



August 26, 2024

VIA EMAIL at [rulecomments.dep@maine.gov](mailto:rulecomments.dep@maine.gov)

Brian Beneski  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

**Re: Comments on Second Posting for Chapter 428: Stewardship Program for Packaging**

Dear Mr. Beneski:

As the association for the consumer-packaged goods (CPG) industry, including makers of food, beverage, personal care, and household products, the Consumer Brands Association<sup>1</sup> advocates for uniform, workable, and durable regulatory frameworks that are informed by risk-based science, promote consumer choice, and build consumer trust across the sectors we represent. State-by-state patchwork regulations cause uncertainty to the industry and confusion to consumers; Consumer Brands supports state and federal frameworks that ensure clarity for consumers and efficient interstate commerce. We have significant concerns about producers' ability to comply with the proposed regulations for the Maine Stewardship Program for Packaging, as well as the overall effectiveness of the program. We appreciate the opportunity to comment on the Maine Department of Environmental Protection's ("DEP's") second posted draft rule of Chapter 428: Stewardship Program for Packaging. Our comments are provided below.

I. The new rule inappropriately reimburses for disposal

In Section 13(D)(1) on page 52, the re-posted rule now provides that municipalities can be reimbursed for landfilling packaging that is not readily recyclable. The legislative history of the EPR bill clearly demonstrates that disposal was *not* intended to be reimbursable. The original LD 1541 committee amendment did provide that municipal spending for simply disposing of not readily recyclable materials. However, those provisions were explicitly stripped, though the amendment proposed by Rep. Tucker and adopted by the House and Senate. For example, the committee amendment language on municipal reimbursement stated the following on page 11, lines 7-11:

For the purposes of this subsection [about municipal reimbursement], the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of

---

<sup>1</sup> The Consumer Brands Association ("Consumer Brands") champions the industry whose products Americans depend on every day, representing more than 2,000 iconic brands. From household and personal care products to food and beverage products, the consumer-packaged goods ("CPG") industry plays a vital role in powering the U.S. economy, contributing \$2 trillion to the U.S. GDP and supporting more than 20 million American jobs.

packaging material, whether readily recyclable or not readily recyclable, and the costs associated with the disposal of packaging material that is not readily recyclable.

After Rep. Tucker's amendment was adopted, the last clause about disposal was explicitly stricken from the final language that became law, and the provision about municipal reimbursement was limited to the following:

For the purposes of this subsection, the cost to a municipality of managing packaging material may include, but is not limited to, the costs associated with the collection, transportation and processing of packaging material, whether readily recyclable or not readily recyclable.

38 M.R.S.A. § 2147(10). The DEP's rulemaking drafting process has brought municipal reimbursement for disposal back into the rule a number of times, and each time, stakeholders have brought to the Department's attention that the legislative history was clear in not supporting any such rule language. The reimbursement for disposal would then be taken out of a draft, only to reappear again later in a subsequent draft. This is the third time that municipal reimbursement for landfilling has inappropriately appeared the rulemaking language, and it needs to be the last. The DEP must remove it (again) because the statute does not support this interpretation at all.

## II. Toxics

The cited statutes which DEP has determined to delineate "Toxics" under the Maine stewardship program for packaging are not directly applicable to the materials regulated under the Maine EPR program. Statute 38 M.R.S. § 1694 identifies "toxic chemicals in children's products", which are exclusively applicable to children's products such as toys, baby products, and car seats, as written within the statute. Statute 32 M.R.S. § 1743, regulates "toxic chemicals in food packaging" and its jurisdiction is limited to food packaging. The Maine stewardship program for packaging is intended to regulate a much broader segment of packaging than these two statutes consider. The proposed rule language insinuates DEP is broadly applying statutes intended to regulate specific, defined segments of materials to the wide variety of materials covered under the Maine packaging stewardship program. This is not reflective of the intent or the scope of these two statutes. Materials that are not children's products and food packaging should not be regulated by requirements specific to those product types.

