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April 30, 2025

Submitted via email: MainePackagingEPR@maine.gov

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

RE: Draft Initial Packaging Material Types List – Comments

Dear Maine Department of Environmental Protection,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Maine Department of Environmental Protection ("Department" or "DEP") to submit written comments regarding the draft Initial Packaging Material Types List ("List"), alternatively referred to as "Appendix A." AMERIPEN respectfully submits this comment letter for DEP's consideration when developing the final Initial Packaging Material Types List as part of the Stewardship Program for Packaging ("Program").

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. 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.

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The below written comments and clarifying questions from AMERIPEN, organized by topic, speak to the contents of the draft of Appendix that the Department released on March 26, 2025.

Overarching Concerns

Finding a packaging material type is not readily recyclable, reusable, or compostable has significant and punitive consequences for consumers and producers alike. 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." 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.[1] 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 comes in a period of sustained inflation. Therefore, under the Program rules and proposed List, numerous common material types will face a major price premium in the near future that is unique to Maine.

AMERIEPN understands that the Department intends 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 and so must accurately where 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 expresses strong overarching concerns about the current designations and the inability to understand the rationale behind them.

Inability to Review Underlying Data and Considerations

Based on correspondence with the Department, it is AMERIPEN's understanding that the Department relied 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, which could mitigate concerns about confidential business information. Therefore, it is difficult, if not impossible, 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 that the establishments would provide the information within the limited window to offer comments.

It is unclear whether the Department utilized a scoring system or any another objective mechanism for determining whether the three recycling criteria were met and whether the reuse

[1] 06-096 Code of Maine Rules Chapter 428 § 10(A)(2).

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and compostability definitions were met. This decision-making approach is concerning and lacks transparency. Members of the public are left to guess as to how the Department decided upon its designations by reviewing directions from the statute, rules, and background document DEP provided with the draft List and piecing them together with outside resources.

This approach is in stark contrast with other states with extended producer responsibility (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.[2]
- 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.[3] 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.[4] They also helped contextualize the capacity of Oregon's recycling infrastructure for collecting and processing various material types ahead of the creation

[2] 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/.
[3] COLORADO NEEDS ASSESSMENT: Executive Summary 2025, Circular Action Alliance. pages 25–28.
[4] "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.

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

Understanding that Maine's Program is constructed differently than those of the aforementioned states, AMERIEPN urges the Department to pursue options to increase the amount of publicly available data and information informing List designations. At a minimum, the Department should share its internal methodology (e.g., a scoring system, if applicable) for deciding whether each criterion and definition was satisfied. To the extent feasible, the Department should also provide aggregated, anonymized data on statewide recycling (which will avoid exposure of sensitive business information).

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 […]".[5] The 2024 Recycling Establishment Report form (form) available on the Department's Recycling Establishment Report webpage[6] identifies six overarching material classes and delineates them into specified subcategories, including an "Other" category in each class. The material types in the draft 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 List.

An 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 with RIC #2 and 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 plastics with a RIC between #3 and #7, 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.

[5] Maine Revised Statutes § 2101-A(5).
[6] "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.

AMERIPEN requests that the Department explain how data from the Recycling Establishment Reports informed the recyclability determinations in the draft List, given the disparity in categorizations.

Finally, AMERIPEN disagrees with the sequential approach of conducting the three-part test for determining if a type is readily recyclable. Doing so prevents producers, consumers, and the rest of the public from understanding which criteria a type does and does not satisfy. This approach is not prescribed by the statute or Program rules. AMERIPEN requests that the Department instead assess the satisfaction of each criterion for each type.

Inconsistency with Other States

As an initial note, it is impossible to determine whether a material type on the draft List that was found to not meet the marketability criterion was so found because of a failure to satisfy paragraph (a) of 06-096 Code of Maine Rules Chapter 428 § 4(C)(1) or because of a failure to satisfy paragraph (b) of that same provision. This creates another challenge for the public in determining whether the Department's assessments are accurate and what data is needed to supplement its findings. AMERIPEN requests the draft List be clarified to state explicitly which paragraph was not met for material types that do not satisfy the marketability criterion.

