity on the basis of credible scientific evidence as being:*

*(1) A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;*

*(2) Persistent, bioaccumulative and toxic; or*

*(3) Very persistent and very bioaccumulative;*

*B. The department determines that there is strong credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor or human carcinogen; and*

*C. The department determines that there is strong credible scientific evidence that the chemical meets one or more of the following additional criteria:*

*(1) The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine or other human bodily tissues or fluids;*

*(2) The chemical has been found through sampling and analysis to be present in a food or beverage product; or*

*(3) The chemical has been added to or is present in a food package.*

The commissioner can designate a food contact chemical of high concern as a priority food contact chemical. Manufacturers or distributors that have more than $1,000,000,000 in annual, national sales of food and beverage products must report to the department if they sell food packages (which include packages and the food or beverage products contained in therein) that contain a priority food contact chemical.

The department can prohibit the sale of a food package if:

*A. Distribution of the food package directly or indirectly exposes consumers to the priority food contact chemical; and*

*B. One or more safer alternatives to the priority food contact chemical are available at a comparable cost.*

The department may request that a manufacturer or distributor of a food package provide a certificate of compliance if there are grounds to suspect it is selling a product in violation of this chapter.

The list of food contact of chemicals of high concern is available here: [Listing-Criteria-for-Chemicals-in-Food-Packaging\_Dec2021.pdf (maine.gov)](https://www.maine.gov/dep/safechem/packaging/Listing-Criteria-for-Chemicals-in-Food-Packaging_Dec2021.pdf), and more information on the department’s implementation of this statute is available here: [Toxics in Food Packaging Program, Maine DEP](https://www.maine.gov/dep/safechem/packaging/index.html).