



October 27, 2025

Submitted via email: rulecomments.dep@maine.gov

Maine Department of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, Maine 04333-0017

RE: AMERIPEN Comment on Chapter 428: Stewardship Program for Packaging

Dear Maine Department of Environmental Protection,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Maine Board of Environmental Protection (“Board”) and the Maine Department of Environmental Protection (“Department” or “DEP”) to submit written comments regarding the proposed rulemaking for the Stewardship Program for Packaging (“Program”). These rules include the Initial Packaging Material Types List (“List”), alternatively referred to as “Appendix A.” AMERIPEN respectfully submits this comment letter for the Board’s consideration as it prepares to amend the Program rules.

AMERIPEN represents the entire packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. As the leading voice for packaging policy in the United States, AMERIPEN collaborates with legislators, regulators, and stakeholders to develop science-based, data-driven solutions that enhance the role of packaging in product protection and circularity. We have several member companies with a presence in Maine, and many more who distribute packaging materials and products into the state.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values, and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

The below written comments and clarifying questions from AMERIPEN, organized by rule in the first section and by topic in the second section, speak to the contents of the proposed rules that were publicly noticed on September 24, 2025.



SECTION I: CHAPTER 428: STEWARDSHIP PROGRAM FOR PACKAGING

5. Process for Defining the Packaging Material Types List & 12. Requirements for Participating Municipalities

In Section 5(A)(2), the rules are being amended to delete a sentence that reads, “Packaging material types designated as readily recyclable must be collected and sent for recycling by participating municipalities.” Additionally, in Section 12, subdivision (A) language has been removed requiring participating municipalities to collect “all packaging types that have designated as readily recyclable”.

According to the staff memo to the Board dated September 18, 2025, the rules are being amended in part to “[r]emove language requiring participating municipalities to collect and recycle *all* packaging material designated readily recyclable because participating municipalities are *now* permitted to collect and recycle *any* packaging material designated readily recyclable” (emphasis original). AMERIPEN understands that this appears to be tied to the recent amendment of the underlying statute to require a participating municipality to “[p]rovide for the collection and recycling of *any* packaging material that is generated in the municipality and is readily recyclable.”¹ (emphasis added). The proposed rule changes in paragraphs 5(C) and 12(A) also correspond to these amended provisions. AMERIPEN is concerned, however, that treating the addition of the word “any” as grounds for giving municipalities discretion to pick and choose which readily recyclable packaging material to collect, without improving their existing recycling programs, undermines statutory intent and desire to improve recycling in Maine. AMERIPEN participated in the legislative process surrounding this change and our understanding was that this change was to try and give municipalities greater flexibility with collecting readily recyclable materials, but not to change the whole structure of the importance of the readily recyclable materials list to improve and create uniformity to recycling programs in Maine.

In fact, the Environment and Natural Resources Committee amendment report summary for LD 1423 (which amended the extended producer responsibility law in 2025) provides that the revision in question “amends the requirements for municipalities to participate in the packaging stewardship program by *clarifying* that a participating municipality must provide for the collection and recycling of any packaging material that is generated in the municipality and is readily recyclable”² (emphasis added). This excerpt provides evidence that the change has the impact of clarifying rather than intended to create an entirely different meaning to the provision. The effect of the changes in the rule would contravene that by dramatically limiting the readily recyclable collection obligation for municipalities. Prior to LD 1423 and even with its adoption (as demonstrated by the citation above), the purpose of the clause is to have municipalities collect and recycle all readily recyclable packaging materials within their jurisdiction; the clarifying addition of “any” through LD 1423 removes ambiguity as to whether that obligation applies to all instances or an unspecified subset of material. The purpose of the obligation to collect and recycle

¹ 38 MRSA §2146, sub-§9, ¶A

² Maine Joint Standing Committee on Environment and Natural Resources. (2025). COMMITTEE AMENDMENT “ ” to S.P. 579, L.D. 1423, “An Act to Improve Recycling by Updating the Stewardship Program for Packaging”. Maine Legislature. <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0579&item=2&num=132>.



readily recyclable packaging materials is to ensure there is statewide access to recycling. Letting municipalities cherry-pick which readily recyclable materials they want to handle harms consumers who are expecting a modernized recycling system and uniformity of programs across the state. It also creates unnecessary hurdles for producers in meeting recycling goals under the Program, which in turn only serves to raise the cost of packaging due to the punitive design of Program fees. It is also important to remember that system costs will be funded by producers and that municipalities have the autonomy to decide whether to participate.

While AMERIPEN strongly believes that it is the intent of the program and operationally important for readily recyclable materials to be collected by all municipalities, we respect the Department's desire to create some flexibility for a municipality to not have to collect all readily recyclable materials under certain conditions. Therefore, AMERIPEN would propose a process that allows municipalities to notify the Department of conditions that make it infeasible to collect all readily recyclable materials. AMERIPEN recommends several language changes as follows to provide this flexibility, while preserving the intent of the law per the objectives outlined above. This proposed process would be similar to a process being considered under draft regulations in California for its packaging extended producer responsibility (EPR) law (SB 54), with elements of the proposed changes offered below mirror the mechanisms of California's proposal.

