



October 31, 2023

Maine DEP, via email: MainePackagingEPR@maine.gov

RE: CCNA Feedback on Maine's Conceptual Draft Rules for Stewardship Program for Packaging

The Carton Council of North America (CCNA) appreciates the opportunity to provide feedback to Maine DEP during the informal rulemaking process regarding Maine's Stewardship Program for Packaging (MRS Title 38, §2146). The CCNA, an industry organization, was formed in 2009 and is committed to growing carton recycling by promoting both recycling technology and local collection programs, as well as growing awareness that cartons are recyclable. Following are our comments and questions pertaining to Maine's Conceptual Draft Rules.

Conceptual Draft Rules on Municipal Reimbursement

1. Definitions (page 1)

A. **Commodity.** "Commodity" means processed material that meets an industry specification, and

(3) For paper, does not require further processing before entering a pulping operation; and

Comment – We suggest that for paper this definition not be limited to pulping operations, but also to include the addition of "or other recycling operations," as cartons can be used in their entirety in the manufacturing of building products.

3. Defining Municipal Reimbursement (page 3)

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 – While we recognize that not all packaging will initially make the "readily recyclable" list, we believe that fees going into an EPR program for packaging should fund the recycling system, not disposal. Although we agree that producers of non readily recyclable packaging should pay into the system, and at a rate higher than readily



recyclable packaging (all else being equal), we believe these funds should be used to help fund innovation and education that eventually allows for currently non readily recyclable packaging to become readily recyclable.

Conceptual Draft Rules on Exemptions, Definitions, Recycle Ready, and Producer Fees

Scope Definitions

- E. **Product.** “Product” means an economic good, or the delivery of an economic good, that is marketed or sold. (page 2)

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 – Please provide a reason for including the second sentence of the above definition of “product.” It appears to be in order to clarify that such items (considered to be products) are not considered to be “packaging,” however this needs to be clearly stated.

Readily Recyclable

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

- A. For 60 days beginning the effective date of this rule, the Department will accept written comments on, suggestions for, and information related to the proper classification of packaging material into packaging material types and the status of those types with respect to the criteria in SECTION READILY RECYCLABLE through the MainePackagingEPR@maine.gov email address.
- B. Within 90 days of the effective date of this rule, the Department will publish a proposed packaging material types list and readily recyclable list and include in an appendix all comments, suggestions, and supporting information received during the 60-day comment period.
- C. The Department will accept written comments on the proposal for 30 days following its publication and will republish the proposal, attaching comments received.
- D. Within 30 days of the second publication of its proposal, the Department will hold a meeting, both in person and virtually, to discuss the comments prior to the Department finalizing the initial packaging material types list and initial readily recyclable list. The Department will make reasonable efforts to ensure recycling establishments and potential stewardship organizations are present.

Comment – We believe this process, as well as updating the list and determining investments, could benefit from a more formal governance structure, such as a Board with a full array of stakeholders represented, including municipalities, processors, haulers, and producers. This would provide more assurance of balanced input.

4. Representative Audits (page 5)

A. To better understand the presence of packaging material in the waste stream, the SO will conduct waste audits to determine the relative weight and volume of packaging material in the waste stream, by base material.

Comment – For this specific type of audit, it is stated that the audit is to be done by base material. Typically, such audits are done at the packaging type level, not the base material level.

5. Program Goals (pages 6 - 8)

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. 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. 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.

Question – Is reusable packaging included as part of the weight of packaging as the “denominator” above?

B. **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. The percentage of the investment must be at least equal to the difference between the percent reuse goal and the realized percent reuse as reported two calendar years prior.

Question – How would progress toward these goals be measured?

Comment – These goals are too high to be realistic and compete with some of the other goals.

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. If a goal is missed, beginning the following calendar year, and continuing every year in which the goal remains unmet, the postconsumer recycled material incentive fee must be adjusted. The percent used to determine the incentive fee must increase by the difference between the percent postconsumer recycled material goal and the realized percent postconsumer recycled material, by base material, as reported by producers two calendar years prior.

Question – What is the basis for having the same postconsumer recycled content goals for all base materials? Different materials have different technological limitations. However, this does not mean that the packaging does not have other significant sustainability attributes.

Comment 1 – Some product/package pairings are unable to meet this goal due to limitations on food contact packaging due to there being no or limited LNOs from the FDA.

Comment 2 – We suggest that the postconsumer recycled material content goal include an allowance for renewable feedstock to achieve this goal.

