

October 31, 2023

Via Electronic Submission

MainePackagingEPR@maine.gov

Re: EPR Conceptual Draft Rules, Part 1, Part 2, and Part 3

The Personal Care Products Council (“PCPC”)¹ is pleased to submit the following comments on the Maine Department of Environmental Protection’s (“Department”) EPR Conceptual Draft Rules, released in 3 parts throughout September and October (the “Proposed Rule”).² Our member companies are involved in the distribution and sale of over-the-counter nonprescription drug products, cosmetics, toiletries, fragrances, and ingredients in Maine, and therefore have a strong interest in the scope and applicability of the Conceptual Draft Rules.

The Conceptual Draft Rules address in detail the importance of implementing LD 1541 (“EPR Law”) for the reduction of volume and toxicity in packaging material, and for the increased recycling of packaging material. While PCPC supports Department’s role to establish a stewardship program for producers of covered products, we do believe that the conceptual draft rules could be revised to create a more efficient program.

Our Position

PCPC supports Maine’s goals to execute an effective stewardship program and implement the EPR Law. We are also very appreciative of the Department’s stakeholder inclusion with the Conceptual Draft Rules. We kindly request the Department to consider our feedback on the Conceptual Draft Rules concerning the below.

Part 1

Definitions

The definitions seem to mix all waste and required producer payments, requiring payment for both recycling and landfill waste, including non-packaging waste. We request the Department specify that the packaging waste stream excludes any waste that is not associated with packaging.

¹ Based in Washington, D.C., PCPC is the leading national trade association representing the cosmetic and personal care products industry. Founded in 1894, PCPC’s more than 600-member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the United States. As the makers of a diverse range of products that millions of consumers rely on every day, from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance, member companies are global leaders committed to product safety, quality, and innovation.

² See Maine Department of Environmental Protection, Conceptual Draft Rules, available at <https://www.maine.gov/dep/waste/recycle/epr.html>.

The definition of “similar municipalities” could be further clarified to include populations of less than 6,500 does not include populations of less than 1,200.

Determining Municipal Reimbursement

A. Obtaining information.

(1) Consultations.

We request further information on how consultations will be funded and the feasibility of conducting 20 consultations in light of all requirements.

(3) Representative Audits.

We request clarification on why “weight” is used in certain provisions, while “volume” is used in others. This provision also includes language regarding the accuracy of the audits. The Department should consider clarifying who and how accuracy will be determined.

Additionally, the purpose of site-specific audits is unclear (i.e., do they result in higher reimbursement rates for that specific jurisdiction?). If the purpose is for higher reimbursements, the Department could be constantly subjected to requests for site-specific audits so it could be beneficial to add a cap either in terms of numbers per year or no more than a certain percentage of the SO’s administrative costs.

B. Defining reimbursable costs by packaging stream.

Costs for recycling infrastructure equipment are reimbursable. We would like the Department to clarify how these costs will be handled differently between equipment held before the implementation of the EPR Law and new equipment.

Part 2

Scope Definitions

The definition for consumer seems to include B2B and commercial entities. The scope should be clarified in this definition.

Readily Recyclable

3. Process for annual review of the packaging material types list and readily recyclable list.

The annual review process appears to be onerous and introduces uncertainties for producers, who have to plan and account for expenses considering longer timeframes. We request the Department to consider harmonizing the lists across states, such as with the process in California’s SB 343, and consistency with federal guidance.

G. Transitional Period

During the transitional period from not readily recyclable to readily recyclable, producer payments are based on the “highest management cost.” We request for the Department to clarify how to determine “highest management cost” and how producers will have access to this information. Additionally, since the transitional period is 3 years, the Department should consider whether there will be incentive to move to more readily recyclable materials or away from not readily recyclable materials in a timely manner. The 3-year transition may not be practical if the material and recyclable list could change before the transition time, unless this is the purpose of such timeframe. The transitional period could also create potential issues for the municipalities where costs could be higher to manage not readily recyclable material.

4. Representative Audits

The audit has to identify to the extent possible the amount of litter that belongs to a specific producer, and results will be analyzed to identify prevention opportunities. We would like clarification on the process of the audit and how producers will be chosen in the most equitable manner.

Specifically, how will beverage bottles, exempt from the program, be addressed? Additionally, how will the audit be able to differentiate between caps of containers that are exempt compared to those that are not exempt, including determining the specific producer? The same concern applies to paper/corrugated cardboard and other materials where there may be no markings or materials have broken down into small pieces making it difficult to determine type, form, and/or producer.

5. Program Goals

A. Reduction

So as not to create a barrier to future business growth, the reduction goal needs to be normalized by the number of packaging units shipped. In addition, so as not to penalize companies that have already taken significant steps to optimize their packaging, a mechanism should be added to allow producers to receive credit for historical reductions. California’s SB54 has incorporated similar credits for reference. Furthermore, we recommend that, in addition to the credits for historical reductions, the baseline for reductions be aligned with other states with EPR laws so that producers are working against one baseline for reductions nationally.

