

reuse MAINE

August 9, 2024

Brian Beneski
17 State House Station
Augusta, ME 04333

RE: Maine EPR for Packaging Updated Proposed Rules

Dear Mr. Beneski and team,

Thank you for the opportunity to submit comments regarding the updated proposed regulations for Maine's packaging EPR law. The following comments are submitted on behalf of Reuse Maine - a volunteer coalition of business, municipal, environmental and sustainability leaders in Portland, South Portland, and beyond who are actively working to catalyze and launch reuse systems in our state.¹ **Maine's packaging EPR law represents a crucial opportunity to accelerate packaging reduction and reuse throughout the state, and we strongly support the Department's incorporation of reuse and refill throughout the program.** Outlined below are our detailed suggestions regarding changes to the reuse and refill provisions of the proposed rules.

The two most significant elements of the updated rules as they pertain to reuse are the updated definition of reusable packaging and the updated incentives embedded into producer fees, especially for non-readily-recyclable reusable packaging.

Reusable Packaging Definition

The updated rules amend the previously published definition of reusable packaging material as follows: "*packaging material that is designed to be reused ~~several times for the same purpose and without a change in format~~*"

¹ Please note: Our prior comments to [DEP](#) and [BEP](#) were submitted under the name of Reuse Portland. While our coalition has expanded and rebranded, our core membership and shared vision remain the same.



after initial use, the return and the reuse of which is facilitated ~~made possible~~ by an alternative collection program collecting the reusable packaging material in every county in which it is produced. ~~adequate logistics and infrastructure as part of a reuse system.~~"

These changes will mean the *only* way to qualify as a reusable packaging system is to register as an alternative collection program. We appreciate that some producers may choose to register unique returnable reusable packaging systems as alternative collection programs, especially for formats that do not lend themselves to commingled collection with other types of packaging, such as returnable pressurized gas cylinders. However, **we advise against requiring all reusable packaging systems to register as alternative collection programs.**

As currently structured, alternative packaging programs occur outside of the purview of the Stewardship Organization and do not interact with existing recycling infrastructure or programs. We do appreciate that the Department has included a set of relatively low fees (\$1k for a single producer, \$5k for a group of producers, plus annual report fees) to propose alternative collection programs for reusables. This structure will incentivize groups of six or more producers to work together for the lowest possible costs to implement an alternative collection program for reuse. We also appreciate that non-reuse-related alternative collection programs cost more, as these will not deliver as many environmental benefits as reuse programs. But requiring all reusable packaging systems to be managed independently - even by a group of producers acting together - removes the opportunity for the highest and best use of the EPR program as a catalyst for scaled reuse in the Consumer Packaged Goods sector.

The [best outcome for scaling reuse under packaging EPR](#) is for producers, via the SO, to *pool* their resources and create a *shared, interoperable* reuse infrastructure throughout the state. This system should leverage existing and new recycling infrastructure to collect and sort reusables - exactly the type of system outlined for study in the upcoming needs assessment. When siloed as alternative collection programs, reuse systems are unlikely to integrate into existing collection for recyclables, meaning we may end up with parallel reuse



and recycling programs that overall cost more than one efficient, integrated system. **Please allow flexibility for producers and the SO to decide whether or not an alternative collection program or a pooled system is best for each type of reusable packaging.**

We also strongly urge the Department to reinstate the clause “*several times for the same purpose and without a change in format after initial use*” as part of the definition of reusable packaging material. Each of these phrases is essential for preventing loopholes and greenwashing. Under the amended definition it will be too easy to claim packaging is reusable without ensuring it is properly reused:

- “Several times” ensures that reusables are sufficiently durable to withstand multiple use cycles. While we understand this is vague as it does not provide a clear numeric threshold for the minimum number of reuse cycles, we believe that such flexibility is good for the program and better for producers, as it avoids arbitrary restrictions on reusable packaging design and innovation. However, it is still crucial to specify that reusables must be designed for multiple use cycles - otherwise bad actors may claim they are using reusable packaging when in fact the materials are far too flimsy to withstand reuse.
- “Same purpose” ensures that reusable packaging is not redirected to another application, but continues to cycle through the system fulfilling its original purpose. This *does not* mean it must contain the exact same product in every cycle - for instance, [pooled reusable glass packaging systems in Germany](#) use a standardized set of glass containers in various shapes and sizes across an array of products, so a small jar might contain peanut butter on one loop and raisins on another. But this packaging is still fulfilling the same purpose - as primary packaging for consumer goods within the packaging EPR program. The idea is to prevent bad actors from marketing packaging as reusable when in fact there is no system to recover it and the expectation is actually for consumers to find creative ways to reuse it at home, like turning the glass jar into a pencil holder. Even producers repurposing the same jar for another application, such as a business-to-business delivery, should disqualify the package from credits or incentives as reusable under the