Section 5(A)

*(2) Section 5(C) does not apply to the creation of the initial packaging material types list. **Packaging material types designated as readily recyclable must be collected and sent for recycling by participating municipalities, unless granted a waiver under subdivision 12(D).** Participating municipalities must be reimbursed for managing packaging material in accordance with Section 13, and producers must pay for packaging material in accordance with Section 10.*

Section 5(C)

*(1) Changing a packaging material type's designation from not readily recyclable to readily recyclable affects producer payments, **municipal participation requirements**, and municipal reimbursement.*

... (b) For the purpose of municipal participation, the packaging material type continues to be designated as not readily recyclable for two calendar years following that in which the change occurs.

(c) For the purpose of municipal reimbursement, the packaging material type continues to be designated as not readily recyclable for three calendar years following that in which the change occurs.

*(2) Changing a packaging material type's designation from readily recyclable to not readily recyclable affects producer payments, **municipal participation requirements**, and municipal reimbursement.*

(a) For the calendar year in which the change occurs, the packaging material type fee must reflect the packaging materials type's prior designation as readily recyclable. For the next three calendar years

following that in which the change occurs, the packaging material type fee must be the average per ton cost of recycling the most expensive readily recyclable packaging material type during the prior calendar. Beginning the fourth calendar year following that in which the change occurs, the packaging material type fee is calculated in accordance with Section 10(A)(2).

*(b) For the purposes of municipal **reimbursement and participation**, the packaging material type is designated as not readily recyclable immediately.*

Section 12

*A. Recycling. Participating municipalities must provide for the collection and recycling of **all any** packaging material types that have been designated readily recyclable for at least the two prior calendar years, **unless the municipality has requested a waiver for a particular readily recyclable material type under Section D**; and ...*

D. Material Waivers. A participating municipality may request a temporary waiver, for a two-year period, from the Department for the collection of a specific packaging material type listed as readily recyclable in Appendix A of this Chapter. The request must be made on a form provided by the Department and must document specific local conditions or circumstances that prevent collection of the packaging material type, and must demonstrate one of the following conditions exists:

- (1) The packaging material type cannot be collected and transported from the municipality in a cost-effective manner despite reimbursements available under Section 13 of this Chapter;***
- (2) The municipality does not have appropriate infrastructure to collect the packaging material type due to physical constraints of facilities in the participating municipality;***
- (3) The municipality is not able to provide for transportation of the packaging material type due to lack of a transportation provider; or***
- (4) Unique geographic barriers for that municipality that do not exist in defined similar municipalities prevent collection or transportation of the packaging material type.***

A waiver approved under this subdivision may be renewed annually, for up to a cumulative total of six years.

The Department must make the waiver of a municipality publicly accessible on its website and will accept written comments on its content for a period of 30 days. After the 30-day comment period is over, the Department will make these comments available on its website and evaluate whether to approve or deny the waiver.

If the SO objects to the extension or exemption in public comments, the SO must be responsible for arranging alternative means for the collection, processing, storage, and transportation of the packaging material type resulting from implementing this subdivision.

9. Ongoing Producer Registration and Reporting



In paragraph (B), it is difficult to discern what is intended due to the deletion of subdivision 9(B)(3). The numbering after that deleted subdivision is not updated to reflect the deletion, though cross-references elsewhere are updated as if it were renumbered. Moreover, the text in the paragraph preceding subdivision 9(B)(1) is not entirely updated to reflect the potential renumbering; specifically, the reference to subdivision 9(B)(7) remains the same but likely should be corrected to 9(B)(6). AMERIPEN recommends the Department correct this cross-reference or else explain why the language is being changed to refer to a different subdivision.

Paragraph (E) adds a new sentence to the rules that allows an audited producer to be required to report to the Stewardship Organization (SO) using Universal Product Codes (UPCs). Not all products utilize a UPC, which prompted some of the changes enacted in LD 1423. Therefore, AMERIPEN requests adding the following clause to the end of the new sentence: “, only if the products or the associated packaging material uses UPCs.”