As stated above, California, Colorado, and Oregon relied on different approaches to determining 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, various PET forms were found recyclable in California, Colorado, and Oregon due to the underlying resin's high recyclability, yet none were proposed to be designated as readily recyclable in Maine; this is particularly confounding given that PET bottles are collected for valuable recycling under Maine's beverage container redemption program. 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 initial draft of the program plan for Colorado:

- Molded and pressed aluminum forms
- Aluminum aerosol containers
- Other aluminum forms

- Tin/steel aerosol containers
- Molded pulp forms
- PET (#1) natural forms
- PET (#1) colored forms
- PET (#1) bulky forms
- PET (#1) natural thermoforms
- Other PET (#1) forms
- HDPE (#2) flexible and film forms
- Other (#2) HDPE forms
- LDPE (#4) natural forms
- LDPE (#4) colored forms
- LDPE (#4) bulky forms
- LDPE (#4) flexible and film forms
- Other LDPE (#4) forms
- PP (#5) natural forms
- PP (#5) colored forms
- PP (#5) bulky forms
- Other PP (#5) forms

Additionally, the use of transfer stations in Maine by its 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 further confounds the finding in the draft List that most material types fail the marketability criterion.

Finally, it is important that there be harmony across states with EPR programs to the extent possible to ensure they can succeed. Improved categorization will also give a better understanding of the qualifications of each material subtype. AMERIPEN thus requests that the Department review its categorization of material types with a further focus on alignment with the packaging material category lists in other states. This might include creating separate “small format” subtypes within each material class. Furthermore, it is unclear why the Department is using 12 inches as a criterion for “bulky” types; AMERIPEN seeks to know the rationale or, if there is not one, recommends the Department consult with the categorization approach used elsewhere.

Throughput Criterion is Subjective

In the background document, 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

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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 and it was a subjective one. This approach in practice that would require some unstated threshold of a majority of communities to collect and sort materials, even if many other places in Maine and other states do.

If the Department does not clearly follow the letter of its own Program rules and does not assume a material being on another state's recyclables list is adequate for proving throughput, the Department must provide 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.[7] While Maine is not subject to such a requirement, the standard for throughput in its rules is relatively straightforward. The Department believes a more exacting method of measurement is warranted, it should revise its rules and pursue an objective, statistics-based standard.

Treatment of Gable-top and Aseptic Cartons

The draft List's categorization of gable-top and aseptic cartons merits review. Currently gable-tops are proposed for the "coated paper forms" type and aseptics are proposed for the "multi-material paper forms" type. Instead, they should be categorized together under the "coated paper forms" type. Gable-top and aseptic cartons are widely recognized and managed within the recycling industry under a single material category. They are baled, marketed, and sold together at MRFs across the country, including within Maine. The recycling industry does not differentiate between gable-top and aseptic cartons when preparing bales for end markets, and the combined materials are simply referred to as food and beverage cartons. Combining them into a single category reflects established recycling practices and ensures regulatory consistency and clarity for MRFs and municipalities alike. The Paper Stock Institute chapter of the Recycled Materials Association has an established grade called Grade 52 ("Aseptic Packaging and Gable-Top Cartons")[8] and the EPA has measured gable-top and aseptic cartons together. Furthermore,

[7] California Business and Professions Code Section 17580.
[8] "Aseptic Packaging and Gable-Top Cartons – ISRI SPECS." n.d. https://www.isrispecs.org/orpheus_resource/aseptic-packaging-and-gable-top-cartons/.

