

March 18, 2024

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

**Consumer Technology Association comments on Maine’s Chapter 428: Stewardship Program for Packaging Posting Draft Rules**

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on the Chapter 428: Stewardship Program for Packaging Posting Draft Rules (Rules). We appreciate the opportunity to comment on the Rules 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 currently proposed.

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 requests that the rules be clarified so that producers do not need to report materials by category and weight for each UPC or brick code, but instead as a single gross weight per material category. In line with this reporting scheme, we request that 9.B.(3) on page 27 and (2) “Estimating units produced” be stricken from the Rules. Reporting the amount of units produced will not increase recycling or lead to any value for the Department.

We believe that any additional reporting than what is outlined in statute would be overly burdensome and costly. 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 as much as possible. While there are small differences across provinces, Quebec's producer reporting<sup>1</sup> 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 Rules.

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. Many CTA member companies sell to downstream distributors who ultimately control where the product goes. Therefore, if the volume of packaging sold or distributed specifically within Maine cannot be determined, reasonable estimates based on national data and using population percentages should be allowed for reporting purposes.

### **Producer Fees Determined by PRO**

CTA believes that it is too premature to set the producer fee structure and instead asks that this section be eliminated and replaced with a statement saying the SO will determine the fees for producers in their plan. CTA believes several actions need to take place before a fee structure is set, including a draft budget, the selection of the SO, and the needs assessment. Regarding the eco-modulation fees, CTA suggests that the SO set these fees and bonuses based on the system currently in place in Quebec<sup>2</sup>.

### **Program Goals**

CTA is more amendable to the program goals as laid out in these Rules as opposed to the first draft from DEP. However we still believe that these goals are arbitrary. Recycling rates and target dates need to be supported by data from the needs assessment conducted via a third-party expert consultant. The source reduction rates specifically outlined in the Rules may 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 the performance goals and PCR percentages 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 performance goals in statute with dates prior to 2030, the year that Maine's proposed packaging reduction goals begin. Specifically for source reduction, the electronics industry cannot meet both the goals outlined in California and then the additional program goals proposed in Maine's Rules.

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,

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<sup>1</sup> Quebec special producer financial participation chart by material:

<https://www.eeq.ca/en/modernisation-temp/producers/>

<sup>2</sup> [Ecodesign incentive bonus - Packaging Ecodesign: An approach that everyone can take \(eeq.ca\)](#)

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 Rules, including the Toxics Fee. 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 Rules do 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.

### **Certification**

Regarding the need to certify product packaging be free of toxics, CTA requests the scope be limited to plastic and food packaging. Additionally, we request self-certification or supplier certification be acceptable for compliance. At this point, our member companies are unaware of third-party certification bodies. Finally, we would like to emphasize that that this section is too vague and our member companies need more details to help them comply with the law.

### **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 10 and the litter fees outlined on page 35. The methodology referenced in the Litter Audit is too random to give an accurate landscape of all the litter in Maine. Next, CTA requests that the SO be given more authority to adjust the litter goals based on the trends of litter over time. Most importantly, CTA requests a definition of litter be provided. Without a definition, we believe it will be extremely difficult to comply with litter targets, conduct a litter audit and pay the litter fees.

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.

### **Fund Cap**

CTA applauds the new draft of the Rules and updates to the Fund Cap that now instruct excess funds 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.

### **Labeling**

CTA disagrees with the labeling provisions outlined in the Rules 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. Alternatively, we suggest Maine follow the path of Oregon and New Hampshire, which have conducted a truth in labeling study to learn more information about product labeling before imposing fees.

Additionally, we request that labeling be limited to labeling on the original product packaging. The reality is that a retailer, shipper or anyone can add a label, tape, etc. to a product along the supply chain and the labeling is outside a manufacturers control once the product leaves the factory.

### **Conclusion**

Thank you again for the opportunity to provide these comments on the Rules. The electronics industry is committed to increasing the overall amount of material recycled and decreasing solid waste. 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](mailto:apecck@cta.tech).

Sincerely,

A handwritten signature in black ink, appearing to read "Ally Peck". The signature is written in a cursive, flowing style.

Ally Peck

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