

October 31, 2023

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

Consumer Technology Association comments on Maine’s Conceptual Draft Rules for Stewardship Program for Packaging

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on the Concept Draft for the Maine’s Conceptual Draft Rules for Stewardship Program for Packaging (Concept Draft). We appreciate the opportunity to comment on the Concept Draft and appreciate the Department’s engagement with stakeholders on the implementation of the law. CTA supports the overall goal of the law to increase recycling across material types and decrease the overall amount of solid waste. However, we offer the following constructive comments on the implementation procedures as proposed by the Maine Department of Environmental Protection (DEP).

CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship. The electronics industry is committed to achieving more sustainable packaging design by reducing packaging, switching to more sustainable materials, and increasing recycled content rates. Extended Producer Responsibility (EPR) is a complex policy and there is no “one size fits all” solution.

EPR for packaging is not a new concept and has been implemented by a variety of European countries as well as Canada. Additionally, three other US states are currently in the implementation process of their own state specific EPR for packaging laws. CTA believes that the growing patchwork of laws varying in scope and procedures will be costly and inefficient, especially considering the complex waste stream and variety of interested stakeholders. For this reason, CTA advocates that Maine looks to other jurisdictions to create harmonization where possible.

Producer Reporting

CTA disagrees with the proposed producer reporting procedures outlined in the Concept Draft as they are overly complex and burdensome. CTA’s members companies are global in scale and are already complying with a variety of EPR laws in other countries. We propose that Maine harmonize their reporting scheme to the process used in the Canadian provinces. While there are small differences

across provinces, Quebec's producer reporting¹ requires producers to only report each material as a gross number by weight. Producers pay a specific special producer financial participation fee (PFP) rate per material, but are not required to report by UPC, units of the component produced, packaging material by component, the breakdown of material type per packaging component, total weight of each component, etc as currently proposed in the Concept Draft. The reporting obligations for producers as proposed by Maine DEP are overly burdensome, complicated, and will not ultimately fulfill the goal of reducing solid waste to increase recycling. CTA proposes the DEP adopt the structure of gross reporting by material weight.

Additionally, CTA requests that Maine clarify that any reporting requirement of producers be specific to the volume of products/packaging sold or distributed specifically within Maine.

Producer Fees: Average Cost over Highest Cost

A few times throughout the proposal, DEP suggests that fees be attributed to the highest management cost, CTA disagrees and alternatively proposes that fees be attributed to an average or median management cost. See the below examples where CTA proposes "highest" or "most expensive" be changed to "average" or "median":

- Page 4, 3.G.1.a. "For 3 calendar years following that in which the change occurs, a producer's payment must reflect the per ton cost of managing the readily recyclable packaging material type with the **highest management cost**."
- Page 4, 3.G.2.a "For 3 calendar years following that in which the change occurs, a producer's payment must reflect the per ton cost of managing the readily recyclable packaging material type with the **highest management cost**."
- Page 7, 5.D.1. From 2031 to 2040, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 4 times the per ton cost of managing the **most expensive** readily recyclable material for each ton of packaging material that is not readily recyclable they produce.
- Page 7, 5.D.2. From 2041 to 2050, if less than 50 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 5 times the per ton cost of managing the **most expensive** readily recyclable material for each ton of packaging material that is not readily recyclable they produce. If less than 75 percent of the total packaging material reported the prior calendar year was readily recyclable, producers of packaging material that is not readily recyclable must pay 4 times the per ton cost of managing the **most expensive** readily recyclable material for each ton of packaging material that is not readily recyclable they produce.
- Page 7, 5.D.3. From 2051, onward, producers of packaging material that is not readily recyclable must pay 6 times the per ton cost of managing the **most expensive** readily recyclable material for each ton of packaging material that is not readily recyclable they produce.
- Page 16, 5.A.2.b For a packaging material type that is not readily recyclable, the producer must pay, per ton produced, three times the average per ton management cost of the **most expensive**

¹ Quebec special producer financial participation chart by material: <https://www.eeq.ca/en/modernisation-temp/producers/>

readily recyclable material during the prior calendar year unless goals for the percent of readily recyclable packaging material are unmet, in which case the producer must pay four, five, or six times the average per ton management cost, in accordance with SECTION RR GOALS.

Program Goals

CTA disagrees with the arbitrary numerical goals proposed by Maine DEP for all categories. Recycling rates and target dates need to be supported by data from the needs assessment conducted via a third-party expert consultant. The rates specifically outlined in the Concept Draft will be difficult if not impossible for the electronics industry to achieve without an increase in product breakage. Additionally, meeting these rate targets do not necessarily result in the overall intent of the law to reduce solid waste material and increase recycling.

