

August 26, 2024

**Submitted Via:** [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

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

**Re: Reposting Draft – Stewardship Program for Packaging**

Dear Commissioner Loyzim:

The Association of Home Appliance Manufacturers (AHAM) appreciates the opportunity to provide comment on *Chapter 428: Stewardship for Packaging-Reposting Draft* (Reposting Draft). AHAM supports reasonable and effective extended producer responsibility (EPR) measures and is committed to working with stakeholders to establish an effective program in Maine.

#### **AHAM Feedback on the Reposting Draft**

AHAM appreciates the opportunity to comment on the Reposting Draft. While the Public Comment period was open on the Posting Draft, AHAM noted the necessity for the Stewardship Program to align its definition of a “Durable Product” with the Bureau of Economic Analysis’ (BEA). The Posting Draft and Reposting Draft have defined “Durable Product” as “a product that wears out over an expected lifespan of at least 5 years. A durable product is not depleted through use.”

AHAM again requests Maine align its definition of “Durable Product” with BEA’s, which defines durable goods as: “Tangible products that can be stored or inventoried and that have an average life of at least three years.”<sup>1</sup> AHAM appreciates the continued inclusion of a definition for durable products. A consistent definition of a durable product is vital to a national marketplace, which helps to ensure Maine consumers continue to enjoy a broad range of products.

With respect to packaging for durable products, AHAM recommends Maine provide an exclusion for packaging that does not enter the household or curbside recycling stream. Appliance packaging materials, including expanded polystyrene (EPS) and thin plastic film (PE), may ultimately not enter the residential recycling stream because large appliances are usually delivered to a consumer’s home and, as part of the installation, the packaging material is removed by the installer and not left in the home. The installers load the packaging into the

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<sup>1</sup> <https://www.bea.gov/help/glossary/durable-goods>

delivery truck and return those materials to be recycled through commercial (non-residential) recycling systems.

Like major appliances, packaging materials that are used for the shipping and distribution of multiple portable and floor care units are commercially recycled and do not enter the residential recycling stream. A shipment of portable and floor care appliances would include hundreds of products placed in multiple master cartons that are secured to a pallet. The pallet of product goes to a distribution center and is either separated by units or delivered to the final seller.

Oregon's EPR law, the Plastic Pollution and Recycling Modernization Act (SB582, 2021) recognizes and encourages this successful recycling process by including a provision that exempts covered packaging materials if the producer can demonstrate that their packaging is recovered as a function of the distribution chain and is recycled at a responsible end market. The Oregon law states the following:

*A producer may demonstrate to the department that a material is exempt from the requirements for a covered product if the material:*

- (A) Is collected through a recycling collection service not provided under the opportunity to recycle;*
- (B) Does not undergo separation from other materials at a commingled recycling processing facility; and*
- (C) Is recycled at a responsible end market.<sup>2</sup>*

Ontario, Canada takes a similar approach with a regulation that allows for two deductions and home delivered appliances are one of them. The following is a common deduction in Canada:

*Allowable deductions are those Blue Box materials that are:*  
*Collected from an eligible source at the time a related product was installed or delivered.*  
*For example, packaging that is supplied with a new appliance and is removed from the household by a technician installing the new appliance.<sup>3</sup>*

Circular Materials, a Canadian not-for-profit producer responsibility organization (PRO) works to develop, implement and support effective and efficient recycling programs across Canada. To help producers meet their obligations, Circular Materials publishes a *Guidebook for Stewards*, under extended producer responsibility (EPR) regulations in Canada's provinces.<sup>4</sup>

The 2023 Guidebook notes that there are differences in the definitions of packaging across the provinces and in an attempt to harmonize the programs, Circular Materials has designated packaging to be defined as: "*materials that are used for the containment, protection, handling,*

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<sup>2</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB582>

<sup>3</sup> <https://www.circularmaterials.ca/faq/>

<sup>4</sup> <https://www.circularmaterials.ca/>

*delivery or presentation of goods which are supplied to residential consumers (as opposed to industrial, commercial, or institutional consumers).”<sup>5</sup>*

Circular Material’s Guidebook identifies and distinguishes between packaging materials that are supplied to residential consumers and packaging materials that would not enter the residential or household system of packaging recovery.

