



October 31, 2023

Brian Boneski
Supervisor, Recycling Programs
Division of Materials Management
Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
17 State House Station
32 Blossom Lane
Augusta, Maine 04333-0017

Sent via email: MainePackagingEPR@maine.gov

RE: Feedback on Conceptual Draft Rules for Extended Producer Responsibility Program for Packaging

Dear Mr. Boneski,

Circular Action Alliance (CAA) appreciates the opportunity to provide feedback on the conceptual draft rules for Maine's Extended Producer Responsibility Program for Packaging.

Circular Action Alliance (CAA) is a U.S., non-profit producer responsibility organization (PRO) established to support the implementation of extended producer responsibility (EPR) laws for paper and packaging. CAA's Founding Members include Amazon, Clorox, Colgate-Palmolive, Ferrero, General Mills, Keurig Dr Pepper, Kraft Heinz, L'Oréal, Mars, Incorporated, Nestlé USA, Niagara Bottling, LLC, PepsiCo, Procter & Gamble, SC-Johnson, Target, The Coca-Cola Company, Unilever United States, and Walmart. On May 1, 2023, Colorado approved CAA as the PRO responsible for administering a packaging and paper products EPR program under the state's EPR law. On Oct. 18, 2023, Maryland approved CAA as the single producer responsibility organization to represent the interests of producers.

CAA looks forward to continuing the discussion with DEP and other key stakeholders through the consultation process on initial rule concepts. These are only our initial comments, and we may have more feedback on these policy areas as our team continues its evaluation.

Sincerely,

Susan Bush
EPR Program Planning
Circular Action Alliance

CONCEPTUAL DRAFT RULES FOR MUNICIPAL REIMBURSEMENT

1. Definitions (page 1)

L. **Reporting entity.** “Reporting entity” means a participating municipality or an affiliated contractor that reports to the Stewardship Organization (S.O.) in accordance with SECTION CALCULATION OF THE PER TON COST BY DISPOSAL STREAM OR COMMODITY.

Comment – The above definition should not include the word “commodity”; instead, it should read “material type.” Commodity includes materials that have been further processed after leaving the MRF, e.g., material after it leaves the reclaimer or beneficiary. This is described in the definitions included in this Conceptual Draft Rule, above, “commodity.” We suggest this definition include “sorted material types sold by a MRF.”

Question – If this definition intentionally includes the word commodity, what is the obligation of the SO regarding beneficiaries and reclaimers and what is their obligation in terms of reporting data?

M. **Set of accepted materials** (page 2). “Set of accepted materials” means materials permitted in a packaging stream.

Comment – Because packaging stream can mean packaging destined for disposal, as well as other materials, this definition seems inconsistent with other definitions. We recommend specifying if it is a packaging stream for recycling or reuse.

2. Requirements for Participating Municipalities (page 3)

a. If a municipality did not participate during the previous calendar year, it must notify the S.O. of its intent to participate, in writing, prior to March 31 of the year for which it seeks reimbursement.

Comment – In order for the SO to budget and set fees properly, it would need a 12- to 18-month lead time for a municipality to become a participant. A new municipality could not begin participating in a year for which producer fees have already been set and levied.

b. A municipality must provide for the collection and recycling of all packaging material types that have been on the readily recyclable list for at least 3 consecutive years,

Comment – This seems to be a long time for municipalities to collect all the materials on the readily recyclable list. To support residents in Maine with enhanced collection services, we suggest that municipalities must accept all materials within two years and allow the municipality to request more time if needed.

3. Defining Municipal Reimbursement (Page 3)

A. For packaging material types that are readily recyclable, a participating municipality shall be reimbursed for each ton managed for recycling at the median per ton cost realized by similar municipalities during the previous calendar year.

Comment 1 – Many municipalities may not be able to provide per-ton costs for managing each “packaging material type” and contractors may be unwilling to provide this information due to confidentiality concerns.



Comment 2 – Municipalities should be reimbursed for median NET costs (i.e., net of any material revenues earned). This issue should be addressed throughout the conceptual draft rules.

- B. For packaging material types that are not readily recyclable, a participating municipality shall be reimbursed for its per capita share at the median per ton cost realized by similar municipalities for the management of disposal streams during the previous calendar year. A municipality's per capita share is determined by dividing the statewide total tons of packaging material that are not readily recyclable (as reported sent into Maine by producers) by the state's population and then multiplying by the municipal population.

Comment 1 – This approach seems to assume that the municipality manages all tons disposed – even those that are managed by private entities (such as commercial and institutional entities) manage. Industrial, commercial and institutional materials are managed under separate contracts in many cases. The methodology must be adjusted to account for the differences in materials management.

Comment 2 – Based on existing EPR principles, producers should only fund program elements that contribute to the recycling or increased diversion from disposal of packaging materials. Our belief is that municipalities should not be reimbursed for the disposal (or costs leading up to disposal) of packaging. If packaging is not “readily recyclable,” funds should be used to help improve the recycling system such that eventually the packaging material can be moved to the readily recyclable list. If not, they are incentivized to switch to readily recyclable packaging. We are unaware of any EPR programs in Europe or Canada that fund the disposal of packaging.

- C. For packaging material types that are not readily recyclable and are managed for recycling, reimbursement will be limited to the median per ton cost realized by similar municipalities for managing the readily recyclable packaging material type with the highest management cost during the previous calendar year.

Comment 1 – Reimbursements should be for median per ton NET costs (i.e., net of any revenues received for the material type).

Comment 2 – At this time, the highest management costs of a readily recyclable material is not known. This cost could be prohibitive and suggest this material is not economically viable to recycle. It is recommended that the upper limit for any reimbursement be set at the lower of i) \$5,000 per ton of net cost or ii) the highest management net cost.

4. Determining municipal reimbursement. (Page 4)

- C. **Obtaining information.** The S.O. must determine the per ton cost of managing each packaging material type for recycling, the total tons of each packaging material type managed for recycling by each participating municipality, and the per ton cost of managing packaging material for disposal. The S.O. will obtain this information through annual reporting from reporting entities, consultations with participating municipalities, and representative audits.



Comment – It is not achievable to determine the per-ton costs for each packaging material type managed for recycling or for disposal for each municipality using this methodology. The reporting entities do not have the ability to perform these complex allocations. A better approach would be to have the SO identify total net costs eligible for municipal reimbursement and allocate those costs to each stream (recycled packaging that is readily recyclable, recycled packaging that is not readily recyclable, and disposed packaging that is not readily recyclable) based on proportionality. This approach can be taken by requiring reporting entities to report these total net costs to the SO annually but not have them attempt to allocate costs to each base material. Based on cost allocation studies (primarily cost modeling) performed by the SO, the reported costs for managing reimbursable recycling and disposal streams can be allocated to the appropriate categories by the SO. This can be done based upon the municipality groupings to allow different reimbursement rates to be determined for the broad material categories and municipal groupings. The SO would work with the 20 “in depth consultation” municipalities to assess these costs.

(1) Consultations (page 5)

- (b) Follow-up consultation. The S.O. will conduct a follow-up consultation to update information in a municipality’s complete consultation when a reporting entity makes a relevant change to the management of a packaging stream. Relevant changes to the management of packaging streams are:
- changes to staffing levels or employee duties;
 - changes to collection, transportation, or processing procedures, including changes to sets of accepted materials;
 - new equipment, new uses of equipment, retirement of equipment; capital investment into existing equipment;
 - new structures, new uses of structures, retirement of structures; capital investment into existing structures;
 - changes to transportation routes; and
 - energy use changes affecting total metered energy.

