

SENT VIA E-MAIL TO: rulecomments.dep@maine.gov

August 26, 2024

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

RE: Chapter 428: Stewardship Program for Packaging Draft Rule Comments

Dear Mr. Beneski:

HospitalityMaine appreciates the opportunity to submit comments regarding the “Chapter 428: Stewardship Program for Packaging” rule proposal. We are a trade association representing restaurant and lodging establishments of all sizes across the state, and our comments reflect the perspective of both operators and the businesses that support them. While we recognize the importance of environmental stewardship and commend the progress businesses are making towards sustainability, we have significant concerns about the current draft of this rule and its potential effects on the hospitality community. Certain revisions are necessary to ensure the rule is both balanced and workable.

Our comments will focus on the proposed definitions, associated costs and fees, and exemptions. Many of these concerns are similar to those we expressed in our March 2024 submission, but we will concentrate on the areas that most impact the hospitality industry.

Definitions & Rule Concepts

- **Consumer:** We reiterate our concern that including business-to-business (B2B) packaging within the program raises questions about its alignment with the law's original intent. We interpret the law as targeting packaging that directly reaches end consumers, not intermediaries removed from the consumer transaction. Therefore, B2B packaging should be excluded from any final rule.
- **Manage:** As currently proposed, the definition of "manage" extends beyond the parameters outlined in the statute, particularly with regard to educational requirements for producers and litter mitigation efforts. It was understood during the legislative process that the Stewardship Organization (SO) would handle

recycling and packaging-related educational outreach. We maintain that packaging producers have little to no impact on consumer decisions to litter.

- **Toxics:** The definition of "toxics" as proposed may place an unreasonable burden on small businesses across Maine. We request that this definition be made more balanced, considering the difficulties businesses would face in screening for thousands of toxins unrelated to packaging. Specifically, the challenges producers face in certifying their products as free of certain toxins, as seen in PFAS compliance, should be taken into account.
- **Readily Recyclable:** We have previously commented on the concept of "readily recyclable," emphasizing the need for clear and understandable guidelines. Businesses need to fully understand this concept before implementation. The current proposal remains ambiguous and risks putting Maine out of step with how other states make similar determinations. We recommend limiting criteria that would be difficult for many of Maine's small businesses to meet and instead suggest determining "readily recyclable" based on an honest evaluation of Maine's recycling capabilities.

Costs & Fees

We continue to hear concerns from restaurants and lodging establishments across Maine about the costs associated with Extended Producer Responsibility (EPR). While this draft provides more information on fees, it remains unclear how much individual businesses will be required to pay. This uncertainty is largely due to the lack of clarity around what is considered "readily recyclable." We support the idea of providing businesses with cost estimates, which would allow them to plan and budget appropriately. Unanticipated or surprise costs could be a significant financial setback for many, especially as the cost of doing business continues to rise.

- **Disposal Costs:** Maine should not be the first state to require producers to cover disposal costs. We urge the Maine Department of Environmental Protection (DEP) to adhere to statutory intent and exclude disposal costs from the rule.
- **Management Costs:** As stated in our previous comments, we support the idea that any additional costs should be borne by the SO.
- **Goals & Penalties:** We encourage DEP to adopt more flexible timelines based on realistic goals, taking into account the challenges often associated with novel regulatory changes such as EPR. We are concerned that businesses making good faith efforts to comply with new regulations could be penalized heavily for

noncompliance. Businesses that demonstrate efforts to comply should not face exorbitant financial penalties.

Program Exemptions

We continue to advocate for DEP to issue exemptions for packaging products that are federally regulated and in cases where no readily recyclable alternatives exist. The process for qualifying for an exemption should be straightforward and streamlined, without the need for public input on each exemption. Federally regulated products are already subject to strict oversight and compliance standards, and adding state-based restrictions could discourage new business and complicate matters for those already operating in Maine.

HospitalityMaine appreciates the opportunity to provide input on the latest draft of Chapter 428. To ensure the program's success, it is crucial that it enhance sustainability while also considering the impact on businesses and consumers. We remain committed to engaging constructively with DEP and the SO throughout the program's development. Thank you for considering our perspective as you refine the rule before its adoption.

Sincerely,
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