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Oregon's EPR rule for recycling collection requirements groups together polycoated cartons (including milk cartons) and aseptic cartons.[9]

Additionally, both gable-top and aseptic container materials meet Maine's readily recyclable criteria. First, for marketability, there are at least seven established end markets currently accepting food and beverage cartons sorted into the aforementioned Grade 52 bales and over 25 end markets accepting food and beverage cartons sorted into Grade 54 ("Mixed Paper") bales. These facilities transform food and beverage cartons into new products such as tissue, paper towels, and other paper goods, and building products. These end markets have adequate capacity and infrastructure to support the continued recycling of food and beverage cartons, reinforcing their recyclability. For throughput, both ecomaine and Casella accept and sort gable-top and aseptic cartons into mixed paper bales. Finally, for the ratio criterion, cartons average 72% of fiber component by weight targeted for recycling. The fiber component of cartons, which is by far the dominant portion by weight, is routinely recycled, with high demand for its quality and performance. This ensures that a substantial majority of carton weight contributes to the recycling stream, not residue. In addition, those end markets that recycle cartons into building products can use 100% of the package. Finally, we urge the Department to consult with the Carton Council of North America if interested in further information or specific data.

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 can cause stronger environmental impacts than the related packaging. This emphasizes the important and sometimes overlooked role that packaging serves in preventing pollution.

One way to help mitigate the impacts of packaging and food alike is to increase the use of postconsumer recycled (PCR) content. While progress has been made in this area, particularly for polyethylene terephthalate (PET) and polypropylene (PP), using PCR in food grade applications faces steeper health and safety burdens. It is therefore critical that the recycling of these materials be maximized under an EPR system. Otherwise, there will be an unwarranted restriction in the supply of PET and PP that can be used as PCR content. To that end, recyclers across the United States continue to invest in increasing collection and sortation of materials such as PET thermoforms.[10]

A review of The Recycling Partnership's Community Recycling Program Acceptance Data[11] (which is discussed later in this letter) demonstrates significant rates of acceptance for multiple forms of

[9] Oregon Administrative Rule 340-090-0630(2)(d).
[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/.

PET and PP across Maine. This provides evidence that these are found to be worthwhile for collection and sortation in advance of provision to end markets.

Applicability of Alternative Collection Methods and Recyclability of Plastic Films

It is unclear whether the Department considered alternative collection programs, such as store drop-off and retail takeback methods, when determining if packaging material types are readily recyclable. 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 commingled collection, and thus are an import source of recyclable materials. Therefore, AMERIPEN believes non-curbside collection programs should be taken into account when considering whether a type such, LDPE films and flexible materials, is recyclable.

As an example, there is a robust network of retail locations that collect an array of plastic films across the United States, including throughout Maine.[12] Consumers return used plastic films (typically RIC #2 (HDPE) and RIC #4 (LDPE)) at the designated drop-off locations, at which point they are collected and sent for recycling. Materials collected in this stream are clearly capable of satisfying the three-part criteria for being readily recyclable under the Program:

1. **Marketability:** There are multiple examples of existing and active end markets for recycled plastic films in North America.[13] Moreover, efforts are underway to expand the number of end markets available for them.[14] However, the Department indicated that no type of plastic film satisfied this criterion; this finding clearly contradicts the reality that films are accepted for recycling presently. Given that, AMERIPEN believes the requirement in the Program rules that "[o]perational facilities have the capacity to recycle the packaging material type in quantities equal to, or in excess of, the amount of material collectively supplied by the market" is also satisfied; if the Department disagrees, AMERIPEN seeks its explanation as to how this conclusion was reached.
2. **Throughput:** According to the background document, "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." The list of reportable recyclables DEP supplied includes "Plastic film (#2, #4)" as a material type for reporting recyclables. Moreover, such materials by their nature would not be considered contamination since they almost entirely constitute the target material. Given the presence of this type as a

[12] "Home Page - Plastic Film Recycling." 2025. Plastic Film Recycling. March 20, 2025. https://plasticfilmrecycling.org/.
[13] "Impact Spotlight: End-markets for Film Plastics — US BCSD." n.d. US BCSD. https://www.usbcsd.org/impact-spotlight-end-markets-for-film-plastics.
[14] "Film and Flexibles Coalition - the Recycling Partnership." 2025. The Recycling Partnership. March 21, 2025. https://recyclingpartnership.org/film-and-flexibles/.

reportable recyclable, and the existence of end markets as demonstrated above, the throughput criterion can be considered satisfied.