10. Producer Fees

LD 1423 specifically created a process whereby the Stewardship Organization may request revisions to the structure of Producer Fees under the rule. This is an important provision from LD 1423 and must be formally included in the rule to specifically allow for this process to take place and link back to the fees established in the rule. Therefore, AMERIPEN requests that the following language from LD 1423 be included in Section 10 as a new paragraph (D), as follows: “**D. Fee Adjustments. The SO, based on the statewide recycling needs assessment conducted pursuant to Section 3(C) and other available information, may recommend to the Department that the producer payments schedule adopted under this subdivision be modified to better incentivize the use by producers of readily recyclable packaging materials and support the solid waste management hierarchy.**”

SECTION II: APPENDIX A. PACKAGING MATERIAL TYPES LIST

Overarching Concerns

Finding a packaging material type is not readily recyclable, reusable, or compostable has significant cost implications for consumers, municipalities, and producers alike. These designations are also the **only factor** that causes any potential change in municipal recycling behavior to improve recycling locally under the Chapter 428 Rules adopted in December 2024. It is critically important that this List begin to create driving forces to improve recycling and not simply revert to the lowest common denominator and worst performing municipal recycling systems.

Regarding producer material fees, under the Program rules, a material type that is not readily recyclable must pay at least “**two times the average per ton cost of the most expensive readily recyclable packaging material type** during the prior calendar year” (emphasis added). This alone would represent a substantial cost escalator untethered from the actual cost of managing materials, but it is further escalated: if the “readily recyclable, reusable, or compostable” program goal is unmet, the fee multiplies



three, four, or five times, depending on the year.³ As such, it is crucial that accurate designations are made. Otherwise, producers of packaging for products in Maine will be saddled with tremendous additional costs that are out of step with other states and that come in a period of sustained inflation. Therefore, under the Program rules and proposed List, numerous common material types would still face a major price premium in the near future that is unique to Maine.

AMERIPEN acknowledges and thanks the Department for its efforts in revising the List and providing more clarity about how it developed the List in the past few months. AMERIEPN understands that the Department intends for producers to be responsible for substantiating whether their packaging material types meet the readily recyclable, reusable, and compostable criteria. However, the List necessarily includes designations for these three characteristics, so it must accurately reflect whether each material type inherently satisfies them. If the List fails to do so, the premium costs for packaging in Maine will become an unwelcome reality. For that reason, AMERIPEN continues to have overarching concerns about the current designations and the inability to understand the rationale behind them.

Inability to Review Underlying Data and Considerations

First, AMERIPEN appreciates that that the “Compostable” and “Reusable” designation columns have been restored in this version of the List, and that the Department made compostability designations for applicable material types.

Next, based on previous correspondence with the Department about how it made determinations, it is AMERIPEN’s understanding that the Department relied in part upon the 2023 and 2024 Recycling Establishment reports and that the contents of these reports are treated as confidential. The data also is not provided in aggregate or anonymized fashion, even though that would mitigate concerns about confidential business information. Therefore, it is exceedingly difficult for the public to vet the accuracy of the underlying information and assumptions that informed the readily recyclable designations of the draft List. Even if an individual were to seek the information directly from each reporting recycling establishment, there is no guarantee enough establishments voluntarily would provide the information.

AMERIPEN does appreciate the provision of the Readily Recyclable Designation Scoring document (“scoring sheet”) with the second draft of the List, which helped address the concern that it was unclear whether the Department utilized an objective mechanism for determining whether the three recyclability criteria were met. However, there is still no way to review or dispute the evidence the Department considered when assessing each criterion.

To this point, there were confusing outcomes in some of the “scoring sheet” cells that are difficult to understand without further information. Another example is the “LDPE (#4) - flexible and film forms type, which satisfied all marketability columns, the “Source Separated (SS) Collected” and “SS Recycled columns,” and the Ratio column, yet is not designated readily recyclable. This designation contradicts the regulatory requirements for recyclability: “MRF collected” and “MRF Recycled” are not criteria that

³ 06-096 Code of Maine Rules Chapter 428 § 10(A)(2).

are listed in statute or the Chapter 428 regulations, so using them as disqualifying factors is not supported by the law. Relatedly, the Department’s “Summary of Stakeholder Comments on Draft Packaging Material Types List” document states that, “[w]hile the Department initially considered store drop-off locations when evaluating throughput of a packaging material type, further review determined that these sites will no longer be considered equivalent to a municipal source-separated recycling operations in Maine, due to differences in operational characteristics.” It is unclear what “differences in operational characteristics” means and how that has any bearing on whether a material meets the regulatory “throughput” requirements.

Ultimately, members of the public are still left with limited clarity as to how the Department determined whether each of the three recyclability criteria was met. This approach contrasts with other states with EPR programs for packaging that have developed or are developing material type lists. Despite the variation in each respective EPR law, those states shared at least some level of recycling data or scoring to give insight into how packaging would be categorized. Specifically:

- In California, the Department of Resources Recycling and Recovery presented multiple drafts of its proposed Covered Material Categories (CMC) List beginning June 2023. The list was also updated in December 2023 to include initial recyclability and compostability determinations for each CMC, which were informed by a material characterization study that was subject to a separate public review process. That study provided statewide material collection and sortation data that stakeholders could assess and compare against any other resources they may have access to. The CMC List and study are to be regularly updated to ensure recyclability and compostability determinations reflect recent conditions. Maine is not subject to the same complex EPR framework as California, but this example demonstrates the significant gap in the level of publicly available data between the two states’ programs.⁴
- In Colorado, the Producer Responsibility Organization (PRO) established a minimum recyclable list and an additional materials list using a scoring system. The system was evaluated based on five criteria: availability of recycling services, recycling collection and processing infrastructure, sortability of materials at the material recovery facilities, recycling end markets, and detriments.⁵ The draft scores were presented to the state’s Advisory Board to gather its feedback, and opportunities for public comment were also made available. This approach presented an objective and publicly reviewed option for categorizing and characterizing covered materials.
- In Oregon, the Department of Environmental Quality conducted two recycling studies in 2023 to determine inbound and outbound contents of recycling streams at the state’s recycling facilities. These studies informed the implementation of the state’s packaging EPR program.⁶ They also helped contextualize the capacity of Oregon’s recycling infrastructure for collecting and

⁴ California, State Of. n.d. “SB 54 Covered Material Categories List - CalRecycle Home Page.” CalRecycle Home Page. <https://calrecycle.ca.gov/packaging/packaging-epr/cmclist/>.

⁵ COLORADO NEEDS ASSESSMENT: Executive Summary 2025, Circular Action Alliance. pages 25–28.

⁶ “Department of Environmental Quality: Waste Composition Study: Materials Management : State of Oregon.” n.d. Waste Composition Study : Department of Environmental Quality. <https://www.oregon.gov/deq/mm/pages/waste-composition-study.aspx>.

processing various material types ahead of the creation of its material collection lists via two rulemaking phases. Furthermore, it is worth noting that the PRO is authorized to recommend additions to the collection lists to the state.

Understanding that Maine’s Program is constructed differently than those of the aforementioned states, AMERIEPN urges the Department to pursue options to further increase the amount of publicly available data and information informing List designations by:

- To the extent feasible, providing aggregated, anonymized data on statewide recycling (which will avoid exposure of sensitive business information) that is used to assess compliance with the throughput and ratio criteria; and,
- Providing more explanation of why a type did not meet requirements within each criterion. Such explanations include how it was determined that it was not “common enough to warrant sortation” or could not “be included in a commodity used to market packaging material without increasing the contamination in that commodity” (in the case of the throughput criterion) and what underlying data informed the “60% or more by weight targeted for recycling” for the ratio criterion.

Misalignment between Recycling Reports and List Types

The definition of "reportable recyclable materials" in Maine law uses broad material categories: “glass; cardboard, paper and paper products; plastic and plastic products; cartons, laminated materials and other packaging; nonferrous and ferrous metals, including white goods; textiles; and mixed streams of recyclable materials that include any combination of the materials [...]”.⁷ The 2024 Recycling Establishment Report form (“form”) available on the Department’s Recycling Establishment Report webpage⁸ identifies six overarching material classes and delineates them into specified subcategories, including an “Other” category in each class. Even after revisions from prior drafts, the material types in the proposed List do not completely align with the subcategories in the Recycling Establishment Report form. The translation from the form to the List is further complicated by the “Other” material types and subcategories, which also do not align and which require making assumptions about how materials are categorized between the form and the List.

One example issue in this area is the distinct ways that plastic forms are categorized. The form lumps together plastic with Resin Identification Code (RIC) #3, #4, #5, #6, and #7 into a single reporting category. (Confusingly, it also lumps together plastic film comprised of RIC #2 or RIC #4 into another category, potentially creating overlapping reporting for RIC #4.) This approach glosses over nuance in the management of each plastic RIC and between forms within each RIC. This becomes a problem in the List because the material types are in fact delineated by RIC and further by forms within each RIC. For

⁷ Maine Revised Statutes § 2101-A(5).

⁸ “Recycling Establishment Progress Report, Solid Waste Application Fees and Forms, Remediation and Waste Management, Maine Department of Environmental Protection.” n.d.
<https://www.maine.gov/dep/waste/solidwaste/applicationforms/recycling-establishment-report.html>.



plastics with a RIC between #3 and #7, inclusive, it is unclear how the reporting from the forms can inform the recyclability of material types within each RIC, since the reporting is not broken out so specifically. As discussed below in this letter, some of these plastic resins and forms have been found to be widely recyclable, necessitating use of reporting at the resin level and even at the form level. Another example of this is that there is one paperboard category in the form but multiple in the List; it is unclear how the Department was able to parse data on different forms of paperboard for making List designations when the existing data is not similarly parsed in the form. AMERIPEN requests that the Department explain how data from the Recycling Establishment Reports informed the recyclability determinations in the draft List and what other sources were used, given the disparity in categorizations.