program. In both of these scenarios, the jar remains in use but is no longer completing multiple cycles as primary consumer packaging.

- “Initial format” ensures that reusable packaging is not heavily reprocessed before it reenters the market, defeating the purpose of design for durability. As we have previously submitted in comments to DEP, we are aware of examples of companies purporting to “reuse” materials when in fact they are actually recycling them (i.e., flaking plastic from used products and recycling it into new formats). The environmental benefits of reuse come primarily from the prevention of new manufacturing. Reprocessing or remanufacturing packaging - beyond cleaning and minor repairs - is not reuse.

Every other packaging EPR law in the country enacted to date has specified these provisions when defining reusable packaging.² **We urge DEP to align the definition of reusable packaging as closely as possible with [Upstream’s recommended definition](#)** (see also [accompanying fact sheet](#)), which harmonizes across all five packaging EPR laws. This model definition was carefully considered based on best practices and emerging global consensus among policymakers, advocates, and reuse practitioners, including the ongoing development of global reuse standards.

Producer Fees

Changes in Section 4C requiring all covered materials to be designated as either readily recyclable or not readily recyclable have implications for reusable packaging across many aspects of the program, most notably producer fees (Section 10).

Boiling reusable packaging down to whether or not it is readily recyclable leaves room for non-readily-recyclable reusables or serviceware to be disincentivized, despite the fact that they are still a superior choice environmentally (for instance, [this reusable mailer](#) offers immense carbon savings, but is highly unlikely to meet the criteria for readily recyclable under Maine’s packaging EPR regulations). We understand that, as updated, the

² See: [MN Packaging Waste and Cost Reduction Act, Sec 2 Subd. 33](#); [CA Plastic Pollution Prevention and Packaging Producer Responsibility Act, Sec. 42041\(a\)](#); [ORS 459.005 Sec. 45\(24\)](#); and [CO Producer Responsibility Program for Statewide Recycling Sec. 25-17-703 \(43\)](#).



proposed rules would direct most if not all reusable packaging into alternative collection programs that will likely offset most or all producer fees. However, given our above suggestion to allow flexibility for reusable packaging programs to fall more directly within the purview of the SO, **we strongly urge the Department to include a provision clarifying that reusable packaging, whether or not it is readily recyclable, shall pay the lowest possible fees into the program. We suggest including language specifying that reusables shall pay only once, upon first market entry.** This aligns with global best practices for reusable packaging in EPR programs as well as language in both Oregon's and Minnesota's laws (in California and Colorado, reusables are exempt and thus pay no fees):

- [Oregon Recycling Modernization Act](#): Sec. 2(6)(b)(J) (J) clarifies that a covered product does not include *“any item that is not ultimately discarded inside this state, whether for purposes of recovery or disposal.”* The Oregon Department of Environmental Quality has interpreted this to mean that reusable materials are exempt from paying fees into the program as covered products until and unless they are ultimately discarded inside the state - in other words upon their exit from the marketplace after numerous reuse cycles.
- [Minnesota Packaging Waste and Cost Reduction Act](#): Sec. Sec. 14. [115A.1454] Subdivision 1(4) outlines that producer fees must *“prioritize reuse by charging covered materials that are managed through a reuse system only once, upon initial entry into the marketplace.”*

In previous comments, we have recommended including an incentive (likely in the form of discounted program fees) for high-performing reusable packaging that achieves a 90% or higher return rate. Adding language to clarify that reusables only pay upon first market entry (whether recyclable or not) will inherently incentivize higher return rates, as each additional cycle of a reusable package will result in reduced costs for producers. There can still be a fee reduction for readily recyclable reusables compared to non-readily recyclable reusables.