Comment – An SO cannot accurately budget without parameters on the number of audits there are to be conducted. As a result, there should be a maximum number of follow up consultations to be conducted annually. Also, we suggest that some of the criteria that trigger a follow up consultation be removed, as most municipalities and other reporting entities would make such changes frequently. Examples include changes to routes, use of new equipment, changes to staffing levels and duties. This is tied to the comment about the complexity of the cost assessment approach and the unlikelihood of private entities to provide this information. Furthermore, if a single entity (e.g., a MRF) serving multiple municipalities makes a change, it appears that all municipalities would have to report. The entire approach is not workable.

- (ii) If a relevant change affects the complete consultations of at least 20% of participating municipalities in a group of similar municipalities, the reporting



entity will report to the S.O. on operations prior to the relevant change in accordance with its existing cost reporting plan. The S.O. will conduct a follow-up consultation with the reporting entity to update the cost reporting plan, and the reporting entity will report on operations for the remainder of the reporting year in accordance with the updated cost reporting plan.

Comment – Taking this approach will create challenges for the implementation of EPR in Maine. Conducting additional consultations if a change affects at least 20% of participating municipalities in a group of similar municipalities does not leave enough time to assess and split costs mid-year.

(3) Representative Audits (page 7)

a. Types

- iii. To allocate costs associated with a mixed packaging stream, the S.O. must determine the volume of the materials that will make up a disposal stream or a commodity relative to the volume of all materials included in the mixed packaging stream's set of acceptable materials.

Comment 1 – Allocation of costs should not be set in rule but instead should be based on the principles of cause and effect using activity drivers. That could be by volume, but it may be pieces or lbs. per square foot or other measures. For example, the disposal stream activities include a garbage cart, collection vehicle, tip floor at transfer station, transfer vehicle, tip face of landfill, and post landfill compaction. Each has different densities, translating into different volumes for which to allocate costs.

Comment 2 – Again, the word commodity seems to be incorrect here, as commodity as defined includes materials that have been through secondary processing in some cases.

b. Requirements

- iii. **Accuracy.** For each site and season, samples should be collected and analyzed until results estimate the value sought with 90% confidence +/- 3%

Comment – This level of accuracy will be costly to achieve because the accuracy pertains to each site, each season, and for all resin types. This level of accuracy could likely be achieved if plastic were not sorted by resin type, as some resin types are not prevalent in the material streams. We recommend that the requirements be less stringent initially – relaxing the “by resin type” requirement, and over time as audit data is accumulated, improve the statistical representativeness of the audit results.

- iv. **Applicability.** If audit results from the first two participating municipalities audited are not significantly different, they must be averaged and applied to all participating municipalities managing the commodity or set of accepted materials. If audit results from the first two participating municipalities audited are significantly different, the S.O. must audit a third participating municipality. If the results from the third participating municipality audited are not significantly different from at least one of the first two, the results that are not



significantly different must be averaged and applied to all participating municipalities managing the commodity or set of accepted materials, unless there is an audit result that is more applicable in accordance with SECTION PROCESS. If audit results from the third participating municipality audited are significantly different from the first two, each audit result must be assumed to be site-specific and consultations for all participating municipalities managing that commodity or set of accepted materials must include a site-specific audit.

Comment 1 – We are not aware of a scientific basis to support this approach.

Comment 2 – Significantly different does not appear to be defined here.

Comment 3 – This appears to potentially trigger the need for a significant number of audits. Budgeting and planning for this process will be challenging if the number of audits to be conducted is not known or is not capped.

Comment 4 – See Accuracy, above, for an alternative suggested approach. We suggest allowing for statistical accuracy to be achieved over time, rather than expecting it from the initial audits. As audit data is accumulated, accuracy and representativeness will be improved over time. We do not believe that the business case exists for the cost of this level of precision from program onset. Additionally, a need for ongoing access to municipalities' facilities can be intrusive to their operations.

B. Defining reimbursable costs by packaging stream (Page 9). The reimbursable costs are the percentages of each of the cost centers below used in the management of a packaging stream.

Comment 1 – It needs to be made clear that for labor, equipment, buildings, etc., used for multiple purposes, the costs associated with non-recycling uses needs to be deducted, and then, the portion pertaining to readily recyclable packaging (for recycling) or not readily recyclable packaging (for disposal) needs to be identified. It also needs to be made clear where costs associated with readily recyclable packaging need to be identified vs. costs associated with packaging that is not readily recyclable or other recyclables that are not considered packaging, such as food serviceware and printed paper.

Comment 2 – It needs to be made clear throughout when the reporting entity is the municipality, and when it is a contracted service provider. Reporting requirements are unclear. Also, as mentioned above, it is highly unlikely private entities will provide the data requested.

Comment 3 – Again, the approach described herein is not workable. Municipalities do not have the ability to identify such costs by material type, and the private reporting entities will not be willing to do so. This is also a very costly approach. Under (1), labor costs, for example, two full activity-based costing (ABC) studies are described due to the requirement to have two-season sorts.

Comment 4 – Under (2), equipment costs, an amortization period needs to be defined.



Comment 5 – Under (2), equipment costs, (a), (ii), it states that “During a consultation, the SO must document the routes used to manage each packaging stream and the number of miles per route. The reporting entity must report annually the number of trips for each route traveled and the total miles the vehicle traveled.” This approach will create additional burden for local governments.

Comment 6 – Under (2), equipment costs, (b), maintenance costs, the information requested is extremely detailed. It is our experience that most small entities will not track this information.

Comment 7 – Under (2), equipment costs, (c), capital investment costs, i, it states that “the capital investment cost is the sum of the interest and principal paid on a loan obtained.” This is incorrect. Interest costs are never combined with amortization. Using this approach, an entity could buy a MRF with a three-year loan and the SO could end up paying for the MRF over three years, despite it being an asset that should last much longer and be amortized over a much longer period. This is also the case under (3), structure costs, (c), capital investment costs, i.

Comment 8 – Under (2), equipment costs, (c), capital investment costs, iii, it states “In cases where equipment is not owned but rather is borrowed or leased, the capital investment cost is the amount paid to borrow or lease.” This is only true for operating leases. In the case of a capital lease, it must be accounted for as a capital asset and amortized over the useful life of the equipment. This is also the case under (3), structure costs, (c), capital investment costs, iii.

Comment 9 – Under (4), Energy cost, the approach would be extremely costly to implement. This is an impractical approach.

- C. **Calculation of the per ton cost by a disposal stream or commodity** (Page 13). The reimbursable cost to a reporting entity for managing a packaging stream is the sum of the associated labor cost, energy cost, equipment cost, structure cost, and profit and overhead paid. These costs are assigned to a disposal stream or a commodity in accordance with this section. Where there is revenue from the disposal of a disposal stream or the recycling of a commodity, it is subtracted from the cost of the disposal stream or commodity.