More specifically, there are physical limitations to how much packaging can be reduced to still practically and safely transport products. For example, if companies reduced packaging by 25%, further reducing by another 50% would mean a total reduction of 75%. Producers should be credited for already taking steps to address these goals due to their own initiative or required by other jurisdictions, such as California. Additionally, not all of the program goals are appropriate for all of the base materials, i.e., glass, metal, paper, plastic.

B. Reuse

There is no definition of reuse in the draft rule, only a definition of refill. There are various references to either reuse or both reuse and refill throughout the concept. The EPR law includes a definition of reuse that refers to another product stewardship statute that defines reuse as follows: “Reuse” means a change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally produced. We recommend this concept be revisited so as to ensure that the refilling of packages by the original consumer in their home or outside the home is incorporated into this goal.

C. Postconsumer Recycled Material

Packaging materials that are restricted from using postconsumer recycled material due to federal law (e.g., transportation regulations) should be clearly out of scope of these requirements and not included in the total weight of packaging material used to calculate the percentage that is postconsumer recycled material.

D. Readily Recyclable

Since the Readily Recyclable list is subject to change or update annually, the Department should consider how such updates will affect a producer’s ability to meet the target dates. Additionally, the deadlines and penalties for producers with packaging material that is not readily recyclable seem arbitrary and extremely severe. There should be a sound basis for additional fees, such as additional cost to handle not readily recyclable materials or investments needs to improve recycling. Additionally, we request the Department to reconsider the 100% target, as there could be small traces of material that could slightly lower this percentage.

E. Litter

Given that all other aspects of the regulation are based on packaging weight, the litter goals should also be expressed in weight (vs units). Additionally, the Department will dedicate certain percentages of investments to litter education projects. We would like the Department to clarify the focus of such projects (i.e., for packaging material litter solely or all litter) and explain how the Department arrived at the investment percentage allocated to litter education projects.

F. Participation

Since the statute does not require municipalities to participate in the stewardship program, the Conceptual Draft Rules sets goals for increased participation and allots 2 percent of investments to educate municipalities on why they should participate. We would like the Department to clarify the basis for the 2 percent of investments and how the use of the investments will practically increase municipality participation. Also, we request the Department to clarify whose responsibility it is to increase such participation.

G. Collection

This provision sets collection goals for participating municipalities but does not provide the next steps for participating municipalities that underperform. We request the Department to provide any such next steps for underperforming municipalities.

Producer reporting and payments

1. Definitions

D. Toxics

The definition for toxics is broad with some references to specific product categories that are not relevant to all covered products under the EPR law. One such reference is Reduction of Toxics in Packaging, 32 M.R.S. §§ 1731-1738 (2019), which regulates PFAS in food packaging, but not in all packaging. The Conceptual Draft Rules now penalizes all packaging and as a result regulates PFAS in all packaging in a way that was not intended or proposed under the referenced law. We request the Department to revise this definition to only have the toxics list apply to the specific product category in which it was intended in the referenced regulation.

We would also like the Department to consider that there could be traces of toxic chemicals in PCR as the material is reprocessed. The Department should consider whether the elimination of every trace of toxics will be feasible for producers.

3. Initial Registration and Payment

Producers must register with the SO within 30 days of registration becoming available. We request the Department to extend this timeframe, at least during the first year, to allow for producers to adjust to the new requirements, as well as allow time for potential system errors as the new EPR law is being implemented. We recommend that the Department allows registration on an ongoing basis up until year end, at least during the first year, and consider a reasonable time period after analyzing the registration process during the first year.

It may also not be feasible for producers to pay within 30 days, specifically with short notice of knowing exact payment amounts. Considering the short turnaround time and potential errors in the registration system as the program is being implemented, penalties are too high.

4. Producer Reporting

B. Annual reporting for producers that are not low-volume producers

Reporting obligations should be simplified to allow calculation of fees against statutory obligations without additional complexity that is unnecessary and could introduce inaccuracies given producer data may be organized in different ways. To this end, the following should be considered:

- Reporting should be by SKU and then packaging components as defined in the producer specification system rather than defined by separability for recycling.

- Reporting for multi-material components should be by individual material type and not by heaviest material type.
- Reporting should not require brick code as not all companies use brick codes.

D. Estimates

Please clarify that reporting based on actual shipments at the national level and normalized for Maine's population are not subject to malus fees associated with estimated data.

5. Producer Fees

- A. Fees for Producers Other than Low-Volume Producers
- 3. Incentive Fees
 - a. Post-consumer recycled material fee.

It is unclear why an additional fee is warranted and what meeting or not meeting the PCR goals means at the component level when the base material PCR goal is met.

6. Packaging Stewardship Fund Cap

We request clarification on why refunds are not allowed for excess funds. We further recommend that the SO decides on how to allocate such excess funds, as it will have first-hand knowledge of needs. If the rules require the excess funds to be used for additional staff, this could take away from a greater need.

7. Transparency and Benchmarking for Producers

Many of the program goals referenced are based on percentage of total packaging material weight across brands, so it is unclear why reporting would be warranted at the brand level.

Thank you for the opportunity to submit comments on the Conceptual Draft Rules, and we look forward to continued engagement on this important issue.

Best regards,
Kenisha Cromity
Staff Counsel
Personal Care Products Council