

October 31, 2023

Via electronic submission: MainePackagingEPR@maine.gov

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

RE: Conceptual Draft Rules for *Stewardship Program for Packaging*

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

FPI appreciates the Maine Department of Environmental Protection's (DEP) efforts in drafting these conceptual draft rules and their ongoing stakeholder engagement. This letter provides FPI's initial comments in response to the Conceptual Draft Rules for *Stewardship Program for Packaging*, Parts 1 and 2.

Please note that given the short timeframe for response and the depth and breath of topics covered in the proposed rules FPI may provide further feedback to the DEP for future consideration, including comments concerning Part 3 of the draft rules.

Part 1: Conceptual Draft Rules for *Stewardship Program for Packaging* (Part 1)

With respect to Part 1, we are concerned with the references to reimbursement of packaging disposal cost. Within Part 1, there are several mentions regarding the cost of managing packaging material that is not readily recyclable, as well as per capita disposal costs. Our understanding was that packaging managed as waste was not part of reimbursement under the *Stewardship Program for Packaging* and therefore such language should be removed.

Next, it may be more straightforward, and in the interest of increased diversion, to require all municipalities to collect what is on the list rather than the proposed requirement that 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*". We further submit that if the requirement remains, clarification on how such a condition would apply during the first three years of the program is needed.

Part 2: Conceptual Draft Rules for Stewardship Program for Packaging (Part 2)

Based on the number of topics for comment in Part 2 our comments are provided by area below.

Consumer Definition

As drafted in Part 2, the “consumer” definition appears to capture commercial consumers. We recommend the adjusting the definition to reflect consumer packaging that is destined for the residential sector.

Representative Audits

FPI suggests that there is a need for all auditing to have a clear process for differentiating between covered materials and other materials being managed in the Maine recycling system. It is imperative that producers only finance the portion of the system that services covered materials.

Additionally, given the significant financial consequences of the annual litter audit, consideration should be given to gathering a broader set of data in advance of being viewed as representative and applying penalties as proposed under producer incentive fees.

Program Goals

In general, we note that the proposed program goals impose significant financial penalties for missing future targets that are not grounded in baseline data and market realities.

Goal setting should recognize that the Stewardship Organization (SO) will complete a needs assessment within a reasonable timeline after organization approval. We submit that the proposed program goals should be tied to baseline data and that goals should be set after the needs assessment is complete.

The performance targets related to reduction, reuse and postconsumer recycled material are applied equally across all packaging materials. In reality, different materials have varying capabilities, technically and economically, to be reduced, reused or incorporate recycled content. Program goals should recognize material differences either by differentiating the goals or by allowing the SO to average compliance over a range of products.

FPI further notes that a waiver or exemption process is needed for those covered materials that are unable to achieve postconsumer recycled material targets due to FDA requirements, supply constraints, performance issues, and/or other circumstances beyond producer control. This is particularly true for food contact materials.

On the proposed goal that no less than 100 percent of packaging material is readily recyclable by 2050, we are concerned about the impact this goal will have on certified compostable foodservice packaging. We recommend that DEP give consideration to how these materials will be impacted as well as the potential for increased infrastructure for compostable materials in the State.

In addition, while producers may have influence over some of the proposed program goals, there are a number of goals outside of their control, including litter. Addressing litter must draw a clear distinction between the item itself and the human behaviour and/or system-wide issues that create it. Producers do not control littering, nor do they have control over how much litter is not packaging. Tying the standard to the proportion of all litter that is packaging, means that producers do not control either side of the equation. A standard that moves toward continuous improvement, meaning an overall reduction in the amount of packaging litter, may be more sensible and connected to the program goals.

Readily Recyclable

With respect to defining packaging materials, there are concerns with the proposed definition for “readily recyclable”. These include apprehensions regarding the timelines for onboarding new packaging items, marketability standards, as well as the throughput and yield requirements.

First, it is our perspective that the timeline for onboarding new packaging items to the readily recyclable lists is too long. To promote increased diversion of covered materials, the system needs to be able to adjust and reflect recyclability and actual costs in real time as opposed to waiting three years.

Rather than a marketability requirement for three operational remanufacturing facilities, we suggest that marketability be based on how commodities are sold from MRFs into the marketplace.

Additionally, we believe that the throughput standard for readily recyclable could limit expansion of infrastructure in the Maine. Progressive recycling systems may add secondary sortation facilities to consolidate materials from multiple material recycling facilities (MRFs) to capture small quantity items that are fully recyclable but pose sorting, baling and storage challenges in individual MRFs. To drive system improvement, the regulations should allow for expansion to ensure that recyclable materials can be captured.

On yield, the condition that 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” requires clarification and expansion. This requirement lacks information about how yields will be determined, particularly in cases where a covered material includes multiple materials. It is our suggestion that the rules clearly state that only the base material is subject to meeting a yield standard. Further, the geographical limitation of the State does not reflect how recycled materials move within the marketplace.

Producer Reporting

The proposed timelines for producer reporting, invoicing and payment do not account for the time it will take for producers to have payments processed and assign a punitive financial penalty of ten percent for missing the imposed deadline. The timelines should be adjusted to reflect the time needed for payments to be processed and paid by producers.

Producer Fees

Similar to earlier comments, we are generally concerned with the punitive and seemingly arbitrary financial penalties proposed as part of the producer fees, including the incentive fees.

We also continue to flag that a number of areas with financial consequences are outside of producer control. For example, as noted above, some food contact covered materials may be unable to meet the postconsumer recycled material goals based on FDA requirements and/or other constraints.

Also, clarity is needed on the matter of labeling regarding what will be interpreted as being “labeled to indicate or encourage use of a material management pathway that is unavailable or improper in the State”. With a penalty of 30 percent of the packaging material type fee, it is crucial that producer understand how this will be evaluated.

Thank you for your consideration of this initial feedback. FPI looks forward to continued engagement as this and future rulemakings progress.

Sincerely,

A handwritten signature in purple ink that reads "CPatterson".

Carol Patterson
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