Inconsistency with Other States

As stated above, California, Colorado, and Oregon relied on different approaches to determine which material categories can be considered recyclable (and compostable in the case of California) in their respective packaging EPR programs. These approaches included consideration of material collection and sortation and the availability of end markets (particularly for Colorado's program). Despite their disparity in methods, the EPR programs in those three states each determined more materials were recyclable (or compostable) than was found in Maine's draft List. For example, all non-small forms of aluminum and tin/steel were found recyclable in some form in California, Colorado, and Oregon, yet the "Aluminum – other forms" and "Tin/steel - other forms" types are not proposed to be designated as readily recyclable in Maine. These matters highlight that there are issues underlying the designations in the draft List that will leave Maine's Program significantly out of step with the rest.

By way of example, it is worth comparing the recyclability determinations proposed for Maine against those proposed for Colorado with its comprehensive consideration of recyclability factors. The list below identifies packaging material types in Maine that are not designated as readily recyclable, but for which largely similar material categories are listed on the Minimum Recyclable List or Additional Materials List for curbside collection or other means in the Circular Action Alliance's draft of the program plan for Colorado. While differences in the construction of the two state programs account for some of these changes, it nonetheless illustrates the disparity between them and is particularly questionable given Colorado's relative lack of recycling infrastructure:

- Glass – other forms
- Aluminum – other forms
- Tin/steel – other forms
- Paper – Coated paper forms
- Paper – other forms
- PET (#1) colored bottles, jugs, and jars
- PET (#1) colored other rigids
- HDPE (#2) carbon black bottles, jugs, and jars
- HDPE (#2) squeeze tubes
- HDPE (#2) – flexible and film forms



- HDPE (#2) – others [sic] forms
- LDPE (#4) bottles, jugs, and jars
- LDPE (#4) – flexible and film forms
- LDPE (#4) – other forms
- PP (#5) – bulky rigids
- PP (#5) squeeze tubes
- PP (#5) – other forms
- PS (#6) expanded/foam cushioning

Additionally, the use of transfer stations in Maine by their nature should lead to more effective pre-sorting of materials since consumers are often directed to separate them by material type at the station. In turn, these more organized streams eventually will result in cleaner, higher value bales sold to end markets. Given this, the lack of material types found to be readily recyclable in the draft List is further perplexing. AMERIPEN notes that this condition also confounded the finding in the first draft of the List that most material types fail the marketability criterion.

The background document for the second draft of the List states the “Readily Recyclable Changes document outlines the changes to the readily recyclable designation that resulted from the changes made to address requests for alignment between the proposed packaging material types in the draft list and the producer reporting categories in the Colorado and Oregon programs.” It would appear from this sentence that the designation changes only reflect the modification of the material types, despite the research the Department has performed and comments it has received. AMERIPEN seeks clarity as to whether the changes reflect only the recategorization or if they also reflect the consideration of additional information since the first draft List was released.

Finally, it is important that there be harmony across states with EPR programs to the extent possible to ensure producers can successfully comply with them in a cost-effective manner. Improved categorization will also give a better understanding of the qualifications of each material subtype. AMERIPEN therefore thanks the Department for endeavoring to align the material types with the list of material categories in Colorado and Oregon, including use of separate “small format” subtypes within each material class and removal of a 12-inches criterion for “bulky” types. Relatedly, AMERIPEN recommended the Department follow the recent policy the California Department of Resources Recycling and Recovery utilized for determining whether a material should be categorized in a “small” category. Specifically, AMERIPEN asked the Department to integrate consideration of whether any material’s “size sorting potential,” as determined by the Association of Plastics Recycling Design Guidance; an item that meets the “Preferred” criteria under this test should not be categorized under the respective packaging types for small materials. While AMERIPEN appreciates the use of this concept as it applies to plastic closures, AMERIPEN requests that it be extended to all “articles” or components of a material, to better align with this Sorting Potential Test Method.



Clarification for Marketability Criterion

In order to satisfy the marketability criterion for a packaging material type to be readily recyclable, Section 4(C)(1)(a) of the program rules requires the type to have “at least two facilities in North America operating in accordance with applicable environmental laws that recycle the packaging material type into products that are not primarily used for fuel and are not placed into the permitted area of a landfill.” AMERIPEN asks the Department to confirm that it is accurate to read this provision as only requiring the presence of recycling facilities in North America and not as obliging materials within the material type to be sold solely to North American markets.

Throughput Criterion is Subjective

In the background document provided with the first draft of the List, the Department interpreted the throughput criterion as follows: “Material included in a reportable recyclable that is presently collected and supplied to a recycling market is considered material that is common enough to warrant sortation. However, material included in a reportable recyclable that is considered contamination or that is not a target material is not considered common enough to warrant sortation.” On its face, this appears to be a straightforward standard whereby a material that is reported under the recycling establishment reports and sent to a market without causing contamination is assumed to be compliant.