Comment 1 – Again, in this section it needs to be made clear that costs for recycling/disposal are to be identified, then the appropriate portion is to be allocated to the readily recyclable packaging or not readily recycling packaging, as appropriate. Municipal equipment, labor, and buildings are often used for more than one purpose. Similarly, it needs to be made clear that the cost for managing materials that are not packaging, such as printed paper and food serviceware, need to be deducted from reimbursable costs, including under contracted services.

Comment 2 – Again, it appears the word “commodity” here is not being used as defined above. It appears material type sold by the MRF is what is envisioned here.

Comment 3 – Material types and “commodities” are not the same, so there would have to be some sort of mapping of revenues by bale type to material type, based on bale audits.



Comment 4 – Under (3) shared transportation cost, (c), it states that to identify baled “commodity” transportation cost weight should be used. This should be done by volume. A bale count can be used.

D. Figuring the Median (Page 17)

- (1) For each participating municipality that has a current complete consultation, the S.O. must calculate the per ton cost of managing a packaging material type for recycling as the per ton cost of managing the commodity with which it was sold.

Comment 1 – Please clarify whether net cost per-ton of managing the material type is what is meant here, or otherwise clarify the intent of D (1).

Comment 2 – Again, this is not a commodity as defined above.

Comment 3 – This seems to imply that every type of packaging material type has the same value in the end. This is not the case. For example, a PET thermoform may be included in a PET bottle bale, but it does not have the same value.

- E. Figuring the tons managed (Page 17) -- A participating municipality must annually report the information necessary to determine the tons of each packaging material type recycled, and for municipalities that have a current complete consultation, the tons of each disposal stream disposed. After determining the tons of each commodity sent to a recycling market by each participating municipality, the S.O. must convert the tons of each commodity sent to a recycling market to the tons of each packaging material type sent to a recycling market in accordance with REPRESENTATIVE AUDITS TYPE i.

Comment – This is a significant level of effort, which appears to result in splitting “commodity” bales into 60 plus different per-ton costs by material type to pay to each municipality. We would like to better understand the rationale for taking this approach.

- (2) Determining the tons of a commodity sent to a recycling market or the tons of a disposal stream disposed by a participating municipality.
- c. In cases where material that does not qualify as packaging material due to its origin contributes to a commodity, a commodity stream, or a mixed packaging stream sent by a participating municipality, the participating municipality must develop a method of estimating the material that is not packaging material and deduct its weight from the tons sent to a receiving facility.
 - i. A participating municipality must assume material received from the retail sector did not leave the point of sale with a consumer and does not qualify as packaging material unless a specific case is brought to the attention of the Department and determined to be an exception.

Comment 1 – Please clarify what is meant by “due to origin” and in which cases the material would be qualified as packaging material and in which cases it would not.



Comment 2 – How would a municipality do this? It appears that what is described above pertains to a contract between the hauler (or material buyer) and the retailer.

Comment 3 – It appears that this is to address packaging material backhauled for recycling via a retail location, however this is very limiting to specify “retail sector.” Please clarify if something else is meant here.

CONCEPTUAL DRAFT RULES FOR EXEMPTIONS, DEFINITIONS, READILY RECYCLABLE, AND PRODUCER FEES

Exemptions (Page 1)

At this time, no additional producer exemptions are being proposed under subparagraph (13)(D).

Comment – We suggest that you adopt additional exemptions. We propose the following, which is based on Oregon’s list of exemptions (adapted to be in alignment with Maine’s statute):

- Packaging that comes into contact with hazardous materials which would include:
 - Pesticides
 - Herbicides
 - Fuels (e.g., oil, gasoline, methanol, lighter fluid)
 - Antifreeze
 - Motor oil
 - Corrosives (excluding down-the-drain cleaners)
 - Solvents
 - paint
- Refillable and non-refillable pressurized cylinders (excluding aerosols containers having the same meaning found in 40 CFR 273.9)
- Packaging not primarily made from glass, plastic, metal, paper or any combination therein
- Packaging intended to be reused or refilled for at least five years
- Specialty packaging items that are used exclusively in industrial or manufacturing processes, including but not limited to:
 - (i) Cores and wraps for rolls of packaging sold by a mill to a packaging converter or food processor; and
 - (ii) Trays, whether designed for a single use or multiple uses, used for the transport of component parts from a parts supplier to a manufacturer that assembles those parts.
- Pallet wrap or similar packaging used to secure a palletized load if added by a person that is not the producer of the palletized covered products.
- Packaging sold or supplied in connection with:
 - (i) Prescription drugs (as defined in state statute, as applicable);
 - (ii) Nonprescription drugs (as defined in state statute, as applicable);



- (iii) Drugs marketed under a brand name (as defined in state statute, as applicable) or
- (iv) Drugs marketed under a generic name (as defined in state statute, as applicable).
- Packaging sold or supplied in connection with drugs that are used for animal medicines, including but not limited to parasiticide drugs for animals.
- Packaging sold or supplied in connection with:
 - (i) Infant formula as defined in 21 U.S.C. 321(z);
 - (ii) Medical food as defined in 21 U.S.C. 360ee(b)(3); or
 - (iii) Fortified oral nutritional supplements used for individuals who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the commission.
- Packaging for products:
 - (i) That are required under 40 C.F.R. 156.140, or other federal regulation pertaining to toxic or hazardous materials, to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling; or
 - (ii) Identified by ME DEP by rule as product that is required by law to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling.
- Any other material, as determined by the commission by rule, after consultation with the Oregon Recycling System Advisory Council.

Scope Definitions (Page 1)

Consumer. “Consumer” means the entity that uses a product, including an entity that uses a product to create a new product.

A consumer is not an entity that only distributes, delivers, installs, sells a product at retail, or undertakes any combination thereof.

Comment 1 – Please confirm/clarify that consumers can be commercial entities and where this line is drawn.

Comment 2 – We suggest including the phrase “uses a product for its intended purpose” be included in the definition, which would negate the need for the second sentence of the definition. However, further clarity and examples regarding whether this includes commercial, institutional, and industrial entities would be helpful.

Comment 3 – Including commercial entities as consumers adds an element of complexity, as commercial entities also recycle some packaging, but their material is not always



managed through municipalities – though sometimes it is. Supply data, then would have to include all covered material in the state. Typically, the “numerator” would include material a municipality recycles, which in the case of most municipal reimbursement programs aligns with residential material, which generally aligns with “sold at retail.” In this case it appears all non-exempt products are to be included (to be verified) in terms of denominator (shipped into/sold into state) and material recycled, for measurement of progress/goal purposes. Please verify that is correct. For reimbursement purposes the portion managed through participating municipal programs will have to be tracked.

Comment 4 – Please clarify how material that is managed through wholesale or retail backhaul is to be counted in the system relative to progress toward achieving goals, as well as producer fees. It seems it must be “proven” that material is managed through backhaul (in which case it may go out of state or to paper stock dealers, etc.). It is unclear who is responsible for reporting the management of that material and how that data is to be obtained.

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; 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 is branded by a person that meets the requirements of subsection (1) and has no physical presence in the United States.
- (3) Adds packaging material to another producer’s product for distribution directly to a consumer.

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).

Comment 1 – Please clarify that an entity does not have to be located in Maine to be considered a producer.

Comment 2 – Please clarify the significance of “sole entity” in (2), above. Please clarify what happens when there are multiple parties that import the product into the state.