3. **Ratio of weight targeted for recycling to total weight:** Given that plastic resin constitutes the overwhelming portion of film and flexible packaging items, it is reasonable to assume that plastic RIC #2 and #4 constitute at least 60% of plastic film packaging in general.

AMERIPEN urges the Department to reassess whether each material type can be considered readily recyclable with consideration given to alternative collection programs. In particular, the Department should reevaluate its assessment of the plastic flexible and film form types, especially for RIC #2 and #4, given the preceding information.

Additional Resources Provide More Evidence of Recyclability

AMERIPEN requests that the Department 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.[15] 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.[16] 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.

[15] ecomaine. n.d. "2023 Annual Report." ecomaine. https://www.ecomaine.org/wp-content/uploads/2023/12/ECO-011-Annual-Report-2023_r4_PROOF.pdf.
[16] "Community Recycling Program Acceptance Data." 2024. The Recycling Partnership. September 23, 2024. https://recyclingpartnership.org/recycling-data/.

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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. Specifically, there are programs for reusable HDPE pallets and wood pallets that operate across North America, including in Maine.[17][18] 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 create specific packaging material types for HDPE pallets and wood pallets and designate them as reusable.

Consideration of Compostability

Under the draft List, no materials are proposed to be designated as "reusable" or "compostable." In the case of compostability, the adopted regulations for the Program define "compostable packaging material" as "packaging material that is designed for direct food contact and is capable of undergoing composting as shown by third-party certifications to ASTM D6400, ASTM D6868, and ASTM D8410." The ASTM standards that the definition references are the same ones that BPI uses to certify products under the "BPI Commercial Compostability Certification Scheme - 2.5." [19] This definition provides the only requirements in the law or rules for determining compostability under the Program, as confirmed by the background document that DEP supplied with the draft List. AMERIPEN therefore emphasizes that, at a minimum, any material receiving a BPI certification must be designated "compostable" under the Program.

Moreover, the designation of "untreated wood/cork forms" as not compostable is particularly confounding, given that wood is inherently compostable. AMERIPEN notes that the lack of compostable designations is in direct contrast to the compostability determinations recently made in California's EPR program for packaging. California's latest Covered Material Category List, which was released January 1, 2025, determined that multiple forms of paper and fiber as well as wood and other forms without plastic are compostable.

Other Material Type Categorization Matters

AMERIPEN seeks clarification as to which packaging material type a primarily paper bag with plastic with a plastic liner belongs. It is unclear if it would be categorized as "other paper forms,"

[17] "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/.
[18] "Discover How CHEP Works and CHEP Pallet Locations | CHEP USA." n.d. https://www.chep.com/us/en/why-chep/how-chep-works.
[19] "BPI Commercial Compostability Certification Scheme - 2.5" June 2023. https://storage.googleapis.com/bpiworld-org/documents/BPI-Commercial-Compostability-Certification-Scheme-2.5.pdf.

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a plastic flexible and film form, or some other unaccounted form type. AMERIPEN seeks the Department's input as to what this hybrid form would be.

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 "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 change rapidly for a number of 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 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.

# # #

AMERIPEN strives to offer a good-faith and proactive approach. We continue to focus on strategies that develop and/or strengthen policies to progress the "reduce, reuse, recycle" strategies, while at the same time, 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 dialogue with the Department and interested stakeholders while collectively balancing between the myriad of needs for packaging, recycling, and sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, which in the end, ultimately assists in the success of extended producer responsibility for packaging. 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 Appendix A and appreciates the Department staff's time and assistance during this process.

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Please feel free to contact Andy Hackman (AHackman@serlinhaley.com) or Gregory Melkonian by email (GMelkonian@serlinhaley.com) with any questions on AMERIPEN's positions.

Sincerely,

Gregory Melkonian
Regulatory and Government Affairs Associate