However, at the Department’s April 16, 2025, stakeholder meeting, it became AMERIPEN’s understanding that the Department applied a different approach in practice compared to what was written. This more subjective approach in practice deferred to communities that chose not to sort materials, even if many other places in Maine and other states do. Additionally, the rule language governing throughput considers the potential for material to “warrant” sortation or that material “can be” included in a commodity (as opposed to the material actually “is sorted” or “is included”), but this is not reflected in the Department’s approach. The proposed method for assessing throughput risks backsliding on recycling of materials despite their confirmed potential for recyclability in Maine.

If the Department is creating new and more restrictive criteria than what is conveyed in the Program rules and does not assume a material’s presence on another state’s recyclables list is adequate for proving throughput, AMERIPEN requests that the Department **provides a clear numeric or objective threshold for throughput and recycling access.** For example, California’s EPR program relies on a related law that establishes recyclability in part by identifying which packaging material categories are sorted at material recovery facilities (MRFs) that serve at least 60% of the state’s recycling programs; this approach was based on a systematic survey of recycling facilities and subject to an extended public input process.⁹ While Maine is not subject to such a requirement, the standard for throughput in its rules is relatively straightforward. If the Department believes a more exacting method of measurement is warranted, AMERIPEN requests it revise its rules and pursue an objective, statistics-based standard.

⁹ California Business and Professions Code Section 17580.



Non-Municipal Recycling Designation

If the Department continues to rely on overly restrictive readily recyclable requirements that are unique to municipal recycling programs in Maine, the state must create some sort of on-ramp or non-municipal recyclable designation for materials that are not recycled by a municipality but that are collected and recycled via other drop-off or depot-type collection programs. The punitive fees in the Chapter 428 rules will discourage innovation in collection. As the state continues to define what is recyclable, AMERIPEN encourages DEP to align its efforts with insight into what on-ramps supported by the Stewardship Organization can look like.

Stewardship Organization investment to improve recycling will require access to supply. Supply requires opportunities to collect post-consumer materials to ensure sufficient data is collected to understand what changes and investments would be needed to ensure successful recycling of the materials. Recognizing and designating non-municipal collection systems (such as the one being developed in Oregon) within the statewide recycling list and supporting on-ramps is essential to achieve recycling and recyclable packaging design innovation. Therefore, AMERIPEN asks the state to reconsider this and evaluate how source-separated, non-curbside collection supported by the Stewardship Organization (outside of a full alternative collection program) could be recognized as a viable pathway for recycling. This will help increase the recovery of packaging materials and decrease landfill of these valuable inputs.

Treatment of Food Contact and Other Materials for Postconsumer Recycled Content

Optimal packaging design requires balancing efficient use of materials with protection of the packaged product. This dynamic is particularly noticeable in the food industry, where the production and waste of food products can have stronger environmental impacts than the packaging. This emphasizes the important and sometimes overlooked role that packaging serves in preventing food waste. .

One way to help mitigate the impacts of packaging is to increase the use of postconsumer recycled (PCR) content, which reduces dependency on virgin materials. While progress has been made in this area, PCR may be difficult to utilize due to factors unrelated to EPR. For example, using PCR in food grade applications faces steep health and safety burdens. Regulatory hurdles facing use of PCR, like that in food packaging, along with other barriers such as supply of some materials, need to be addressed alongside consideration of EPR to increase supply of PCR.

To that end, recyclers across the United States continue to invest in increasing collection and sortation of materials.¹⁰ A review of The Recycling Partnership’s Community Recycling Program Acceptance Data¹¹ (which is discussed later in this letter) demonstrates significant rates of acceptance for multiple forms of various material types across Maine. AMERIPEN recommends the Department consider this

¹⁰ Waste360. 2025. “Supply Chain Players Tap PET Thermoforms for More Recycled Content,” February 5, 2025. <https://www.waste360.com/plastics/supply-chain-players-tap-pet-thermoforms-for-more-recycled-content>.

¹¹ “Community Recycling Program Acceptance Data.” 2024. The Recycling Partnership. September 23, 2024. <https://recyclingpartnership.org/recycling-data/>.

evidence that these types are found to be worthwhile for collection and sortation in advance of provision to end markets.

Applicability of Alternative Collection Methods and Recyclability

Given the current documentation, it appears that the Department did not consider materials collected via existing non-curbside/municipally run recycling programs, such as store drop-off and retail takeback methods, as being readily recyclable. However, neither the statute nor the rules for the Program constrain recyclability to materials collected via a commingled or curbside system. The Department stated at the April 16, 2025, stakeholder meeting that material drop-off at retail establishments would likely be adequate when considering **access** and **throughput** for the entire state of Maine. Moreover, drop-off programs by their nature tend to contain less contamination and non-target materials than materials from commingled collection. Thus, they are an important source of recyclable materials.