**AHAM respectfully requests Maine include the provisions above in the Stewardship for Packaging Program.**

The Reposting Draft includes the proposed 2050 goals for Maine’s recycling and waste management program. The program goals outlined in the Reposting Draft appear overly ambitious given the significant uncertainties over the next 25 years. These goals and requirements are inconsistent with existing federal guidelines and lack harmonization with packaging EPR program goals in other states. Several key points highlight the aggressive nature of these targets:

- **Recycling Access Goal:** The program aims for 70% to 100% recycling access in Maine, a target far higher than other Extended Producer Responsibility (EPR) programs and the Federal Trade Commission’s Green Guides<sup>6</sup>, which recommend a 60% access threshold. Achieving such high access levels is ambitious and may be unrealistic given the challenges of implementation and regional disparities.
- **Ambiguity in Target Responsibility:** It remains unclear which performance targets will be managed collectively by the Stewardship Organization (SO) and which will be the responsibility of individual producers. This lack of clarity could create confusion and inefficiencies in achieving the goals.
- **Aggressive Reduction Goals:** The reduction target of 40% by 2040 and 60% by 2050 is a cause for concern. For comparison, California’s SB54 caps its reduction goal at 25% by 2032. Given the national scale of many product markets, Maine risks losing access to certain products due to this aggressive mandate, which may not align with broader market conditions.
- **Unrealistic Reuse Goals:** The reuse goal, set at 30% by 2040 and 50% by 2050, is similarly ambitious. It’s unclear whether this target applies collectively or individually, and it’s unlikely that producers will uniformly transition to reusable packaging across the national market. This could also lead to diminished product availability in Maine as producers struggle to meet the state’s stringent requirements.

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<sup>5</sup> <https://www.circularmaterials.ca/wp-content/uploads/2023/06/2023-Circular-Materials-Steward-Guidebook.pdf>

<sup>6</sup> [https://www.ftc.gov/system/files/documents/public\\_events/975753/ftc\\_-\\_environmental\\_claims\\_summary\\_of\\_the\\_green\\_guides.pdf](https://www.ftc.gov/system/files/documents/public_events/975753/ftc_-_environmental_claims_summary_of_the_green_guides.pdf)

- **Overly Detailed Labeling Requirements:** The labeling requirement necessitates material management services in each of Maine's 16 counties, which could be counterproductive to efficient program management. Such a granular requirement is likely to hinder the scalability and cost-effectiveness of the EPR program, potentially leading to inefficiencies. Moreover, the compliance timeline is unclear, and it's unlikely that all counties will have the necessary infrastructure in place by the start of the program (or even after three years), creating a risk of non-compliance for producers through no fault of their own.

While the 2050 goals are intended to be forward-looking, their aggressive nature raises concerns about feasibility and the risk of unintended negative consequences, particularly given the uncertainties in the market and infrastructure development over the next 25 years.

### **The Program Should Focus on Packaging Recovery and Not Material Design Requirements**

As Maine DEP continues to determine the design and requirements of their EPR program, the unavoidable use of certain packaging materials must be recognized.

Worker safety in warehouses, distribution centers or during transportation/delivery is essential, especially when dealing with large appliances such as refrigerators, freezers, dishwashers, cooking ranges, clothes washers and dryers. Once assembled, major appliances are often packaged, stored and moved in very large warehouses or distribution centers. These facilities often have limited climate control and can experience extreme temperature and humidity changes. Low temperatures can cause packaging materials to become brittle while humidity and heat can affect the packaging's structural integrity and limit the effectiveness of adhesives or the strength of products made from fiber.



For safety purposes, it is vital to maintain the structural strength of packaging materials, particularly with respect to major appliances that are regularly stacked vertically with multiple units above ground. Furthermore, these appliances are often moved around by clamp truck and the packaging must withstand the force of the clamps to be moved efficiently. Other paper



alternatives such as cardboard, molded pulp or honeycomb can only handle a limited number of impacts and are more apt to lose structural integrity in hot and humid environments.