Comment 3 – Please clarify the meaning of “imports” in (2), above. It is unclear if it means the person importing the product into the state of Maine from outside of the country, or from anywhere, including another U.S. state.

Comment 4 – Please clarify what is meant by (3) above. This seems like it could result in confusion over who the responsible party is.

Comment 5 – Please clarify who is ultimately the responsible party. Is any/all packaging that is “filled at the point of sale” included? If so, who is the responsible party (i.e., producer) of such packaging?



Product. “Product” means an economic good, or the delivery of an economic good, that is marketed or sold.

Product includes material sold in bulk for use in containing, protecting, delivering, or presenting items at a later time, but does not include packaging material bought at the point of sale for use containing, protecting, delivering, or presenting other purchases.

Comment 1 – It is unclear why the definition of product being included. If it is to discern products from packaging and thus exclude bulk material from the definition of “packaging,” this should be explicitly stated.

Comment 2 – The second paragraph creates uncertainty about who the responsible party is in the case of packaging that is converted (e.g., cartons and pouches). It appears to be to identify such material as a product, and not a package, but we believe if this is the case it should be clearly stated.

Comment 3 – We suggest the second paragraph include those that otherwise supply, distribute or otherwise provide or transfer (i.e., not sell) the packaging material.

Readily Recyclable

1. Definitions.

Base material. “Base materials” are glass, metal, paper, plastic, by resin type, and mixed.

Refill. “Refill” means an operation by which an end-user fills its own container.

Remanufacturing facility. “Remanufacturing facility” means the facility responsible for the final processing of a commodity prior to its use in a new product.

Comment 1 – Please clarify what is meant by “mixed,” under base material. Is it mixed materials including mixed resin types?

Comment 2 – We suggest the definition of base material be revised to state: “Base materials” are glass, metal, paper, plastic or any combination of the aforementioned.”

Comment 3 – We suggest the definition of “refill” be removed from this section. This definition is limiting (as it only pertains to containers owned by the end user), and we believe it does not belong under “readily recyclable.”

2. Process for creating the initial packaging material types list and initial readily recyclable list (Page 2).

3. Process for annual review and update of the readily recyclable list (Page 3).

Comment 1 – We suggest that a stakeholder Advisory Board or Committee with representation from a wide array of stakeholders, including haulers, processors, and producers, provide input into the packaging material lists and readily recyclable lists – both initial and updates. This will do more than “allow” input from a broad base of stakeholders – it will ensure it.

Comment 2 – Based on the time frames described in 2. and 3. above (and other timelines described in the Conceptual Draft Rules), it appears that the annual reports would have to be due sometime in late January. This is not adequate time for producers and the SO to



complete the analyses required to submit the annual report. Instead, we suggest they be due June 30. Comments could be received by July 31 and report reposted. Dept. holds meetings, receives inputs, makes changes to list by Sept. 30 for the following year.

G. Transitional Period (Page 4)

Comment 1 – This section includes a prescriptive process that may make implementation more difficult.

Comment 2 – It is unclear why “refill” is defined within “readily recyclable.” This seems misplaced.

Comment 3 – The definition of refill seems very limited, as it only applies to a container owned by the end user. Is this to allow for a separate definition of reuse? Please clarify.

Comment 4 – Consider requiring the municipalities to add materials within two years or petition the Department for additional time.

4. Representative audits (Page 5)

A. Waste audits (Page 5)

Comment 1 – We recommend clarifying the purpose of conducting waste audits by weight and volume. This requirement would be complex. For example, at what point in the material collection, transport, disposal process is volume to be determined? The volume of packaging is different at all those points. We suggest waste audits be done by weight only.

Comment 2 – The waste audits are to determine the amount of packaging in the waste stream by base material. Some resin types for film plastics cannot be identified once disposed, e.g., flexible film packaging by resin type. This requirement needs to be adjusted.

Comment 3 – Sub section (3), level of precision states that “For each audit, the SO must collect and analyze samples until results estimate the relative weight packaging material, by base material, with 90 percent confidence, ± 3 percent.” Especially initially, and because audits are to be done by base material including resin type, it is our opinion that the costs will exceed the benefits of such a high level of precision, at least initially. We suggest the DEP start with a more streamlined approach and work to build up the level of precision, including adding sorts by resin type, over time.

B. Litter audits (Page 5)

Comment 1 – The litter audit is required to include 2 square acres or 5 miles, but it does not provide a cut-off for weight. We suggest a certain weight limit be applied – e.g., or 500 pounds, whichever is first.

Comment 2 – Please clarify whether a 5-mile roadway audit includes both sides of the road.

(2)... “The SO must collect and sort all litter into non-packaging material and packaging material, and further sort the packaging material by packaging material type. The SO must then sort packaging material by producer, to the extent possible.”



Comment 1 – It is unclear what the purpose of sorting by producer is, and what will be done with this data.

Comment 2 – Sorting by producer has limitations. It will be difficult to identify the producer of certain packaging after it has faded/decomposed. Additionally, the area chosen for the litter audit will not necessarily be representative of litter statewide.

Comment 3 – Later in the Conceptual Draft Rules (under “Goals”), it stipulates that progress made toward the litter goal requires litter to be measured by unit. In effect, the litter audits also need to include material counts in order to obtain this information, though this is not specified under description of the litter audits. Payments and other aspects of this program are based on weight, therefore progress toward achieving this goal should be based on weight.

Comment 4 – There is an element of inequity in the litter audits, in that many of the materials collected will not be packaging materials. For example, materials that end up in litter often include items such as beverage containers (many of which are excluded as packaging material in Maine,) cigarette butts, straws, food waste, and other non-packaging items. Many items may also be difficult to distinguish. Producers are paying in to manage their packaging and associated goals, but this will cause producer fees to be expended, in part, conducting litter studies on non-packaging material and as a result, we believe, this goes beyond the intended scope of the legislation.

5. Program Goals (Page 6)

A. Reduction

“...Relative to the first producer reporting, the total weight of packaging material reported by producers should be reduced by no less than 15 percent from 2030 to 2039, no less than 30 percent from 2040 to 2049, and no less than 50 percent from 2050, onward.” The percentage of the investment must be at least equal to the difference between the percent reduction goal and the realized percent reduction as reported two calendar years prior.

Comment 1 – This approach of measuring the absolute amount of packaging assumes no growth in population or in product consumption. This metric should be measured relative to total quantity of products (units) sold into the state. The state might consider tracking based on a per-capita basis, as well.

Comment 2 – This goal encourages producers to switch to lighter weight packaging even if it does not offer greater environmental benefit and potentially penalizes producers that do not have an ability to lightweight their packaging due to legislative requirements. For example, producers of items that are contained in gas cylinders (if they are not exempt) would have little to no opportunities to lightweight their packaging. It could also unfairly penalize certain material formats (e.g., glass) over others.

Comment 3 – Producers (and packaging manufacturers) that have already begun source reduction efforts should not be penalized for being early innovators. There should be a mechanism to allow credit for historical achievements.



Comment 4 –We recommend clarifying “total amount of investment.” It seems all potential investments need to be considered jointly, so the relative cost and benefit (which may impact more than one goal) can be assessed, rather than allocating funding via such an equation.

