

August 26, 2024

Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

**Consumer Technology Association comments on Maine's Reposting Draft Rules for Stewardship Program for Packaging**

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on Maine's Reposting Draft Rules for Stewardship Program for Packaging (Reposting Draft). We appreciate the opportunity to comment on the Reposting Draft and appreciate the Department's engagement with stakeholders on the implementation of the law. CTA supports the overall goal of the law to increase recycling across material types and decrease the overall amount of solid waste. However, we offer the following constructive comments on the implementation procedures as proposed by the Maine Department of Environmental Protection (DEP).

CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship. The electronics industry is committed to achieving more sustainable packaging design by reducing packaging, switching to more sustainable materials, and increasing recycled content rates. Extended Producer Responsibility (EPR) is a complex policy and there is no "one size fits all" solution.

EPR for packaging is not a new concept and has been implemented by a variety of European countries as well as Canada. Additionally, three other US states are currently in the implementation process of their own state specific EPR for packaging laws. CTA believes that the growing patchwork of laws varying in scope and procedures will be costly and inefficient, especially considering the complex waste stream and variety of interested stakeholders. For this reason, CTA advocates that Maine looks to other jurisdictions to create harmonization where possible.

**Definitions**

Regarding the definition of "consumer", CTA requests the definition be changed to align with Colorado's definition in statute:

"CONSUMER" MEANS ANY PERSON WHO PURCHASES OR RECEIVES COVERED MATERIALS IN THE STATE AND IS LOCATED AT A COVERED ENTITY

"COVERED ENTITY" MEANS THE FOLLOWING LOCATIONS IN THE STATE FROM WHICH COVERED MATERIALS ARE COLLECTED: (a) ALL SINGLE-FAMILY OR MULTIFAMILY RESIDENCES IN THE STATE; AND (b)

NONRESIDENTIAL LOCATIONS IDENTIFIED IN THE FINAL PLAN, INCLUDING PUBLIC PLACES; SMALL BUSINESSES; SCHOOLS, AS DEFINED IN SECTION 22-1-132 (2)(c); HOSPITALITY LOCATIONS; AND STATE AND LOCAL GOVERNMENT BUILDINGS.

### **Program Goals**

CTA appreciates the clarification that the SO measuring progress towards program goals will not be used for compliance purposes, Section 10(A). We also appreciate the update in Section 3(A)(4) Reduction goals being measured via total weight as opposed to total units for reporting purposes. However, we still object to setting of program goals at this stage since the SO has not been selected and the Needs Assessment has not been completed.

Recycling rates and target dates need to be supported by data from the needs assessment conducted via a third-party expert consultant. The source reduction rates specifically outlined in the Section 3(A)(4) will be difficult if not impossible for the electronics industry to achieve without an increase in product breakage.

Additionally, while we agree that the transition to refillable or reusable packaging (Section 3(A)(5)) can be an important component to increased resilience in our recycling and solid waste management systems, we do not agree that these requirements can be applied to the electronic industry. The durable goods industry is a small contributor to packaging waste overall and CTA would support packaging reduction strategies specifically tailored to our industry, not arbitrary goals mandated in statute that will hinder innovation. CTA is interested to hear additional feedback and engage in a conversation with Maine DEP as to how they see reuse and refillable packaging being applied to the electronics industry.

CTA requests that post-consumer recycled material goals (Section 3(A)(9)) be harmonized with those already in statute in New Jersey<sup>1</sup>. An increasing amount of step stone state specific goals create unnecessary burdensome design requirements for producers, especially durable goods like electronics. As we previously indicated in multiple sets of comments, electronic products have unique protection needs – screen protection, protection against shock and vibration for sensitive components – that dictate and severely limit the packaging material types that adequately protect these products.

### **Litter**

CTA agrees with the overall intent to reduce litter in the state of Maine (Section 3(E)) However, CTA strongly disagrees with the litter targets outlined in Section 3(A)(10) and the litter fees outlined on Section 10(3)(c). In the reposting draft, the litter audits increased from one to two per year, CTA believes the audit should remain at one per year. CTA is supportive of the reposting draft changes to the litter audit reporting mechanism as outlined in Section 3(E)(2) since municipalities will have more resources to conduct the audit and the data gathered from municipalities will be more useful in determining infrastructure improvements. CTA requests the reposting draft provide more clarity on subsections (3) and (4). If a municipality is conducting the litter collection event, the SO should not be the responsible party as currently attributed in subsections (3) and (4), the municipality will be the party collecting, sorting, and measuring the litter. We believe that subsections (3) and (4) should not be their own subsection but be part of subsection (3).

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<sup>1</sup> <https://www.nj.gov/dep/dshw/recycled-content/>

Litter is a product of consumer behavior and while producers can attempt to influence consumers to stop littering, invest in recycling infrastructure, and create more convenient systems, producers ultimately cannot force consumer behavior.

### **Producer Reporting**

CTA appreciates the striking of Section 9(B)(4). As we previously commented, reporting on the level of units would have created an unnecessary burden for our producers.

Regarding Section 9(B)(6), CTA would like to emphasize that many companies package their products overseas to be delivered to consumers. Because of the global scale of our industry, the necessity for the total weight of PCR content to be validated by a third-party audit is very difficult if not infeasible. We request that alternative pathways be outlined that still encourage the use of PCR content, such as certification by individual producers when material is sourced and packaged overseas.

Additionally, CTA objects to Section 9(B)(7) and Section 9(B)(10), as outlined in the below topics.