CTA proposes that any targets be aligned with those already in statute in similar jurisdictions, like New Jersey or California, to create a more streamlined and harmonized regulatory compliance system for producers. California's EPR for packaging law currently has aggressive program goals in statute for packaging reduction with dates prior to 2030, the year that Maine's proposed packaging reduction goals begin. The electronics industry cannot meet both the goals outlined in California and then the additional program goals proposed in Maine's Concept Draft. Alternatively, CTA proposes fee incentives, instead of mandated goals, that encourage and reward producers for meeting certain environmental outcomes, like packaging reduction.

Furthermore, several states have recently passed legislation with mandated post-consumer recycled content (PCR) rates in statute, including California, New Jersey, and Washington. CTA proposes that Maine harmonize their regulatory goals with those that are already passed in other states. Additionally, Maine should utilize the needs assessment to study the availability of PCR content for manufacturer packaging, since supply has not been consistently readily available at the current demand needed.

Consumer technology products have unique protection needs – screen protection, protection against shock and vibration for sensitive components – that dictate and severely limit the packaging material types and amounts that adequately protect these products. These arbitrary mandated source reduction rates are not informed by an assessment that studies the relationship between the package and the product itself and can result in the increased amount of product breakage – which would ultimately lead to an increase in the solid waste being landfilled, instead of reducing it.

CTA approaches the packaging conversation from the unique perspective that accompanies complex durable goods. Packaging design flexibility for producers to achieve desired environmental outcomes – including the reduction of damage to products during transport which is critical for the consumer technology industry - should be encouraged. The technology industry has already made strong commitments over the past several years to packaging reduction and should not be punished for being proactive in their design innovation.

Additionally, while we agree that the transition to refillable or removable packaging can be an important component to increased resilience in our recycling and solid waste management systems, we do not agree that these requirements can be applied to the electronic industry. The durable goods industry is a small contributor to packaging waste overall and CTA would support packaging reduction strategies specifically tailored to our industry, not arbitrary goals mandated in statute that will hinder innovation.

Toxics

CTA has strong objections to all regulations of toxics in packaging that are outlined by DEP in the Concept Draft. Any regulation of toxic substances should be handled separately via Department conducted risk evaluations to determine if a material is toxic based on its risk and the exposure from the actual packaging material. The federal government is leading in chemical regulation under the Toxic Substances Control Act. The Concept Draft does not offer any scientific basis for the ban of the listed substances and CTA believes regulation should be based on sound science conducted through a peer-reviewed risk evaluation.

Additionally, CTA does not support the expansion of authority granted to the Department to ban toxic substances from the recycling stream. The potential for an entire material type to be designated as "toxic" and therefore banned from the recycling system is not the best path forward for encouraging the recycling and proper handling of packaging material. Instead, it will lead to an increase in disposal of these material types. Designation of "toxic substances" that should be banned from packaging should be handled separately outside of a producer responsibility system based on a risk assessment approach.

Litter

CTA agrees with the overall intent to reduce litter in the state of Maine. However, CTA strongly disagrees with the litter targets outlined on page 7 and the litter fees outlined on page 16. Litter is a product of consumer behavior and while producers can attempt to influence consumers to stop littering, invest in recycling infrastructure, and create more convenient systems, producers ultimately cannot force consumer behavior. Furthermore, it is for this reason that CTA originally advocated for a shared responsibility payment structure, such as Oregon, where all stakeholders, including consumers, contribute to reducing waste and increasing opportunities to recycle packaging.

Fund Cap

CTA disagrees with the proposal on page 17, that in the case of excessive fund the SO must create and fill an additional full-time position dedicated to assisting producers, recycling establishments and municipalities in the preparation of investment proposals. Additionally, CTA disagrees that this position would be required to be added to the SO's annual budget indefinitely. Any excess in funds should be allocated to investments that best improve the overall recycling infrastructure of the state and reduce the amount of solid waste. The SO should use its own discretion, along with data supported from the needs assessment, to determine how excess funds will be used. A mandate to fund additional staff members is burdensome and may not be the best investment to increase recycling in Maine.

Labeling

CTA disagrees with the labeling provisions outlined in the Concept Draft and the associated fees with "improper labeling". CTA believes this goes beyond the legislative intent of the scope of the law. The electronics industry is composed of global companies that label for multiple international jurisdictions simultaneously. Products should be allowed to have labels that are required by other jurisdictions.

Conclusion

Thank you again for the opportunity to provide these comments on the Concept Draft. The electronics industry is committed to increasing the overall amount of material recycled and decreasing solid waste.

CTA comments on Maine's Conceptual Draft Rules for Stewardship Program for Packaging

We welcome further engagement with stakeholders in this process, and if you have any questions about our above comments please do not hesitate to contact me at apecck@cta.tech.

Sincerely,

A handwritten signature in black ink, appearing to read "Ally Peck". The signature is fluid and cursive, with the first name "Ally" written in a larger, more prominent script than the last name "Peck".

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