Comment 5 – The description here and under other goals indicates if the goal is not met “the Department will dedicate a percentage of investments...” There is lack of clarity regarding who decides which investments occur. In the statute it appears that the SO proposes investments, and the Department approves. This process needs further clarification.

B. Reuse

“Reuse. The percent by weight of total packaging material reported by producers that is managed for reuse should be no less than 10 percent from 2030 to 2039, no less than 20 percent from 2040 to 2049, and no less than 30 percent from 2050, onward. If a goal is missed, beginning the following calendar year, and continuing every year in which the goal remains unmet, the Department will dedicate a percentage of investments to projects supporting reuse and refill.”

Comment 1 – There is no definition of reuse in the draft rule, only a definition of refill. There are various references to either reuse or both reuse and refill throughout the Conceptual Draft Rules. The Maine law includes a definition of reuse that refers back to another product stewardship statute (Title 38, Chapter 18, [Section 1771](#)), which defines reuse as follows: “Reuse” means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced. We recommend this concept be revisited so as to ensure that the refilling of packages by the original consumer in their home or outside the home is incorporated into this goal.

Comment 2 – The measurement of reuse can be difficult as the original producers may not be the same producer that prepares the package for reuse. In many cases the consumer may prepare the item for reuse (e.g., a reusable mug, cup, bag, propane tank, etc.). It is also not clear if this approach is meant to capture all business-to-business reusable packaging (e.g., milk crates, bread trays, pallets, produce boxes, large format sacks). While these types of reusable packaging provide a good news story, requiring reporting for these adds administrative burden with little benefit. Reusable and refillable packaging should not be obligated to report.

C. Postconsumer recycled material

“For each base material, the percent of the total weight of packaging material reported by producers that is postconsumer recycled material should be no less than 10 percent from 2030 to 2039, no less than 20 percent from 2040 to 2049, and no less than 30 percent from 2050, onward.

Comment – Packaging materials that are restricted from using postconsumer recycled material due to federal law (e.g., FDA for food contact, 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.



D. Readily Recyclable

“The percent of packaging material that is readily recyclable should be no less than 50 percent from 2030 to 2039, no less than 75 percent from 2040 to 2049, and no less than 100 percent from 2050, onward.”

Comment 1 – Please clarify whether the percentage is meant to be measured relative to all packaging supplied into Maine or by certain subsets.

Comment 2 – The penalties are worded such that if the goal is not met, producers of non-readily recyclable packaging must pay a certain amount multiplied by the “per ton cost of managing the most expensive readily recyclable material.” As we suggest in other sections, producers’ allocation of fees should be based on costs to manage their packaging type. This should read that producers of non-readily recyclable packaging must pay a certain amount multiplied by the “per-ton fees” charged to the most costly readily recyclable packaging, not costs.

E. Litter

“The percent of litter that is packaging material as measured in units should be less than 80 percent of cumulative litter collected during litter audits from program inception to 2029, less than 50 percent of cumulative litter collected during litter audits from 2030 to 2039, and less than 30 percent of cumulative litter collected during litter audits from 2040 to 2049. From 2050, onward, the percent of litter that is packaging material in each litter audit conducted should be less than 15 percent.”

Comment 1 – Please confirm that this applies only to packaging material that is included in the EPR program – e.g., beverage containers included in the beverage deposit return system are not included, etc.

Comment 2 – Again, clarity is needed regarding investments, and how that total dollar amount dedicated to investments is determined, by whom.

Comment 3 – As is described above, given that all other aspects of the regulation are based on packaging weight, the litter goals should also be expressed in weight (vs units). Additionally, measuring by “units” is not always clear and can introduce unnecessary complexity. For example, if a banana peel is torn apart, is each piece a unit?

G. Collection.

“The percent of readily recyclable packaging material expected to be managed by participating municipalities that is collected and sent for recycling by participating municipalities should be no less than 60 percent from 2030 to 2034, no less than 80 percent from 2035 to 2039, and no less than 90 percent from 2040, onward.”

Comment 1 – These are high relative to other collection goals we see.

H. Base material-specific recycling

“For each base material, the percent of packaging material expected to be managed by participating municipalities that is ultimately recycled should be no less than 40 percent from 2030 to 2039, no less than 70 percent from 2040 to 2049, and no less than 80 percent from program year 2050, onward.”



Comment 1 – These are high goals relative to other recycling rates we see.

Comment 2 – Because different material types have different rates of recycling currently, we suggest that goals account for these differences. Nova Scotia and Ontario, for example, have different recycling rate goals for different material types. Ontario’s categories are: flexible plastic, rigid plastic, paper, metal, glass and beverage containers.

Comment 3 – It is hoped that over time new systems develop for additional types of packaging. To require them to achieve the same targets as other material types or to be penalized does not encourage innovation. There needs to be an “on ramp” for such packaging.

Comment 4 – Please clarify that this is a collective goal for all participating municipalities in the state.

Comment 5 – Please describe how “that is ultimately recycled” is determined, and whose responsibility it is to identify that data.

I. Overall recycling rate

“The percent of packaging material expected to be managed by participating municipalities that is ultimately recycled should be no less than 40 percent from 2030 to 2039, no less than 80 percent from 2040 to 2049, and no less than 90 percent from 2050, onward. The amount of packaging material expected to be managed by participating municipalities is the statewide total tons of packaging material (as reported by producers) divided by the State’s population and multiplied by the municipal populations of the participating municipalities. The amount of each packaging material type ultimately recycled is the total amount of the packaging material type sent for recycling multiplied by the recycling yield. The amount of packaging material ultimately recycled is the sum of the amounts of each packaging material type ultimately recycled.”

Comment 1 – Please clarify that this includes all packaging sent to recycling in the state, whether by municipal programs or otherwise. Please describe who is responsible for identifying the quantity of material recycled through means beyond municipal recycling.

Comment 2 – Please clarify whether reusables/refillables would be included in the numerator or denominator.

Comment 3 – The rate of increase is not realistic. For example, to increase the goal from 40% in 2039 to 80% in 2040 is not realistic.

Comment 4 – In general, producers are penalized when certain goals are not met, though the actions of municipalities and individuals also play a role in the success of the program. We suggest that strategies to incentivize municipality and individual responsibility be incorporated.

Producer Reporting and Payments (Page 9)

1. Definitions (Page 9)



D. **Toxics.** “Toxics” means priority chemicals listed by the department in accordance with Toxic chemicals in children’s products, 38 M.R.S. §§ 1691–1699B (2019); PFAS and phthalates as defined under Reduction of toxics in packaging, 32 M.R.S. §§ 1731–1738 (2019); and priority chemical listed by the Department in accordance with Toxic chemicals in food packaging, 32 M.R.S. §§ 1741–1747 (2019); and proven precursors.

Comment 1 – The statute indicates that “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. We recommend that the rules also indicate that toxics refer to intentionally introduced chemicals. This is more in alignment with how toxics are defined in other states’ packaging EPR laws.

2. Defining Packaging Material (Page 9)

B. **Base material.** A packaging material type must have a defined base material. If one material type accounts for at least 60 percent of the weight of a packaging material type, the base material is the majority material in a packaging material type. If no one material accounts for at least 60 percent of the weight of a packaging material type, the base material is considered mixed.

Comment – California is proposing that the base material, which they call the “material class,” be determined by the material that represents the greatest proportion of the package by weight. We suggest that Maine adopt the same criteria.