If the Department is determined to direct the majority of reusables through alternative collection programs, consider specifying a minimum



return/refill rate threshold - ideally 90% - for reusables to qualify as alternative collection programs. This provides an avenue for reusable packaging programs to launch within the program and “graduate” out to alternative collection program status once they are mature. This way, high performance is still incentivized within alternative collection programs. In the meantime, reusables will only pay fees once to the SO upon first market entry, regardless of their recyclability, providing incentives to choose reuse and build high-performing reuse systems within the program itself - ideally leveraging new and existing recycling infrastructure for simplified collection and sorting.

Additional Comments

Program Goals

We continue to strongly support the packaging reduction and reuse targets proposed in the rules, and thank the Department for including these ambitious yet achievable goals. Thank you also for clarifying the language in section 3A pertaining to requirements for producers in the event that reuse and source reduction targets are not met. The increased specificity here, requiring the SO to evaluate how existing reductions have been made, the percent of producers contributing to that reduction, and suggestions as to where reuse and refill systems could be established or expanded will help ensure a more robust response should the program not meet its targets.

We note that units have been removed from the measurements for the source reduction target, which will make it trickier to accurately measure or estimate waste prevention from refill and reuse programs. As we have noted in previous comments, including unit-based metrics in addition to weight-based metrics for source reduction will better align with California’s [packaging EPR program](#) (see 42057(a)(1)), which requires a 25% reduction by weight as well as a 25% reduction by packaging component for single-use plastic packaging. This structure better reflects the realities of switching to reusable and refillable packaging, allows a more comprehensive analysis of the waste reduction impacts of the program, and avoids potential unintended consequences from a purely weight-based metric, which may disincentivize highly reusable yet heavy packaging formats, such as glass. It also may be easier for producers to report given that sales are typically tracked in units, rather than weight.



Additionally, the adjustment of the baseline measurements for source reduction by five years - and a delayed deadline to meet initial reduction targets by 10 years - may weaken the overall program. We appreciate that the 2040-2049 and 2050-2059 deadlines and targets are intact, but do advise that the Department restore at least the baseline measurement timeframe so as not to give the impression that these targets are less important than recycling, participation, and other targets - after all, source reduction is at the absolute top of Maine's waste management hierarchy.

Annual SO Reporting

The updated rules have amended reporting requirements for the Stewardship Organization by removing the requirement to report reusable packaging by brand, instead asking each producer to report an overall percentage of its packaging that is reusable and, separately, a list of brands registered to each producer. This will create a data gap in the program such that there is no direct visibility into which consumer brands are offering reusable packaging to consumers in Maine. We recommend addressing this gap by requiring producers to list the percentage of each of their own brands' packaging that is reusable. This will provide the greatest clarity for the Department and the general public - as well as internally for the SO - to track the expansion of reusable packaging and progress toward reduction and reuse targets for the program. We further suggest including a separate requirement for producers to report the percentage of *refillable* packaging across each of their brands, since refill is defined separately in the statute (as it should be) and will also help producers with progress toward source reduction targets.

We also continue to suggest requiring producers to report to the SO the average return rates (and, separately, refill rates) for any reusable (or refillable) packaging they put onto the market. This will provide further incentives for high-performing reusable packaging as well as greater transparency for the general public as to whether producers' reuse programs are achieving their fullest potential in terms of environmental benefits. High return rates are [*the most important driver*](#) of environmental benefits from reuse. We must ensure producers do not put reusable packaging onto the market without



optimizing for the highest possible return rates. Without transparency into actual return rates for reusables on the market in Maine, we will not have true insights into the environmental benefits achieved by these programs. As reuse gains market share, this transparency will also be critical to building and maintaining the public's trust in producers and in the packaging EPR program.

Reusable and refillable packaging is the future of consumption in Maine, across the country, and around the world. We applaud the Department for incorporating reuse and refill into our state's packaging EPR program, and we strongly encourage strengthening the proposed provisions as outlined above to ensure this program catalyzes robust, statewide reuse and refill systems that support Maine's local economies. **Reuse will mean an overall reduction in waste and improved environmental outcomes across the state.** We thank you for your dedication to this effort and look forward to continuing to work with you to address any questions.

Sincerely,



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