A fiber-based alternative to EPS would be bulkier and heavier. Consequently, this increased unit size leads to more truck loads need to transport the same number of units, more fuel to move them, and more warehouse space required to store them. It is estimated that there would be an increase in size of five to ten percent in all directions for the equivalently designed protective packaging, which

equates to an increase of about 20-30 percent more trucks needed to deliver large appliances. Such an increase of delivery trucks drastically increase emissions and the environmental impact of delivery trucks in Maine.

Additionally, thin plastic film (PE) is used to protect the finish of appliances as well as the display screen. Fiber alternatives, such as paper, are like sandpaper and would scratch the product and would lead to consumers either accepting a damaged product or refusing delivery and the distributor returning the product to the warehouse. There is no alternative to the use of plastic film to protect the finish of appliances or the display screen.

Appliance packaging is used to protect the appliance and factory personnel during storage, transport and delivery. The safest and most effective materials for this use are lightweight, can withstand multiple impacts, and maintain their integrity in humid conditions. Unlike smaller, fast-moving consumer goods, packaging for heavy durable goods have different requirements and must be able to ensure the protection of workers during transportation and at distribution centers. Large appliances such as refrigerators, freezers, dishwashers, cooking ranges, washers and dryers are stacked as high as 30 feet and packaging cannot fail while products are warehoused, regardless of environmental or climate conditions.



### **Durable Product Manufacturers Should Have Designated Seat on Advisory Board/PRO**

Manufacturers of durable products should have an equal role in the management of the program as other stakeholders. Durable goods have unique packaging needs that other, non-durable manufactured goods do not necessarily require. A designated seat or position would ensure that all stakeholders have a voice in the program.

Recovery programs that place responsibility for recycling and/or disposal of post-consumer packaging with producers must ensure producers' involvement is not limited to merely subsidizing the status quo of inefficient recovery and recycling programs. If producers are responsible for the costs to dispose/recycle in a given jurisdiction, then producers must have the authority to exercise proper oversight without being required to give preferential treatment to existing partners, collectors, or municipal programs during the program's design and implementation.

### **Material Fees Appropriately Assigned Based on Material's Environmental Impact**

Packaging material fees or "eco fees" must consider the life-cycle impact of the material. The use of packaging material that is easily and readily recycled should be incentivized as compared to lightweight, non-biodegradable materials. Alternatives to existing packaging materials or material source reduction involve tradeoffs. For example, plastic-based products will generally be lighter and less volume than fiber-based packaging. In addition, there are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging, especially for home appliances that have non-consumer facing packaging, because the packaging is not used for marketing purposes. It is purely an additional cost to the product to ensure the product arrives at the home without being damaged.

The methodology used to set fees should be consistent with established practices to determine fair allocation of costs based on the complexity required to collect certain material. Maine should require the PRO(s) to apply the minimal annual administration fee feasible to prevent less environmentally impactful materials from subsidizing more environmentally impactful materials,

### **Credit Manufacturers for Previous Packaging Reductions**

Manufacturers who proactively reduced and/or included recycled material in their packaging should have those actions counted toward any source reduction or recycled material requirement. A future packaging law or regulation should not penalize companies that have already taken these steps.

### **States Should Seek a Harmonized Approach**

To the greatest extent possible, AHAM requests Maine harmonize its stewardship program, including definitions and the process for reporting and remitting, with other state's programs. Harmonization of recycling policies will encourage economies of scale, efficiencies and convenience for consumers, while streamlining compliance. In Canada, "EPR" packaging programs exist in most Provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents.

AHAM appreciates the opportunity to provide comments on the Reposting Draft. Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value electronics from retail establishments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Cassady', with a stylized, cursive script.

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**About AHAM:** AHAM represents more than 160 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

In Maine, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Maine is \$437.4 million, more than 3,200 direct indirect jobs, \$66.5 million in state tax revenue and more than \$138.3 million in wages.

The home appliance industry, through its products and innovation, is essential to consumer lifestyle, health, safety and convenience. Home appliances also are a success story in terms of energy efficiency and environmental protection.