## III. Post-consumer recycled material limitations

There is currently not enough high-quality mechanically recycled plastic to meet producer demand due to supply limitations, availability, and quality. Some mechanically recycled plastics do not meet FDA requirements for food and medical applications due to downcycling, an adverse effect of mechanical recycling in which the quality of the material being recycled is reduced. Due to an insufficient supply of high-quality post-consumer recycled content and the potential for migration of chemical contaminants to the product being protected, we recommend exempting the packaging for products intended for use on, in, or in contact with the body, including: drugs, medical devices, and hygiene products (for example, diapers, menstrual products, toilet paper, baby wipes) and products intended for contact with food (for example, paper towels) from the post-consumer recycled material targets and applicable fees.

Additionally, requiring producers to conduct additional third-party audits of their PCR content is duplicative and an unnecessary cost. Post-consumer recycled content suppliers are already

typically required to obtain third-party certifications of their materials to provide to buyers (producers). Alternatively, we recommend that under the Maine stewardship program producers have the option to provide PCR certifications from suppliers during a compliance audit.

Packaging materials that are prohibited from using postconsumer recycled material due to federal law (for example, 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. There should be a clear exemption for such packaging in the regulations rather than a process to request an exemption.

#### IV. Definition of “consumer”

The broadened definition of "consumer" in the draft regulations significantly extends the law's scope and could lead to the inclusion of packaging materials already covered by business entities that are out of scope for the Maine packaging stewardship program. The proposed definition of "consumer" includes industrial, commercial, and other business-to-business entities, rather than consumer packaging intended for municipal recycling systems. Unlike residential recycling systems, commercial and industrial packaging materials already have responsible parties for their disposal and do not impose any burden on municipal governments. The inclusion of the language "or includes its use in a service it provides," unnecessarily expands the scope to include these service providers, even when the products they use never enter the municipal recycling stream.

#### V. Reuse

The definition of "Reusable Packaging Material," should be revised to include the scenario where a consumer refills a reusable package at home. This material usage is not currently covered under "managed for reuse by participating municipalities or through alternative collection programs."

Additionally, reusable packages, which need to be durable enough for multiple uses, may necessitate the use of materials that are not easily recyclable. Reusable materials should be designed for durability, ensuring they can be reused multiple times over at least five years. However, this durability may make it more difficult for these materials to meet the criteria for being "readily recyclable." In order to encourage the adoption of reuse systems, these packages should not be subject to the same recyclability standards as other materials and should be exempt from the fees mentioned in section.

Additionally, packaging with child-resistant closures, which cannot be reused under federal law, should be exempt. Child-resistant closures are critical for safety, especially in preventing children from accessing hazardous substances. Moreover, due to strict regulatory requirements, child-resistant packaging designs cannot be easily or quickly altered. Packaging with child-resistant closures should be exempt from reuse targets.

#### VI. Clarity and Standardization of Reporting

Reporting obligations should be simplified to enable fee calculations without adding unnecessary complexity, which could lead to inaccuracies due to variations in how producers organize their data. To achieve this, the following considerations should be addressed:

##### A. UPC

- a. Given that SKU UPCs do not always change when a package changes, other codes that represent the various SKU versions sold during the reporting year should be the basis of reporting rather than UPCs.
- B. Material weight
  - a. Reporting should be only by weight of each material in the packaging material types list material.
- C. Estimates
  - a. The regulations should include clear language to allow for producer reporting using national data prorated for Maine's population.

## VII. Recycling Access Target

The reposted draft introduces a "recycling access" goal, aiming for 100% of Maine residents to have "access to municipal recycling of readily recyclable packaging material." The establishment of a recycling access target should be the responsibility of the stewardship organization. Municipalities are not obligated to join the program. As written, the packaging stewardship program requirements, the stewardship organization itself, and the state do not have the authority to enforce their participation. Requiring a 100% access rate for Maine residents when it cannot be guaranteed that all municipalities participate in the packaging stewardship program sets an unattainable and unrealistic goal. The stewardship program should be able to establish an appropriate, achievable access target as informed by a needs assessment and information on what percentage of municipalities are utilizing the program.

\* \* \*

Consumer Brands appreciates the opportunity to provide its feedback and recommendations on the second posted rule. Thank you for your attention to our comments.

Sincerely,

Greg Costa  
Senior Director, State Affairs  
Consumer Brands Association