



FOODSERVICE PACKAGING  
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Via electronic submission: [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

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### **RE: Chapter 428: Stewardship Program for Packaging**

FPI appreciates the Maine Department of Environmental Protection's (the department's) efforts in drafting the proposed rules as detailed in posting draft of Chapter 428: Stewardship Program for Packaging (Chapter 428).

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.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found [here](#).

As part of our commitment to increasing the recovery of foodservice packaging, we are supportive of policy approaches that advance this effort through systems such as recycling and composting. With respect to producer responsibility programs, it is our position that programs should be based on the principles of shared responsibility, fairness and system effectiveness and efficiency. With these principles in mind, please find detailed below our main feedback and recommendations with respect to the current draft of Chapter 428.

#### Definitions

As drafted, the "consumer" definition appears to capture commercial consumers. We recommend adjusting the definition to reflect consumer packaging that is destined for the residential sector as it is our understanding that industrial, commercial and institutional properties often have private contracts for recycling and waste management services.

As it relates to "base material" the term "composite" is provided as an example of a base material, however

the term is not cited elsewhere in the posting draft. We proposed that further clarification of how this base material would be applied in the evaluation of packaging would be helpful.

It is our perspective that the definition of “compostable packaging materials” may require further details, such as the need to meet labeling standards and third-party certifications.

Further, we note the inclusion of the following definition for “manage”:

“Manage” means to collect, transport, process, and otherwise prepare a packaging stream for recycling, reuse, composting, or disposal. Manage includes educational initiatives to facilitate collection and litter pick-up.

The terms “manage”, “managed”, and “management” are used throughout Chapter 428 and may not always reflect the drafted definition. As an example, under the assessment there is the requirement to identify regional investment needs to efficiently *manage* packaging material collected in single or dual stream recycling and separately by base material and an estimated range of the cost of those investment needs. We suggest striking the second sentence or amending the language to “manage ~~includes~~ *may include* educational initiatives to facilitate collection and litter pick-up”.

On the definition of “refill” we suggest the inclusion of language that reflects the ability of the packaging to be refilled at home for the same or similar general purpose for which it was conceived (for example, for food storage purposes), as well as that formal systems are not always needed in these instances. This concept should be applied throughout Chapter 428 as it relates to “refill”.

### Program Goals

Establishing program goals is a complex task, particularly in the absence of robust data to guide such goals in Maine. As proposed, the program goals are not grounded in baseline data while imposing significant financial penalties for missing future targets (under producer fees). Further, there is no clear process set forth for adjustments, if needed.

Goal setting should recognize that the Stewardship Organization (SO) will complete a needs assessment within 18 months of entering into a contract with the department. 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. As such, FPI recommends the removal of the goals from Chapter 428 or the establishment of a process to adjust the program goals based on the needs assessment outcomes.

It is also important to note that as currently drafted the reduction goals represent the most stringent in the country and do not recognize the value of packaging in reducing waste by protecting and safely delivering products to consumers. Unfounded reduction goals may have unintended consequences which may be addressed by working with the SO and producers to set and adjust goals as needed.

We appreciate the expansion of the goal relating to readily recyclable, to now include reusables and compostables. That being the case, as noted above we suggest that the definition of compostables requires further clarification to ensure compostability.

In addition, while producers may have influence over some of the proposed program goals, there are several goals outside of their control, including litter. Addressing litter must draw a clear distinction between the item itself and the human behavior 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.

## Litter Audits

Given the 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 the reduction of litter fee.

## Readily Recyclable Criteria

With respect to defining packaging materials, there are concerns with the proposed approach for identifying the primary management pathway for readily recyclable, reusable, or compostable.

Regarding “readily recyclable”, our concerns include apprehensions regarding the throughput and ratio of weight targeted for recycling to total weight requirements.

FPI believes that the throughput standard for readily recyclable could limit expansion of infrastructure in 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 the ratio of weight targeted for recycling to total weight, the condition that “at least 60% of the weight of a packaging material type, on average, is composed of materials that are routinely separated and recycled by a recycling market” requires clarification. This requirement lacks information about how percentages 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 this standard.

We support compostables and reusables not being designated as readily recyclable. That said, we request more information be provided regarding the meaning of the following for compostables: “... it will identify the packaging material type that is neither reusable nor compostable with the lowest packaging material type fee, according to annual reporting from the prior calendar year, with which the compostable packaging material type can be managed.” While we acknowledge that this approach may be suitable for reusables, it is important to note that compostable packaging may have different primary management pathways with distinct associated costs. These differences should be taken into consideration.

## Transitional Period

It is our perspective that the timeline for onboarding new packaging items to the readily recyclable list remains too long. To promote increased diversion of covered materials and accurate producer fees, the program needs to be able to adjust and reflect recyclability and actual costs in real time as opposed to waiting two years.