C. **Readily recyclable** (Page 10). The Department shall place packaging material types that meet the following criteria on the readily recyclable list.

1. **Marketability.** A packaging material type is marketable if:
 - a. There are at least 3 operational remanufacturing facilities that recycle the packaging material type,

Comment – We believe it may make sense to allow two markets if they are stable. Requiring three markets may be very limiting and may discourage innovation.

2. **Throughput.** A packaging material type has sufficient throughput if:
 - a. It is common enough in the packaging stream to warrant separate sortation. Packaging material that makes up at least 1 percent by weight of the total packaging material used to contain, protect, deliver, present, or distribute products sold, offered for sale, or distributed for sale in or into the state, as reported during annual producer reporting is common enough to warrant separate sortation. Or,
 - b. It can be included in a commodity already used to market packaging material without increasing the contamination in that commodity or changing the specification of the commodity to one of a lower value.



Comment – The term “throughput” is unclear here. It seems to be talking about prevalence in material stream and compatibility with existing material streams. We recommend clarifying this term.

3. **Recycling yield.** A packaging material type has sufficient recycling yield if at least 60 percent of the weight of that packaging material type that is managed for recycling in Maine is ultimately recycled. Where the recycling yield at remanufacturing facilities is unknown, it is assumed to be the percent of the base material in packaging material of that packaging material type, as reported by producers.

Comment 1 – Some materials may be recycled out of a state and as a result it is unclear why it stipulates managed for recycling in Maine. We suggest that the reference to be removed.

Comment 2 – It is not clear whose responsibility it is to assess the yield rate; how frequently; and how specific the yield rate for each material subset. It might be helpful for there to be an assumption of some industry standard/average.

Comment 3 – The last section is a bit of an assumption and may encourage the use of markets where yield rates are not known.

- D. **Component** (Page 11). Producers report packaging material by component, and one product’s packaging material can have multiple components, as defined by the manner in which the packaging material is likely discarded. Components that are attached at the time of sale are assumed to be discarded separately if they are routinely separated during opening and use of the product, unless they can be reattached without the use of tools and the packaging material tells the consumer to reattach the components for the purpose of recycling.

Comment – It is unclear what the state is trying to achieve in having producers report each component. This could be a significant level of effort for producers. Further clarification is required to better understand the rationale for this proposal.

3. Initial Registration and Payment (Page 11)

- B. Producers selling, offering for sale, or distributing packaging material in or into the State when this rule goes into effect must pay an initial registration fee, as invoiced by the SO in accordance with its approved proposal to the Department. The SO must not charge a producer more than the producer’s estimated annual registration fee for the first program year, as determined by the SO in accordance with its approved proposal, unless the producer agrees to a higher fee.

Comment – Please confirm whether the SO can set fees in the proposal. The SO must be able to establish an initial registration fee it can rely on to fund the start-up of the SO.

4. Producer Reporting (Page 11)

- A. **Registration.** A producer must provide the following information to the S.O. when it begins producing packaging material and must update the S.O. whenever this information changes.



Comment – It will be difficult to require producers to report every time a change is made. It should be up to the SO to indicate when they must report information that has changed. That will likely be done on an annual basis.

B. Annual reporting for producers that are not low-volume producers (Page 12).

Producers that are not low-volume producers or their authorized third-party reporters must report the following packaging material details to the SO by May 31st of each program year. Packaging material details must be reported for each component produced, as follows:

Comment 1 – Reporting obligations should be simplified to allow calculation of fees to support statutory obligations but without adding additional complexity that is unnecessary and could introduce inaccuracies given producer data may be organized in different ways. Programs in Canada, for example, have historically not required producers to report by SKU. Instead, they have been reporting by aggregate weight of packaging-by-packaging type. Producers in North America are not used to reporting by SKU.

Comment 2 – Reporting should not require brick code as not all companies use this.

Comment 3 – We assume producers are to report data pertaining to the prior calendar year. Please clarify this.

Comment 4 – Please define authorized third-party reporters.

Comment 5 – B. 9. states that the producer should report “Whether the producer can certify the absence of toxics.” It is not realistic to expect producers to prove a negative. They can only attest that no toxics were intentionally added to the packaging. This is how most states’ EPR laws are worded.

Comment 6 – We suggest an incentive fee rate tied to recycling rate by base material type.

C. Annual Reporting for Low-Volume producers (Page 13)

Comment – Generally EPR programs include a de minimis threshold below which producers do not need to report.

D. Estimates (Page 13)

Comment – It appears that it would be allowable to use the ABOM method (Average Bill of Materials) that is allowable in Canada. In Canada, however, using this method of reporting under grouping of similar packaging material is allowed, but actual weights of representative packaging are also required. We recommend this be the case here.

1. Estimating weight from units (Page 14)

- d. When the tons of a component produced are estimated, fees assessed under SECTION ECO-MODULATION FEES must assume the following (Page 14):

Comment 1 – It is unclear how the assumptions that are made and result in higher eco-modulation fees relate to the fact that producers are estimating the weight of components. We suggest these assumptions be revisited, as some do not relate to the fact that weight is



assumed. For example, a producer may have to estimate the weight of components but may be aware that the components contain recycled content. Also, the fact that a producer estimates components' weight does not mean the component is more likely to be littered, or that the yield rate is only 60%. It is unclear why producers would be penalized for using an estimation technique when data is lacking.

2. Estimating units to the State (Page 14). Producers that cannot obtain information on the number of units produced must estimate the number of units produced as follows:

Comment 1 – this should say number of units distributed in the state or something similar, not produced.

Comment 2 – It would help to fully understand the requirements of this section if you provided a definition of distributor vs. retailer.

Comment 3 – Please clarify that reporting based on actual shipments at the national level and normalized for Maine's population are not subject to malus fees associated with estimated data.

E. Auditing (Page 15)

3. The SO must provide a mechanism to anonymously report suspected irregularities in producer reporting. In addition to the random audits required by SECTION AUDITING 2, the SO must annually audit up to two brands for which substantiated irregularities have been reported and report the results to the department.

Comment – Greater clarity is required on what constitutes a "substantial irregularity." Any "irregularities" should be substantiated before a producer is subject to an audit.

5. Producer Fees (Page 15). A producer must pay fees based on the packaging material it produced. The SO must invoice producers as soon as possible following producer reporting, and a producer must pay fees owed in accordance with SECTION PRODUCER FEES by July 1st of each program year. On July 2nd of each program year, the SO must apply a late fee of 10 percent of the total owed to the outstanding invoices of producers that are not low-volume producers unless the Department waives the late fee.

Comment 1 – If producers do not pay into the system until July 1, then it seems the SO is fronting all costs for the first half of the year. With no funds collected in the first six months of the year, there will be no ability to fund the program. The reported quantities should be used to set fees for the following year. This allows invoices to be issued in January of the following year to fund the following year's expenditures. For example, if a report is due May 31, it would show quantities supplied the prior calendar year (2023). That data is used to set fee rates for the following year's fee schedule (2025). Those fees are levied based on data reported the prior year (2024) for the year before that's supply (2023). This also allows the fee rates to be calculated and consultation with producers to occur in the fall each year.

Comment 2 – A 10% late fee for being late one day is severe.