As an example, store drop-off recycling for flexible films has been a success. In 2014, the Wrap Recycling Action Program (WRAP) launched a coordinated effort to harmonize and expand film collection at retail locations across the United States and Canada. For more than a decade, consumers in Maine and nationwide have been encouraged to return flexible film packaging to stores for recycling.

In 2024, store takeback programs in the United States collected 114,000 tons of residential film—**11 times more** than the 10,000 tons collected through municipal systems.¹² Store drop-off also delivers cleaner material and lower costs: \$250–550 per ton versus about \$3,000 per ton for curbside programs, with multiple end markets available.¹³ Many municipalities support store drop-off as a cost-effective complement to curbside collection.

In light of this example, AMERIPEN urges the Department to reconsider its decision to exclude store drop-off. AMERIPEN also urges the Department to, at a minimum, publish the criteria defining “operational characteristics” that the Department found as preventing store drop-off sites from being “considered equivalent to a municipal source-separated recycling operations in Maine” in the “Summary of Stakeholder Comments on Draft Packaging Material Types List” document. Transparency is essential to help industry align efforts with the state’s recycling goals.

AMERIPEN believes non-curbside collection programs should be considered when deciding whether a type is recyclable in some fashion – even if it is not collected via municipal programs. It is wholly unreasonable to penalize packaging materials collected via alternative collection methods under the punitive fee structure of the rules: they are indeed being recycled, just not by a municipality or MRF. Some other way of designating these materials as readily recyclable is necessary.

¹² Eunomia. n.d. How to Scale the Recycling of Flexible Film Packaging: Modeling Pyrolysis’ Role in Collection, Quantity and Costs of a Comprehensive Solution. Eunomia. <https://eunomia.eco/reports/how-to-scale-the-recycling-of-flexible-film-packaging-modeling-pyrolysis-role-in-collection-quantity-and-costs-of-a-comprehensive-solution/>.

¹³ Navigate (2025). “Unlocking Curbside Recycling for Flexible Films: What Must Be True” Presentation to SPC Impact. Seattle, WA.



There is a robust network of retail locations that collect an array of various packaging materials. Materials collected in this stream can satisfy the three-part criteria for being readily recyclable under the Program and therefore merit designation as readily recyclable. Therefore, AMERIPEN urges the Department to reassess whether each material type can be considered readily recyclable with consideration given to existing alternative collection programs (such as drop-off programs) or consider some alternate recyclable determination that does not subject materials collected outside the municipal stream to punitive fees.

Additional Resources Provide More Evidence of Recyclability

AMERIPEN encourages the Department to utilize resources beyond the Recycling Establishment Reports to inform its determinations, since neither the law nor the rules require exclusive use of those reports.

One potential resource would be ecomaine, a waste services provider in Maine. Its 2023 Annual Report, the most recent version available on its website, provides high-level revenue information about the recycling market. While it is not presented in as granular form as the List's types, it does show that the following materials had positive values in fiscal year 2023: cardboard, aluminum, steel and tin cans, #1 PET plastic, #2 HDPE natural plastic, #2 HDPE colored plastic, and #3-7 plastic.¹⁴ This provides initial evidence that these many, if not all, of their subtypes generated in Maine have active recycling markets with positive demand. Thus, they are likely to satisfy the marketability and sortability thresholds.

The Recycling Partnership maintains a National Recycling Database and Community Recycling Program Acceptance Data, which measures the community recycling program acceptance rate at the state level.¹⁵ The acceptance data includes curbside and drop-off collection data from across Maine published within the past year. The results demonstrate multiple material forms that were not designated as readily recyclable are actually collected and sent for recycling in the state. AMERIPEN urges the Department to review this tool and the evidence it provides for the in-state recyclability of various material types.

Additionally, the Northeast Recycling Council (NERC) monitors recycling markets in the northeastern United States and includes Maine within its jurisdiction. AMERIPEN recommends that the Department, as a member of NERC, consult with the organization and review any data it can share about markets in the region.

¹⁴ ecomaine. n.d. "2023 Annual Report." ecomaine. https://www.ecomaine.org/wp-content/uploads/2023/12/ECO-011-Annual-Report-2023_r4_PROOF.pdf.

¹⁵ "Community Recycling Program Acceptance Data." 2024. The Recycling Partnership. September 23, 2024. <https://recyclingpartnership.org/recycling-data/>.

Consideration of Certain Reusable Materials

AMERIPEN is aware of certain formats of materials that are reused in business settings that should be considered reusable under the Program, including in Maine.¹⁶¹⁷ Such programs enable the repeated utilization of materials across multiple customers and reduce demand for single-use materials. AMERIPEN accordingly asks that the Department at the very least consider creating specific packaging material types for packaging types that have demonstrated reusability systems and designate them as reusable.

