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October 31, 2023

Maine Department of Environmental Protection
Via email: MainePackagingEPR@maine.gov

RE: Comments on Parts 1, 2 and 3 of Conceptual Draft Rules for the Stewardship Program for Packaging

The Retail Association of Maine and the Maine Grocers & Food Producers Association are jointly submitting additional comments regarding the proposed Conceptual Draft Rules Parts 1, 2 and 3 for the Stewardship Program for Packaging. These comments are in addition to a proposed redline draft comprehensive of all 3-parts being submitted by Andrew Hackman of Serlin Haley. The redline is a collaborative effort from several stakeholders and RAM and MGFPFA support the proposed redline language edits.

Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise, specialty retailers, and convenience stores, distributors and supporting partners — together representing more than 500 members statewide. Maine's retail sector employs more than 85,000 Mainers.

First, while we appreciate the extension of the deadline to submit comments to October 31, 2023, the three parts of the proposed rules are incredibly complex and hard to understand. Notably, Part 1 and 2, in particular, leave us very concerned that this program is likely to be incredibly bureaucratic, and has the potential to drive out businesses that are trying to do the right thing for their business and consumers. These proposed rules seem to create a mechanism for the State of Maine to collect unlimited funds through payments and penalties, and we would urge the Department to consider streamlining these rules so they are more easily understood. We read these rules through the lens of a Maine-based producer either in the consumer goods business or in the business of producing packaging, and without an in-depth technical background in the EPR space, this language is challenging to decipher and fully comprehend. In addition, we shared these rules with our membership, but given the short timeline for input and complexity, we have not received as much input as we would like. The common theme is that many entities are saying they do not understand how this is going to work.

We would like to offer some specific comments for your consideration:

- Part 1:
- We reiterate the need for the Department to revisit the discussion of disposal cost and proposed alternative management to best address material management and the legislative intent.
- Part 2:
- The Department is not proposing any additional producer exemptions. We would urge the Department to consider the impacts of packaged goods that are federally regulated (like child-proof/safety, or medications) or where there is no acceptable readily recyclable alternative to the packaging material (for example, plastic lined

ice cream containers). We support determining criteria to set parameters around how to determine appropriate exemptions.

- We are concerned that the rules are proposing that this program include B2B (business-to-business) packaging (for example, a box containing a case of canned goods for sale at a grocery store). Our understanding of the law was that it was applying to the packaging that contains a product to the end consumer. As many businesses already pay for the recycling and/or disposal of packaging materials containing goods to be placed on store shelves, we would urge the Department to clarify that B2B packaging is not included.
- ‘Readily Recyclable’: payments are proposed to be based on the highest management costs for the previous three years, and reflect the true costs in the fourth year. Why not reflect the true costs sooner? Additionally, this section may be in conflict with other sections that apply higher multiplier costs for non-readily recyclable materials. We also express concerns for the determination of the proposed material types list and readily recyclable list as it relates to businesses’ ability to plan effectively for their budgeting.
- Audits: Representative audits are proposed at least every 10 years. We are uncertain if 10 years is too long between audits.
- Litter: We recommend the Department reevaluate this section. Currently, the Maine Department of Transportation and Maine Turnpike Authority does quite a bit of litter removal each spring so it seems like there is already some available data that can be helpful. It is worth noting that Maine’s beaches often contain litter from other states that unfortunately show up on the Maine coast. Additionally, a packaging producer will have little to no impact on a consumer who unfortunately chooses to litter. We also suggest reviewing the data base selection amongst varying population basis or geographic locations.
- Program Goals: The program goals seem overly ambitious, if not impossible, to meet due to the complexity and significant penalties attached to many of the goals. Multipliers of 4, 5, or 6 times the per ton costs seems excessive. Additionally, the overall recycling rate goal of 40% then jumping to 80% in 2040 may be unachievable. We urge the DEP to revisit how to best determine achievable goals.
- Producer Reporting and Payments: While the brick code may be helpful for the Department to manage a like group of products, we remain concerned that it will be incredibly difficult, if not impossible, for the Department or SO to maintain a comprehensive list of compliant and non-compliant products. This will leave retailers frequently unsure if their product line is compliant. Regardless, the reporting requirements are extremely burdensome and complicated. The rules note that Producers ‘must provide the following information to the SO when it begins producing packaging material’, should this not also be specific to the selling, offering for sale, or distributing in the state and following similar registration needs to the Initial Registration and Payment? The goal of the program is to increase recycling, and excessive reporting will add significant costs to compliance and ultimately significant costs to consumers.
- Alongside reporting, we do not see the specified clarity necessary to determine the responsible entity for payment when it is unclear who the producer and owner of the packaging material is, both at a retail level and specific to packaging with multiple material types.
- We continue to express the necessity to acknowledge any packaging-related design limitations through reduced fees. There may be instances where the packaging’s role may limit the ability of the producer to reduce the material or use a material that is more recyclable but this does not appear to be addressed in the fees/penalties.
- Certifying the absence of toxics: As we have seen with PFAS reporting, the ability for producers to certify that packaging materials are free of toxics is likely to be challenging especially for low-volume producers. This lack of certification levies a 10% penalty. Which toxins are to be certified as absent? This is comprehensive of hundreds of thousands of products.
- Reporting Deadlines and Payments: As we read the rules, producers will need to submit relevant data by May 31 of each year, but then payments to the program are due no later than July 1. Beginning July 2, a 10% penalty is assessed for late payments. Not only is the time frame between reporting and paying too short, the penalty for one day is excessive.
- As we mentioned above, the program goals are incredibly difficult, and penalties / incentive fees are excessive.

- Packaging Stewardship Fund Cap: proposes that the fund will have excessive funds when it reaches five times the annual expenditures. We can think of no other state program that would maintain excess funds that much. Maine's unemployment insurance program, for example, would never maintain a fund balance five times the annual expenditures.
- Registering Within 30 Days: The rules propose that producers must register within 30 days of the SO making a registration mechanism available. This seems extremely short and not practical.
- Transparency & Benchmarking for Producers: We express overall concerns for the SO reporting on specific brand's materials.

Thank you for the consideration of our comments. We look forward to remaining engaged partners as the process continues. It is imperative that this is done well for implementation clarity and overall program success.



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