### **Producer Fees:**

CTA believes that it is premature to set the producer fee structure and instead asks that this section be eliminated and replaced with a statement saying the SO will determine the fees for producers in their plan. CTA believes several actions need to take place before a fee structure is set, including a draft budget, the selection of the SO, the needs assessment, and reporting of producer data. Regarding the eco-modulation fees, CTA suggests that the SO set these fees and bonuses based on the system currently in place in Quebec<sup>2</sup> to create more harmonization.

However, CTA offers the following comments on the fees outlined in the Reposting Draft.

Transitional Period (Section 5(C)): CTA requests additional information as to why the time period was extended from 3 years to 4 years for a packaging material types fees to be accurately updated to their designation as not readily recyclable to readily recyclable in Section 5(C)(2)(a). CTA does not support the prolonged update to the fees.

Average Cost over Highest Cost: A few times throughout the proposal, DEP suggests that fees be attributed to the most expensive readily recyclable material type, CTA disagrees and alternatively proposes that fees be attributed to an average or median management cost. Again, because a budget has not been set and the SO has not been selected, we believe these numbers are arbitrary and should instead be more connected to data. See the below examples where CTA proposes "most expensive" be changed to "median":

- Page 41, 10(A)(2)(b)(i) From 2031 to 2040, if the goal in Section 3(A)(6) is unmet, the producer must pay three times the per ton cost of managing the **most expensive** readily recyclable packaging material type.
- Page 41, 10(A)(2)(b)(ii) From 2041 to 2050, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay four times the per ton cost of managing the **most expensive**

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<sup>2</sup> [Ecodesign incentive bonus - Packaging Ecodesign: An approach that everyone can take \(eeq.ca\)](https://www.eeq.ca/en/eco-design-incentive-bonus-packaging-eco-design-an-approach-that-everyone-can-take)

readily recyclable material for each ton of packaging material that is not readily recyclable they produce. If at least 50% but less than 75 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 3 times the per ton cost of managing the **most expensive** readily recyclable material type.

- Page 42, 10(A)(2)(b)(iii) From 2051, onward, producers of packaging material that is not readily recyclable must pay 5 times the per ton cost of managing the **most expensive** readily recyclable material type.
- Page 41, 5(A)(2)(b) For a packaging material type that is not readily recyclable, the producer must pay, per ton produced, two times the average per ton management cost of the **most expensive** readily recyclable packaging material type during the prior calendar year. If goals for the percent of readily recyclable packaging material established under Section 3(A)(6) are unmet, the producer must pay three, four, or five times the average per ton cost.

### Toxics

CTA has strong objections to all regulations of toxics in packaging that are outlined by DEP in the Reposting Draft as it goes beyond the initial intent of the legislation. Maine already has passed significant legislation, the PFAS in Product Program<sup>3</sup>, and CTA believes that any regulation on this chemical family should stay in that proceeding. Additionally, any regulation of toxic substances should be handled separately via Department conducted risk evaluations to determine if a material is toxic based on its risk and the exposure from the actual packaging material. The federal government is leading in chemical regulation under the Toxic Substances Control Act. The Reposting Draft does not offer any scientific basis for the ban of the listed substances and CTA believes regulation should be based on sound science conducted through a peer-reviewed risk evaluation.

Section 3(B)(2)(a) references packaging being “certified as containing no intentionally added toxics”. CTA believes that requiring certification of third-party suppliers is difficult and burdensome.

CTA does not support the additional language in Section 3(B)(6). “An updated list of toxics provided in an appendix.” CTA believes this goes beyond the original intent of the legislation because the authority to create this list is not clearly stated.

CTA does not support Section 9(B)(7) “Whether the producer can provide a certificate of compliance from the entity or entities that manufacture the packaging material that attests to certify the absence of intentionally added toxics” and that it be completely stricken from the Reposting Draft.

CTA does not support the inclusion of a “Toxicity Fee” as defined in Section 10(3)(b) and requests it be stricken from the Reposting Draft. The inclusion of a toxicity fee is not included in the statute.

### Labeling

CTA disagrees with the labeling provisions outlined in the Reposting Draft at Section 3(B)(2)(a) and Section 9(B)(10) and the associated fees with “improper labeling”. CTA believes this goes beyond the legislative intent of the scope of the law. The electronics industry is composed of global companies that label for multiple international jurisdictions simultaneously. Products should be allowed to have labels

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<sup>3</sup> <https://www.maine.gov/dep/spills/topics/pfas/PFAS-products/>

that are required by other jurisdictions. CTA requests these Sections be stricken from the Reposting Draft.

Additionally, we request that labeling be limited to labeling on the original product packaging. The reality is that a retailer, shipper or anyone can add a label, tape, etc. to a product along the supply chain and the labeling is outside a manufacturers control once the product leaves the factory.

On this subject, CTA suggests Maine follow the path of Oregon and New Hampshire, which have conducted a truth in labeling study to learn more information about product labeling before imposing fees.

### **Conclusion**

Thank you again for the opportunity to provide these comments on the Reposting Draft. The electronics industry is committed to increasing the overall amount of material recycled and decreasing solid waste. We welcome further engagement with stakeholders in this process, and if you have any questions about our above comments please do not hesitate to contact me at [apeck@cta.tech](mailto:apeek@cta.tech).

Sincerely,

A handwritten signature in black ink, appearing to read "Ally Peck". The signature is fluid and cursive, with the first name "Ally" and last name "Peck" clearly distinguishable.

Ally Peck  
Senior Manager, Environmental and Sustainability Policy  
[apeck@cta.tech](mailto:apeek@cta.tech)  
(703) 395-4177