## Defining Reimbursable Cost by Packaging Stream

Reimbursable costs by packaging stream detailed include labor, equipment, structure, and energy costs. We would ask that there be consideration given to developing best practices and associated cost reimbursements in lieu of reimbursements for all costs without parameters.

Additionally, we recommend clarification between the structure costs detailed in this section (containers, warehouses, buildings, trailers, and roll-off containers) and the separate funds for investments in infrastructure.

## Producer Reporting

The [Stewardship program for packaging](#) requires that “a producer shall annually report to the stewardship organization the total amount, whether by weight or volume, of each type of packaging material sold, offered for sale or distributed for sale in or into the State by the producer in the prior calendar year”. As drafted, producer reporting goes beyond these requirements, is overly burdensome and does not align with producer reporting for similar programs in other jurisdictions.

As an example, we have heard that the drafted requirement for producers to report by UPC or brick code will be problematic from both a volume and time perspective. Further, we believe that the following requirement will be challenging for producers to report: “the total weight of the base material or, in cases where separation and recycling of more than one material is determined to be routine as designated in Appendix A, the sum of the weights of the materials that are routinely separated and recycled, and a short description of the methodology used to determine this number”.

We recommend producer reporting that reflects the requirements of the law as detailed above and is in alignment with other jurisdictions.

## 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.

With respect to incentive fees, we appreciate the inclusion of a process to request an exemption from post-consumer recycled material requirements (with recommended changes proposed below). This process will be important for producers of foodservice packaging that may be unable to meet the post-consumer recycled material goals based on FDA requirements and/or other constraints.

On the matter of a toxicity fee, we recommend the inclusion of de minimis thresholds to further define what is considered “intentionally added”.

We are also concerned with the financial penalties related to labeling. Uniform labeling standards are crucial for facilitating smooth interstate and international trade, and it is important to note that companies often do not create and distribute packaging solely for one jurisdiction. As proposed, producers may be financially penalized for complying with labeling requirements in other states as well as following existing guidance from the Federal Trade Commission’s Green Guides (Green Guides) and other industry standards.

To avoid financial penalties, packaging labeled as recyclable or compostable must meet various requirements centered around collection programs in every county, unless it is readily recyclable (as defined). Currently, other truth in labeling laws as well as the Green Guides center on the percentage of the population with access to programs for the collection and diversion of packaging. This draft language is unworkable and a significant departure from these existing approaches and would result in substantial penalties for producers.

Regarding the “weight not recycled” incentive fee we believe it will be challenging to precisely quantify the amount of these materials. These amounts may vary depending on end markets and possibly even from one batch to another. We suggest that this requirement be removed and materials should all be reported under their packaging material type as in other extended producer responsibility programs.

## Municipal Reimbursement

As noted earlier, we suggest that consideration be given to developing best practices and associated cost reimbursements in lieu of reimbursements for all costs without parameters. This is a preferred approach

rather than reimbursing municipalities at the median per ton cost of managing various packaging materials by similar municipalities.

Further, in principle, there should be no cross-subsidization of programs and reimbursements should reflect the management pathway for the packaging material type.

In this regard, there are concerns with the following classification and municipal reimbursements for compostable packaging:

For a packaging material type that is compostable, and for which the most similar packaging material type is readily recyclable, a participating municipality must be reimbursed for each ton managed for composting or recycling at the median per ton cost of managing the most similar packaging material type realized by similar municipalities for composting or recycling during the previous calendar year.

We believe that reimbursements should accurately reflect whether the compostable packaging was managed in the composting or recycling stream. The same applies for reusable packaging where reimbursements should reflect the specific management pathway used.

In addition, we are opposed to the doubling of municipal reimbursement costs for packaging that is managed for recycling but the packaging material type is not readily recyclable. It is our perspective that the SO should propose the appropriate reimbursement model for these materials.

#### [Requests for Exemption from the Post-Consumer Recycled Material Incentive Fee](#)

While we appreciate the inclusion of a process for exemptions from the post-consumer recycled material incentive fee, we recommend a more simplified approach as follows:

A producer may apply for an exemption from the post-consumer recycled material incentive fee. The department may grant an exemption, without penalty, if the producer demonstrates, and the department finds, in writing, that:

- (1) The producer cannot achieve the post-consumer recycled material requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other State or federal law, rule, or regulation;
- (2) It is not technologically feasible for the producer to achieve the post-consumer recycled material requirements;
- (3) The producer cannot comply with the post-consumer recycled material requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or
- (4) The producer cannot comply for another reason as determined by the department pursuant to rule, regulation, or guidance.

Thank you for your consideration of FPI's feedback. We would be pleased to discuss these comments and recommendations with you further.

Sincerely,



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