

August 26, 2024

Brian Beneski
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333
Sent via email: rulecomments.dep@maine.gov

RE: Comment on Chapter 428: Stewardship Program for Packaging

Dear Mr. Beneski,

The Maine State Chamber of Commerce, representing a diverse network of more than 5,000 businesses across the state, appreciates the opportunity to comment on the proposed rule for Chapter 428: Stewardship Program for Packaging. As Maine's largest business association, the Chamber is dedicated to fostering a positive business climate that enables our members to thrive. Maine has been a leader on many environmental issues, and it has often been in close collaboration with the Maine business community. While the Chamber would similarly like to partner in the implementation of the new packaging law, the Chamber has significant concerns regarding the current draft of this complex rule and its potential impact on the business community. We appreciate the many hours of time the Department of Environmental Protection (Department) staff has put in to developing this rule; we do believe, however, that modifications are necessary to ensure the rule is fair, feasible, and aligned with the original legislative intent.

1. Definitions

- a. Consumer. The current definition of "consumer" appears to encompass business-to-business transactions and commercial entities, which could have unintended consequences. We believe it is essential to clarify that the rule applies only to transactions with end-users and not to intermediaries or other businesses. This clarification would prevent unnecessary complications for businesses that are not directly involved in consumer transactions.
- b. Manage. The proposed definition of "manage" extends beyond the legislative intent by including responsibilities such as educating consumers about packaging and participating in litter clean-up efforts. While these activities are valuable, they should not be mandated as part of the Program without specific legislative authorization. In terms of education, the statute says that investments in education shall be made by the Stewardship Organization (SO) and approved by the Department. Furthermore, the SO is to include in

- its Annual Report how that investment is designed to increase access to recycling and reuse of packaging. The Chamber urges the Department to revise the definition to focus on the core responsibilities of producers in managing packaging materials.
- c. **Toxics.** The requirement for producers to screen for nearly 2,000 chemicals, many of which may not be relevant to packaging, presents a significant challenge. This requirement will be particularly burdensome for small and medium-sized businesses, which may lack the resources to conduct such extensive screening. We recommend that the definition of "toxics" be narrowed to include only those chemicals that are directly applicable to packaging and remove all references to certificates of compliance, thereby reducing the regulatory burden on producers.
 - d. **Readily Recyclable.** The term "readily recyclable" is central to the proposed rule, yet it lacks a clear sense of how this will be applied by the Department. The ambiguity surrounding this term creates uncertainty for producers attempting to comply with the regulation. The Chamber recommends that the Department consider adopting a definition of "readily recyclable" based on a thorough needs assessment, similar to approaches taken by other states. This would provide clarity and ensure that the term reflects practical recycling capabilities within Maine.

2. Costs

The proposed rule introduces several fees, but the actual cost of the program and the specific fees to be borne by producers remains unclear, in part due to the lack of clarity around packaging material definitions. Currently, the rule references "readily recyclable" and "not readily recyclable", but not knowing what specific packaging materials will fall under each of those categories creates an uncertain cost for producers. The topic of "cost" has been brought up by many of our members who are already preparing their budget for next year. Without clarity of what is expected of them, producers may face unexpected financial burden. It is important that the Department provides detailed cost estimates to allow businesses to plan accordingly. Included in the cost implications, the Chamber has a few specific concerns we request you consider.

- a. **Disposal Costs.** Our members are concerned that the rule includes disposal costs for landfilling and incineration, which departs from the statute. Including landfill and incineration costs could disincentivize municipalities from prioritizing recycling, undermining the Program's goals. Further, as drafted the rule disproportionately incentivizes incineration over landfilling, an arbitrary distinction that would create skewed market conditions. The Chamber recommends that the rule follow the Legislature's intent and exclude landfill and incineration disposal costs from the rule to encourage greater emphasis on recycling and waste reduction. Worth noting, Maine appears to be an outlier as the other states who have adopted packaging stewardship programs do not require producers to pay for disposal.
- b. **Manage Costs.** If the definition of "manage" is not amended, as suggested earlier in our comments, this will add to the cost producers will be expected to pay. The Chamber

encourages the definition to be amended and that this cost be absorbed in the administrative costs of the SO.

- c. Program Goals and Penalties. The rule stipulates that if program goals are unmet, producers will be required to pay penalties of three to five times the average per-ton cost. While the Chamber supports efforts to improve packaging recyclability, the research and development of the technology and implementation of the necessary infrastructure in the state required to achieve these goals will take time. Penalizing producers who are making good-faith efforts to develop more sustainable packaging could have unintended consequences, including increased costs for consumers. We urge the Department to consider more flexible timelines and realistic goals that recognize the challenges of innovation and the scale of these goals. We also encourage the Department to consider the voluntary programs that producers are doing to collect their packaging materials already. We feel these producers should not be penalized in paying for a program where they are already working to keep their packaging materials from ending up in municipal waste streams.

3. Exemptions

The Chamber strongly encourages the Department to consider exemptions for packaging products that are federally regulated. These products are subject to stringent federal oversight, required to meet certain design, manufacturing, and safety standards. Additional state-level requirements could create conflicts or redundancies. We would also ask that the rule exempt packaging that is critical to the personnel workers during storing, transporting, and protecting products through shipment, delivery, and storage process. For example, shrink and stretch plastic and expanded polystyrene keep handlers safe during the shipment and delivery process, and guarantee products are not damaged and remain durable throughout manufacturers' distribution network, from manufacturing plants to consumers' homes. Exemptions for federally regulated packaging as well as packaging specific to shipping and storing will ensure that the rule does not inadvertently hinder the integrity of packaging critical to protecting public health and safety.

Finally, we encourage the Department staff and Board of Environmental Protection to look at how other states, who have passed packaging stewardship laws, are establishing their programs. It's important that through this process, Maine does not become an outlier and that we implement the best practices from other states. Decisions around other states programs are being guided by information gathered following needs assessment; we feel Maine should also seriously consider taking this approach. Ultimately, developing a new regulatory framework that works for our environment and consumers will require economies of scale across state jurisdictions that promote the innovation and best practices.

In closing, the Maine State Chamber of Commerce is committed to working with the Department and the Stewardship Organization to ensure that the Program achieves its objective without placing undue burden on businesses and consumers. We hope that our comments will be taken into consideration to improve the proposed rule, ensuring that the final rule results in a program that is both effective and

equitable. We look forward to continuing to work with the Department to ensure the program benefits Maine's communities, environment, and economy.

Thank you for considering our comments.

Sincerely,

Ashley Luszczki
Government Relations Specialist
Maine State Chamber of Commerce
aluszczki@mainechamber.org