Comment 3 – Greater clarity is required regarding why the department would have the authority to waive a late fee if the SO is doing all the invoicing, managing the funds, etc.



Comment 4 – Time frames need to be more realistic. If an SO receives data by May 31, it will not be able to invoice and receive payment for all producers by July 1. A minimum of 60 days would be needed.

A. Fees for Producers Other than Low-Volume Producers (Page 15)

1. Annual registration fee (Page 15)

Comment – Please clarify what is meant in 1. B. by “The SO Budget.” We believe this means the amount of funding the SO needs to operate, but excludes investments and municipal reimbursements, but this needs to be defined in detail. For example, would this include the cost to conduct all audits? Even those for which there is no limit in terms of the number that need to be conducted?

2. Packaging material type fees (Page 16)

- a. For a packaging material type that is readily recyclable, the producer must pay, per ton produced, the average per ton management cost for recycling that packaging material type during the prior calendar year. The average per ton management cost is the total amount to be reimbursed to municipalities for recycling the packaging material type during the prior calendar year divided by the tons of the packaging material type recycled by participating municipalities.

Comment – If the producers pay the estimated cost to manage each packaging material type that they supply into the state, there will be a very large fund surplus. We believe that producer fees should be set to equitably cover the costs that the system is expected to incur.

3. Incentive Fees (Page 16)

Comment – We recommend that incentive fees not be levied until after the third year of the program’s operation such that producers and the SO can get a handle on their data and actual costs.

- a. Post-consumer recycled material fee. For components that do not meet post-consumer material goals, as defined in SECTION GOALS PCR, the producer must pay a per ton fee equal to 10 percent of the packaging material type fee, unless the relevant material base type PCR goal is unmet, in which case the percent increase in cost must be figured as required by SECTION GOALS PCR.

Comment 1 – This requirement places an unfair burden/disadvantage on producers that cannot use recycled content due to food contact and other legal requirements or limitations.

Comment 2 – It is unclear why an additional fee is warranted and what meeting or not meeting the PCR goals means at the component level when the base material PCR goal is met.



- d. Labeling. For packaging that is labeled to indicate or encourage use of a material management pathway that is unavailable or improper in the State, the producer must pay a per ton fee equal to 30 percent of the packaging material type fee.

Comment – Please describe who is to monitor the labeling requirement.

- e. Yield. For packaging material that will not be recycled, as measured by the difference between reporting points 5 and 6 in SECTION PACKAGING MATERIAL DETAILS BY COMPONENT multiplied by the units of the component produced, a producer must pay a per ton fee equal to 10 percent of the component’s packaging material type fee. If a component’s packaging material type is not readily recyclable, this fee does not apply.

Comment – Yield rates can differ from mill to mill. Please clarify the requirements around data collection for yield rates.

- C. **Adjustment to Fees for Tons Collected Through an Alternative Collection Program** (Page 17). Each calendar year, the SO must adjust producer fees to account for each packaging material type managed through an alternative collection program.

Question – Under 1, a, it says “Subtract the tons of a packaging material type attributed to a producer from the tons of the packaging material type produced for the purpose of calculating the annual registration fee share.” Should this say: “subtract the tons of a packaging material type managed through an alternative collection program”?

- b. Adjust packaging material type fees and incentive fees by finding the average per ton cost owed for packaging material of that packaging material type, multiplying that per ton cost by the tons attributed to the producer by the alternative collection program, and reducing the producer’s fees by that amount.

Comment 1 – We suggest the producer simply deduct the tons recycled through an alternative collection program from the tons reported as supplied to the SO for payment purposes.

Comment 2 – Please describe the process needed to identify and prove tonnage recycled through an alternative collection program, and how these tons are to be allocated to specific producers, as well as documentation type needed and responsible party.

6. Packaging Stewardship Fund Cap (Page 18)

Comment 1 – Allowing the fund to reach 5x average annual expenditures is a very high cap. Other jurisdictions set this limit at 60% of the program expenditures. This is more reasonable.

Comment 2 – Please clarify what an investment proposal is, and who would make such a proposal.

7. Transparency and Benchmarking for Producers (Page 18)



- A. The SO must annually produce a document that lists the percent of each brand’s packaging material that is readily recyclable, reusable, meeting post-consumer recycled material content goals, able to be certified as containing no intentionally added toxics, and not labeled to indicate or encourage use of a material management pathway that is unavailable or improper throughout the State.

Comment 1 – Here, and throughout this section it reads “brand.” It is unclear if that is intentional. This would be an entirely different level of reporting. Brand is not the same as producer.

Comment 2 – How do you envision producers and the SO measure progress toward achieving reuse/refill goals?

Comment 3 – Many of the program goals referenced are based on percentage of total packaging material weight across brands, so it is unclear why reporting would be warranted at the brand level.

- C. The SO must annually produce a document that relates available data on the average price per unit for packaging material associated with products of a given size and brick code, the highest price per unit paid for components associated with products of a given size and brick code, the least expensive price per unit paid for components associated with products of a given size and brick code, and a description of this least expensive set of components.

Comment 1 – Again, not all producers use brick codes.

Comment 2 – It is unclear whether the rules require reporting the cost producers pay for each component, or the cost to manage each component. Also, the purpose of this is unclear, and the requirement seems onerous.

8. Alternative collection programs (Page 19)

Comment 1 – Please clarify if there is an expectation that alternative collection programs will be audited to identify and allocate material collected through them to individual producers and, if so, whose responsibility it is to conduct such audits.

Comment 2 – Please explain how the fees to be paid to the Department described in subsection D were estimated.

Comment 3 – Please explain whether alternative collection programs include reuse/refill programs and, if so, whether the SO would have any responsibility beyond municipal reimbursement, if the municipality had some role in establishing or running the program.

CONCEPTUAL DRAFT RULE – INVESTMENTS

1. Definitions (Page 1).

- a. **Major investment need.** “Major investment need” means an identified need that requires more funding from the packaging stewardship fund than can be allocated to it during a single calendar year.



Comment – “Major investment” should include an objective dollar amount. Without such a value, “major investment” is too subjective. We suggest any investment that is greater than \$500,000. Investment criteria

2. Investment Criteria

- a. In the case of proposals for new infrastructure, the proposal must designate the infrastructure as the property of a municipality, school administrative unit, or career and technical region unless the new infrastructure is designed specifically to enable reuse, in which case a 501(c)(3) can also be designated as the property owner. These conditions do not apply to proposals for investments in education or improvements to existing infrastructure.

Comment 1 – It is too limiting to only allow the stipulated types of entities to receive investments, even though the conditions do not apply to existing infrastructure. For example, investment in a new reuse or refill system could benefit recycling in the state. If a private for-profit entity receives an investment, however, there should be procedures in place to ensure that the investment is used as intended for the period intended.

Comment 2 – It is unclear what constitutes “new infrastructure.” This requires clarification and objective criteria.

Comment 3 – We suggest the word “education” be added after “career and technical” in the description above.

- d. In the case of proposals for infrastructure, the proposal must be sustainable, as shown by projected revenues equal to or in excess of the funding required for operation.

Comment – In some cases there will not be revenues. There may be a cost that is in line with or less than current costs to manage the same material, or there may be no comparable costs if a new program is being established.