G. Collection

Comment – Achievement toward the collection goals is integral to the ability to achieve the recycling goals, and is largely driven by municipal activity. However, producers are penalized for not achieving recycling goals, and municipalities face no negative consequences for collection goals that are not achieved.

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. 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 each base material ultimately recycled is the sum of the amounts of packaging material types of that base material that are ultimately recycled.

Comment – These are unrealistically large jumps in recycling rate from one tier to the next.

Question – What is the basis for each base material having the same expected recycling rate goal? Some systems are more fully developed, currently, than others.

Producer Reporting and Payments

2. Defining Packaging Material (pages 9 – 11)

A. Packaging material type

1. A packaging material type consists of one or multiple discrete types of packaging material. It must clearly define and indicate the packaging material classified therein.

Comment 1 – We are uncertain how a packaging material type can consist of multiple types of packaging material. This definition needs clarification.

Comment 2 – This definition is slightly different from that presented in Conceptual Draft Rules pertaining to Municipal Reimbursement. It would be helpful if definitions were all consistent, and presented up front (which may be the intent). Further, there are several terms that are similar in nature, which is confusing. It would be helpful to producers and service providers to harmonize language regarding material type, packaging type, packaging category, etc., with other states implementing EPR, as is possible.

- 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 – We suggest that the base material be the material type that comprises the greatest portion of the package, by weight.

- C. Readily recyclable.** 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,
 - b. Operational remanufacturing facilities have the capacity to recycle the packaging material type in quantities equal to, or in excess of, the amount of material collectively supplied, and
 - c. The recycling process safeguards the environment and human health. Recycling processes that are inconsistent with applicable laws and conventions, or that are known to result in the release of material into the environment are examples of processes that do not safeguard the environment and human health.
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.
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 – In #3 above, CCNA suggests removing “in Maine,” as packaging material is recycled all over the country and beyond. Or, have clarity on what “managed” means.

Comment 2 – In #3 above, CCNA suggests that the yield rate be 60 percent of the predominant material category.

Comment 3 – CCNA suggests Maine have a process and appropriate characteristics and definitions for packaging material types that do not yet meet the criteria for readily recyclable, but have the potential and/or are on track for doing so, in order to account for innovation in recycling technologies and packaging.

4. **Producer Reporting** (pages 11 – 15)

D. **Estimates** (pages 13 – 15)

1. Estimating by weight

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

1. The component does not meet post-consumer recycled material goals;
2. The producer is unable to certify no intentional addition of toxics for the component;
3. The component is prone to be littered;
4. The component is labeled to indicate or encourage use of a material management pathway that is unavailable or improper in the State; and

5. In cases where the packaging material type is readily recyclable, the quotient of points 5 and 6 in SECTION PACKAGING MATERIAL DETAILS BY COMPONENT, only 60 percent of the component's weight is recycled.

Comment 1 – It will be necessary for many producers to estimate by weight, particularly given that this is a new program and the data required to make these determinations may not have been historically collected. Producers should not be penalized for having to make reasonable estimates using sound methodology due to a lack of data.

Comment 2 – Although a producer may be making an estimate regarding packaging weights, they still may have accurate information pertaining to some of the above elements, and should be able to apply their knowledge (e.g., regarding recycled content and whether toxics are intentionally added to packaging) to their estimates.

Comment 3 – Some of these characteristics have nothing to do with whether the producer is able to supply data. For example, just because a producer has to estimate packaging weights, it does not mean their packaging is more likely to be littered, or that their product is mislabeled regarding end-of-life management. The negative consequences as a result of having to estimate data seems punitive.

Comment 4 – #5 is unclear and requires further explanation.

Conceptual Draft Rules on Investments

2. Investment criteria (page 1). Investment proposals must meet the criteria below to be eligible for approval from the Department. The primary objective of an investment must be to improve the management of packaging material. Proposals that improve the management of material other than packaging material must be supported with a commensurate source of outside funding.

- 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 – What constitutes “new infrastructure” must be clarified. Does this include processing equipment upgrades, for example, or only a completely new facility?

Comment 2 – We believe for-profit entities should be able to receive an investment, considering successful and efficient recycling programs are often the result of public/private partnerships, and an investment in a privately owned facility can greatly benefit the municipal programs it serves.



**CARTON
COUNCIL**

recyclecartons.com

Again, CCNA appreciates the opportunity to provide this feedback.

Sincerely,

Ed Klein,

President, Carton Council North America