



December 21, 2022

Melanie Loyzim  
Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

## **RE: Comments on Potential Exemptions – Packaging Stewardship Law**

Dear Commissioner Loyzim,

The AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to comment on the potential for regulatory exemptions due to federal laws and regulations identified in paragraph 13(D), subparagraphs 1-4 of the Packaging Stewardship Law (38 M.R.S. § 2146).

AMERIPEN is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material neutral packaging association in the United States. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We focus on science and data to define and support our public policy positions and our comments are based on this rigorous research rooted in our commitment to achieve sustainable packaging, and effective and efficient recycling policies.

**Hazardous Product/Packages** – Generally, AMERIPEN cannot comment specifically on each product and packaging category discussed in the background document, dated November 15, 2022. However, AMERIPEN recognizes certain packaging, due to the products they contain, are likely to be deemed unrecyclable by most, if not all, material recovery facilities (MRFs) and would contaminate material feedstocks. Hazardous and flammable products, pesticides and other products can be toxic and remain on packaging materials, therefore potentially contaminating the recycling stream and creating significant hazards. These packaging materials are more often dealt with in local household hazardous waste (HHW) programs offered by municipalities. These contaminated materials can also not be used in recycled content for packaging that could come into contact with food, as they would not be certified and meet federal U.S. Food and Drug Administration standards<sup>i</sup> for food packaging. As a result, there exists a specific conundrum for these packaging materials – as they are likely to be **permanently determined “not readily recyclable”** under the Packaging Stewardship Law and subject to higher fees without any hope for achieving “readily recyclable” status. Therefore, it is only equitable to exempt these types of product and packaging combinations or work with key stakeholders from these industry sectors to evaluate them to determine if alternative collection programs exist that could be approved.



**Perishable Food Packaging** – AMERIPEN also recognizes the ambiguity in the existing exemption for companies using less than 15-tons of packaging to contain “Perishable Food”. The statutory definition states:

*...as used in this paragraph, “perishable food” means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions, including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. “Perishable food” does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries. (38 M.R.S. § 2146(2))*

AMERIPEN notes that under this definition **all food** is likely to meet this standard unless it is specifically excluded for being frozen (other than wild blueberries). The U.S. Department of Agriculture only provides such guidance that meat products meet the following definition:

*Perishable foods are those likely to spoil, decay or become unsafe to consume if not kept refrigerated at 40 °F or below, or frozen at 0 °F or below. Examples of foods that must be kept refrigerated for safety include meat, poultry, fish, dairy products, and all cooked leftovers.<sup>ii</sup>*

However, this does not encompass bakery products, eggs and fruits and vegetables –nearly all other packaged food items sold in retail stores.

Therefore, without additional statutory clarity, AMERIPEN asserts that the only standard of this exemption that can be considered operative is the “15-ton threshold” for producers that use less than this volume of packaging material for products sold in the state.

**Cost of Exempted Materials** – AMERIPEN would also like to stress that if exemptions are granted under section 13(D)(1-4), producers that remain in the system cannot be held accountable for the cost of those exempted packaging materials that might end up in municipal recycling systems. Additionally, the cost of “disposal” was specifically removed from the Packaging Stewardship Law before enactment, and as a result, exempted materials should not be charged back to covered producers as recycling disposal costs or contamination. During future rulemaking discussions and stakeholder meetings on municipal reimbursement rates, recyclability, auditing and program performance, AMERIPEN asserts that data for the types of packaging that are recycled must be required for any reimbursement for municipal recycling activities.



The power of packaging in balance:

Once again, AMERIPEN appreciates this opportunity to comment on this important issue under Maine's Packaging Stewardship Law. Please feel free to contact me or Andy Hackman, with Serlin Haley, LLP (ahackman@serlinhaley.com) with any questions on AMERIPEN's positions on these important issues.

Sincerely,

A handwritten signature in black ink that reads "Dan P. Felton".

Dan Felton  
Executive Director

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<sup>i</sup> U.S. FDA Guidance: Recycled Plastics in Food Packaging, <https://www.fda.gov/food/packaging-food-contact-substances-fcs/recycled-plastics-food-packaging>

<sup>ii</sup> U.S.D.A. Guidance: What Are Perishable Foods, <https://ask.usda.gov/s/article/What-foods-are-perishable>