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Mr. Brian Beneski Product Stewardship Program The Maine Department of Environmental Protection 17 State House Station 32 Blossom Lane Augusta, ME 04333-0017

VIA EMAIL: rulecomments.dep@maine.gov

RE: Revised Chapter 428: Stewardship Program for Packaging Draft Rule Reposted for Additional Comment

Dear Mr. Beneski:

The Can Manufacturers Institute (CMI) appreciates the opportunity to provide input on the revised Chapter 428 stewardship program for the packaging draft rule. We look forward to working with the Maine Department of Environmental Protection (the Department) to develop a successful program to achieve Maine's goal of increased recycling access for residents and higher recycling rates for packaging throughout the state.

CMI is the U.S. trade association representing metal can makers and their suppliers. The industry employs more than 28,000 people, and our members have facilities in 33 states. Members manufacture a variety of steel and aluminum cans used to package food, beverage, personal care, cleaning and paint products. Our members are proud to make the most sustainable packaging solution.

CMI provides the following recommendations on key definitions and sections of the draft.

Section 2 Definitions. DD. Toxics

CMI is concerned that Maine has not set de minimis levels or conducted risk assessments on some chemicals listed on its <u>Chemicals of Concern</u> and <u>Chemicals of High Concern</u> lists. There are some materials on the Chemicals of Concern list (for example, untreated and mildly treated mineral oils) that may be used, even if they are considered highly treated. Some other chemicals (toluene and hydrogenated rosin) are byproducts of raw materials, but there is no determined de minimis level, and no risk assessment has been conducted. Some levels are so small for some materials that they wouldn't be listed on a safety data sheet, and producers may not be aware that they are present in their packaging.

CMI recommends that the Department apply the relevant lists to the types of packaging they were developed to refer to (e.g., apply the "toxic chemicals in food packaging" list to food contact packaging), rather than a blanket application of all lists to all packaging. CMI additionally recommends that DEP remove the penalty fee provision in 10(A)(3)(b) that would apply to manufacturers unable to present supplier certifications of no intentional addition of toxics.

CMI is opposed to the inclusion of language regulating the use of materials approved by the United States Food and Drug Administration in extended producer responsibility (EPR) for packaging and paper legislation. Although the draft language requires producers and the stewardship organization members to comply with existing Maine law, this language is unnecessary because they already comply with state laws to sell or distribute products in Maine. EPR legislation should instead focus on increasing recycling rates for the materials in the program through producer funds and the responsibility of managing the program. The regulation of materials used to manufacture food contact packaging is out-of-scope in such legislation and should be left to regulatory agencies to decide through a public comment process. While acknowledging the time to remove such references to toxic materials was during the legislative process of writing and passing LD 1541, this comment period should be used to remove Section 2, DD, and all other subsequent obligations the stewardship organization has related to toxic materials in Chapter 428. This allows the scope of the law to focus on establishing the role and responsibilities of the stewardship organization and other related elements of the program.

Section 3. Assessment (5) Reuse

CMI understands the law intends to encourage reusable packaging and reduce the amount of single-use packaging that goes to landfill. However, the performance rates are very aggressive for reusable packaging. CMI suggests that language be added to clarify that the reusable package pays for the setup of necessary infrastructure and covers its cost each time the package enters the market. This ensures that other packaging types do not cross-subsidize reusable packaging. CMI does not support the public sector choosing winners and losers when it comes to reusables versus single-use containers. Consumer demand should determine the growth of reusable container systems.

Section 3. Assessment (9) Post-consumer Recycled Material

CMI supports an exemption for packaging materials that have end-market demand. These materials, such as steel food cans, should be exempted from any post-consumer recycled material requirement. Chapter 428 establishes high post-consumer recycled content (PCR) targets for covered materials (30% by 2050). Requiring steel packaging to have a minimum of 30% post-consumer recycling content is an ineffective tactic for achieving decarbonization and circular economy goals. Requiring higher post-consumer recycled content has unintended consequences of increasing energy inefficiencies in steel production, lowering the environmental benefits.

First, requiring a minimum recycled content of 30% will make it difficult for the specialized steel used to produce cans to meet strict product safety and formability requirements. If the recycled content threshold is set too high, steel canmakers will not be able to meet quality and safety standards.

Second, the requirements for recycled content for steel are difficult to achieve due to how steel is made. The steel used in canmaking is produced in the basic oxygen process (BOP), which typically incorporates 20-30% scrap. Only BOP steelmaking has the capability to produce the grades of steel utilized in packaging. Requiring a minimum recycled content of 30% may result in adding so much recycled content during production that the process becomes energy inefficient. This inefficiency reduces the desired environmental benefits of reusing used steel to make new products.

Third, there is no need for any minimum recycled content requirement for steel cans, given the material's robust end markets in Maine and other states. Demand for used steel scrap already exceeds supply, and all collected steel has a market. Adding a minimum recycled content requirement to increase steel can recycling would not result in more steel cans being recycled. Improvements in recycling access, as Maine's EPR law is laudably aiming to do, will increase the recycling of steel cans; a minimum recycled content amount in steel cans would not increase steel can recycling. It would only shift steel from one end market to a mandated market, adding cost and greater environmental impact to the production of cans.

Section 3. Collection Assessments (3), Statewide Recycling Needs Assessment (C), and Disposal Audits (D) and Timing

The current draft requires assessments of recyclable materials in disposal waste, statewide recycling needs assessments, and disposal audits every 10 years. This period between assessments is too long. CMI suggests eight years as a balanced approach that does not overburden the stewardship organization but collects data necessary to inform the Department of the stewardship organization's progress toward meeting the law's goals.

Section 4. Defining Packaging Material (B) Identifying the Base Material

CMI supports designating the package's base material as the one routinely targeted for recycling. This clarity should prevent confusion if a package has a dominant and a de minimis material type. For example, an aerosol can's dominant material is either steel or aluminum. The nozzle, inside tube, and cap are made of plastic, which is removed when the aerosol can is processed for recycling.

CMI thanks you for the opportunity to comment on the reposted product stewardship program draft chapter. We appreciate your consideration of our feedback and look forward to working with you to improve the state's recycling access and rates. Please let me know if CMI can answer any questions.

Sincerely,

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Michael Smaha Vice President of Government Relations Can Manufacturers Institute