- e. In the case of proposals for infrastructure, the proposal must fulfill an unmet need and be cost effective, as shown by:
 - ii. An analysis of throughput demonstrating that for every \$2000 of investment, expressed in January 2021 dollars and adjusted according to the U.S. Bureau of Labor Statistics’ Consumer Price Index, there will be at least 1 ton of material recycled.

Comment – We realize there must be some parameters around investments; however, this is a somewhat arbitrary level and expectation of return. For example, investing in PS densification which costs over \$1,000 per ton, would not necessarily increase diversion, but could dramatically decrease transportation cost and improve environmental performance of the system. Clarification is required on how such a proposal would be assessed.

3. Needs Assessment (Page 2).

- a. The SO must conduct a recycling needs assessment within 18 months of entering a contract with the Department. The recycling needs assessment must include the following:



- i. Identification of municipalities that do not provide for the collection and recycling of readily recyclable materials and an analysis of the amount of packaging material available for management.
- ii. For each municipality or regional group of municipalities that do not provide for the collection and recycling of all readily recyclable materials, the assessment must identify the infrastructure necessary to:
 1. Collect one or two mixed packaging streams, or
 2. Collect packaging material separately by base material, and
- iii. The Department may request that the needs assessment provide an assessment comparable to that described in subparagraph i and ii for additional packaging materials that are not readily recyclable.
- iv. The needs assessment must identify regional investments needed to efficiently manage packaging material, whether collected in one or two mixed packaging streams, or separately by base material, and provide an estimated range for the cost of those investments; and
- v. The needs assessment must provide a summary of the ways recycling infrastructure is used to manage reusable packaging material in other jurisdictions and examples of investment proposals that would allow for reusable packaging to be managed through municipal recycling systems in the State.

Comment – We do not believe reusable packaging should be managed through municipal recycling systems, and we are unaware of recycling infrastructure being used for reusable packaging material. Typically, reusable packaging has a separate logistics and processing system. We suggest deleting or editing this reference to reuse programs managed through municipal programs.

4. Submittal of investment proposals. Investment proposals must be submitted using a form provided and approved by the Department.
 - a. The SO must provide a mechanism for accepting investment proposals from interested entities on an ongoing basis.
 - b. The Department may work on the development of an investment proposal and may issue an informal request for investment proposals to meet an identified need.

Comment 1 – It is unclear where the Department and SO's roles and responsibilities lie. This area requires further clarification. The statute states that the SO makes investments, and the SO submits proposed investments to the department for approval. The rules do not seem to support this approach.

Comment 2 – Please clarify what an informal investment proposal is.



Comment 3 – Please clarify whether an investment proposal, informal or otherwise, could be submitted by a private for-profit entity. Under this current draft rule concept, it appears it could not.

5. Annual evaluation of investment proposals (Page 3).

- a. **Public comment.** The SO must include summaries of the investment proposals it received during the previous calendar year in its annual report and provide a mechanism for requesting and receiving a full investment proposal. A summary must include the submitter’s name, the purpose of the investment, a brief description of the work plan and proposed services, and the cost of the investment proposal. For a period of 30 days after the SO posts its annual report, the Department will accept comments on the investment proposal summaries, and the Department will share comments received on its website.

Comment 1 – Clarification is needed regarding full investment proposal. Would this be requested by members of the public? Does this need to be public information? What if proposals contain sensitive information?

Comment 2 – Please clarify that although the SO receives investment proposals on a continuous basis, it only submits them to the department, in July (as described below).

- b. **Stakeholder input.** During annual reporting, the SO must include an optional survey that asks municipal reporting entities and producer reporting entities to comment on and rank investment proposals included in its annual report. Stakeholder comments and ranking received must be passed to the Departments with investment proposals by the second Monday in July.

Comment 1 – We suggest that the Annual Report be due June 30th. Therefore, this would be too close to that deadline.

Comment 2 – As is described above, we suggest that an Advisory Board or Committee be established to help prioritize and provide insights regarding potential investments. This would be comprised of various stakeholders including producers, processors, haulers, and municipalities.

- c. **SO’s evaluation.** The SO must provide an evaluation of each investment proposal that includes a determination on whether the proposal meets each investment criterion. The SO must include its evaluations when it passes investment proposals to the Department by the second Monday in July.
- d. **Department evaluation.** The Department will evaluate each investment proposal to determine whether the proposal meets each investment criterion.
- e. **Discussion.** The SO and the Department will meet to discuss investment proposals including any differences between the SO and Department’s evaluation of investment criteria and the SO’s priorities for investment. If after discussion, the SO’s and the Department’s evaluations of an investment proposal still differ, the Department’s decision will determine an investment proposal’s eligibility for funding.



Comment 1 – This process is unclear. It is stated that the department must review and evaluate all investment proposals within 90 days, yet it calls for an annual evaluation of investment proposals.

Comment 2 – It is unclear who receives investment proposals – the SO, the Department, or both. It seems the SO must have a process for receiving them on an ongoing basis, and the Department only receives them from the SO annually, and from any “informal request for investment proposals.” Clarification is needed.

6. Funding availability (Page 4).

a. Allocating funding to major investment needs.

- i. The Department will develop and maintain a savings plan to fund major investment needs. The Department will review the savings plan on an annual basis to allocate new funds to major investment needs and reallocate funds among major investment needs to accommodate any changes to priorities or timelines that arose during the previous calendar year. The SO must maintain a copy savings plan on its website. The savings plan includes the list of major investment needs, their estimated costs, and the years in which the Department plans to fund them.
- ii. The Department may propose the addition of a major investment need to the savings plan. When proposing a major investment need, the Department must identify the investment need, estimate its cost, and project the year in which it will fund the major investment need. A proposed major investment need should be included with investment proposals in the SO’s annual report and in the optional survey provided to municipal reporting entities and producer reporting entities during annual reporting. The Department will consider comments provided, consult with the SO, and make adjustments as appropriate before adding a major investment need to the savings plan.
- iii. Two years prior to the projected investment year of a major investment need, the Department will issue an informal request for proposals to meet the identified investment need. The Department may approve an investment proposal that meets the identified need and the investment criteria, but the funding for an investment proposal must not be dispersed by the SO until the full amount required has been saved.

Comment 1 – This seems like a long process. We suggest one to two years.

Comment 2 – Please clarify roles and responsibilities for major investments. For example, who is in charge of the RFP process? Who awards the project? Who makes payments to the successful bidder? The statute says the SO makes investments, but as described here, it is unclear what the SO’s role is and what the Department’s role is.



Comment 3 – As part of the fee setting rules, typically the portion of investment that benefits each base material will be allocated to each base material and incorporated into those fees.

b. **Defining available funding** (page 5).

- i. The Department will not approve funding for investments such that expenditure would leave the stewardship fund with less than the required funding for one year of municipal reimbursements and program administration, as estimated from the prior year's expenditure.

Comment – Further clarification is required regarding the roles of the Department and the SO. For example, the Department approves the funding and establishes a savings plan while the SO manages the fund and makes investments, according to the statute. Clarification is needed.

- ii. The Department will approve investment proposals such that any funding percentages required by SECTION PROGRAM GOALS are met.
- iii. After the requirements of subsections i and ii are met, the Department will allocate funding to previously identified major investments in accordance with the savings plan.

Comment – Please clarify that this does not include major investments that have already been approved.