Other Material Type Categorization Matters

Based on the material type descriptions, there may be an overlap in the way certain paper materials are categorized, particularly if they are compostable. For example, an uncoated paperboard food boat that can undergo composting pursuant to ASTM D8410 could be categorized in both the “Uncoated paperboard” and “Compostable paper forms.” In scenarios like this, a producer and the Stewardship Organization do not have clear direction as to how to categorize their materials. AMERIPEN seeks the Department’s guidance as to how ambiguities like this will be decided – in this specific example, would the reporting producer be able to select the packaging type that is most fitting?

According to the document comparing the Maine packaging material types to corresponding Colorado reporting categories, the Maine “Paper – small forms” and Maine “Paper – other forms” material types both correspond to the Colorado “Paper Products: Other Printed Materials” reporting category. However, Maine’s EPR law applies only to packaging material and does not apply to paper products, unlike Colorado’s law. Therefore, AMERIPEN believes the “Paper Products: Other Printed Materials” should not be utilized in making comparisons for the List.

Finally, the language in the Description sections for the various plastic packaging types that requires “displaying” of resin identification codes is problematic. Maine’s EPR law does not specifically authorize regulation of labeling or governance of recyclability claims; the only reference to labeling in the law is limited to an incentive for producer payments and is unrelated to Appendix A. Inserting labeling standards may create conflicts with existing or potential state regulations governing labeling. AMERIPEN striking the “displaying” language from many plastic types’ descriptions, as the remaining language sufficiently captures the appropriate composition requirements.

Importance of Tracking Latest Market Conditions

It is vitally important that the Department regularly update the List and engage with producers and other recycling market participants when doing so. The law requires the Department’s rules to include a

¹⁶ “Recycled Plastic Pallets: Choosing Sustainable, Reusable Plastic Shipping Pallets.” n.d. iGPS.

<https://igps.net/resources/recycled-plastic-pallets-choosing-sustainable-reusable-plastic-shipping-pallets-slp/>.

¹⁷ “Discover How CHEP Works and CHEP Pallet Locations | CHEP USA.” n.d. <https://www.chep.com/us/en/why-chep/how-chep-works>.



“process for determining on an annual basis those types of packaging material that are readily recyclable, which must involve consultation with the stewardship organization and recycling establishments.” The Program rules incorporate this provision by requiring the Department to “annually review input from the [Stewardship Organization] and stakeholders on the packaging material types list and initiate rulemaking to make adjustments, as necessary.”

Changes in the market for recyclable materials can occur rapidly for many reasons, including new investments, advancements in technology, and updates to legal policies. Any lapse in the review of recycling, reuse, and composting conditions risks ignoring progress made for a given packaging type. Furthermore, various actors in the market, from producers to processors to recyclers, have unique insights into the state of the market. AMERIPEN accordingly urges the Department to: (1) maintain a regular and public schedule of annual rulemaking to revise the List (including initiating the process every January to ensure sufficient time to navigate the process); and (2) proactively engage stakeholders to gather up-to-date information beyond the recycling establishment reports.

Lack of Clarity Regarding List Terminology Markings

AMERIPEN appreciates the explanation of various symbols used in documents for prior versions of the draft, which helped clarify the Department’s process. AMERIPEN also appreciates the more simplified use of markings in the current draft of the List.

Additionally, the scoring sheet for a prior draft of the List contains columns under the throughput section labeled “MRF collected,” “MRF Recycled,” “Source Separated (SS) Collected,” and “SS Recycled.” It is unclear how these columns related to the throughput requirements in the adopted rules, which relate to sortation and contamination rather than collection and recycling. AMERIPEN requests further explanation of the meaning of each of the columns in the scoring sheet and that they align with the regulatory requirements if they are not already. AMERIPEN also argues that requiring the satisfaction of both MRF-related columns and both SS-related columns (as stated the August 5, 2025, meeting) exceeds the requirements under the law, and asks instead to require satisfaction of only one pair to meet the throughput requirement and redesignation of materials as readily recyclable, where these characteristics are met.

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AMERIPEN strives to offer a good-faith and proactive approach. We continue to focus on initiatives that develop and/or strengthen policies to advance the “reduce, reuse, recycle” strategies, while also enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain



AMERIPEN looks forward to the continued open dialogue with the Department while collectively balancing the myriad needs of the packaging industry, developing sound solutions to foster a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, ultimately supporting the success of this program. We remain committed to supporting progressive, proactive, and evidence-based strategies for sustainable packaging policies and programs.

AMERIPEN thanks the Department for this opportunity to provide written comments regarding the official draft rules, including Appendix A. AMERIPEN appreciates the time and assistance of the Department staff during this process. Please feel free to contact Andy Hackman (AHackman@serlinhaley.com), Gregory Melkonian (GMelkonian@serlinhaley.com), or me by email with any questions on AMERIPEN's positions.

Sincerely,

A handwritten signature in black ink that reads "Danielle F. Waterfield".

Danielle F. Waterfield
Policy Director and General Counsel
AMERIPEN