



July 24, 2026

Submitted via public comment form at <https://minnesotaoah.granicusideas.com/discussions/41576-minnesota-pollution-control-agency-request-for-comments-on-the-packaging-waste-and-cost-reduction-act>

RE: Packaging Waste and Cost Reduction Act Request for Comments – AMERIPEN Comment Letter

Dear Administrative Law Judge Christa L. Moseng:

AMERIPEN – the American Institute for Packaging and the Environment – is providing feedback to the Request for Comments (“RFC”) under Court of Administrative Hearings Docket No. 22-900-41576, entitled “41576 Minnesota Pollution Control Agency Request for Comments on the Packaging Waste and Cost Reduction Act”. These comments ultimately are intended to inform the potential rulemaking of the Minnesota Pollution Control Agency (“the Agency” or “MPCA”) to implement the Packaging Waste and Cost Reduction Act (“the Act”). AMERIPEN respectfully submits this comment letter for the Agency’s consideration as it develops rulemaking language.

AMERIPEN represents the entire U.S. packaging value chain, advocating for responsible packaging policies that drive meaningful progress in packaging sustainability while supporting industry growth and consumer needs. Our membership includes materials suppliers, packaging manufacturers, retailers, consumer packaged goods companies, and end-of-life materials managers. This cross-sectional membership gives AMERIPEN a perspective on packaging policy that no single-sector commenter can offer, and it informs the technical and regulatory analysis that follows.

In this letter, AMERIPEN offers feedback and suggestions related to the topics outlined in the RFC document. The comments below are organized according to the same order as in the RFC document.

Topic One (Definitions):

Food Packaging: AMERIPEN is concerned that the definition of “food packaging” in statute is interpreted to apply overly broadly and to a wide range of materials that may never reach covered entities. This concern is addressed more fully in the “Packaging” paragraph below, which deals with a similar issue.

Packaging: AMERIPEN is concerned that the definition of “packaging” (as well as “food packaging”) in statute is interpreted to apply overly broadly to a wide range of materials that may never reach residential consumers or other covered entities. Moreover, the definition is not read as limited to packaging associated with an underlying product. This puts the Act out of alignment with extended producer responsibility (EPR) laws in other states, will create substantial new costs and implementation burdens that are unjustified, and will cause implementation confusion (especially for smaller producers that may no longer be exempted as a result). Packaging limited to “back-of-house” operations and packaging “sold empty” without a product should not be treated as “covered material” because they generally will not reach the waste stream unless and until they are filled. These critical issues should be further clarified to achieve feasibility and harmony. A reasonable scope for “packaging” (and “food packaging”) should clarify that the scope of types of materials referenced in the statute would only apply to those materials that contain an underlying product and that ultimately reach a covered entity.

Statewide: It would be helpful to clarify what the meaning of “statewide” is under the Act, particularly regarding the two covered materials lists. The Act refers to the lists as being “statewide,”¹ and AMERIPEN supports the EPR program maintaining lists with uniform (rather than locally tailored) application once fully implemented.

Topic Three (Collection lists):

3(a): “Current availability of collection” services for recycling can be estimated using the share of population with access to recycling, across all methods (including curbside, drop-off, and subscription), for both recycling and organics. But what qualifies as sufficient availability will likely be lower for organics, given organics recycling has less infrastructure and system maturity relative to recycling. AMERIPEN suggests setting the threshold for sufficient “availability” at no higher than 60% for recycling and potentially lower for composting; this provides some consistency with related frameworks in the federal Green Guides administered by the Federal Trade Commission while allowing for infrastructure to develop and increase rates.

3(b): The criterion in the Act that considers processing focuses only on “processing infrastructure”.² Therefore, the MPCA commissioner should consider the existence of infrastructure rather than “access” to it. The threshold for this criterion should be whether there is sufficient infrastructure in place to create marketable commodities consistently. There is not a need to set different standards for regions, as statute talks about the recyclable and compostable list and the Alternative Collection Program (ACP) list both being “statewide”.³ In a mature EPR system, Minnesotans will be able to recycle or compost the same materials no matter where they live. The system should be designed to achieve this end, though it is important to note that thresholds across all criteria may need to start lower in order to maintain covered material on the market while infrastructure and expectations for the materials’ performance ramp up.

3(c): The question in the RFC document conflates processing with sorting, but those two processes are listed separately in the statutory criteria.⁴ However, industry bale specifications established by the Recycled Materials Association (ReMA) for all material types serve as broadly accepted indicators for material acceptability. Inclusion in an industry-accepted bale specification signals the capacity and existing technology to sort and reprocess the materials at recycling facilities. Consideration of these “bale specs” also addresses the responsible markets consideration under 3(d) because their existence for a given material indicates market interest. Alternatively, both processing and sortation sufficiency can be assessed by examining yield and residue amounts at the material recovery facility or composting facility. AMERIPEN suggests that sorting and processing can be considered sufficient for a given material if there is adequate yield for that material to be marketed.

3(d): AMERIPEN strongly recommends against using a specific number of end markets or similar “hard” number thresholds when evaluating this criterion. A fixed threshold is arbitrary and does not reflect differences in market maturity or stability. Moreover, there is significant variation among materials markets such that using the same threshold for every single one is an inadvisable, one-size-fits-all standard. Finally, it may unintentionally disadvantage materials with emerging but growing end markets. Instead, the responsible market

¹ Minn. Stat. § 115A.1453, subds. 1 and 2.

² Minn. Stat. § 115A.1453, subd. 4, cl. (2).

³ Minn. Stat. § 115A.1453, subds. 1 and 2.

⁴ Minn. Stat. § 115A.1453, subd. 4, cls. (2) and (3).

consideration should assess the extent to which a given material is ultimately marketable to responsible markets. “Bale specs” can be helpful in this regard and would better reflect the sufficiency of markets in relation to the material collected. Focusing on material acceptability at responsible markets addresses much of the proposed criteria without unnecessarily demanding proprietary information.

3(e): AMERIPEN recommends that regulation of inputs to packaging be handled through separate regulatory frameworks rather than as a feature of EPR; this is consistent with the drafting of the Act. Objective facility performance data, including rejection rates, yield rates, and market acceptance that may be helpful are also already captured implicitly in the other criteria: a substantial number of facilities may not have adequate infrastructure to manage a covered material, and that would weigh against recyclability. It is also important for the Agency to note that contamination can occur after a covered material reaches the consumer or enters the waste stream, through no fault of the producer. Additionally, MPCA should consider the positive impact that improved performance standards will have for addressing such factors that might reduce recyclability.

3(f): The quantity of available and recoverable material could be estimated using observed collection and recovery data, including recycling and composting facility yield data and the proportion of covered material ultimately reaching responsible markets. However, AMERIPEN de-emphasizes this criterion in relation to many of the others; waste collectors and processors are in a better position to determine when there is enough material to justify pursuing it, rather than setting arbitrary thresholds that cannot keep up with changing supply and demand conditions.

3(g): The primary future condition to consider is investments and upgrades in collection, sortation, and processing infrastructure. Other conditions include changes in responsible market capacity and changes in material design that affect material acceptability.

3(h): AMERIPEN recommends against the specific criteria for residuals, contaminants, and toxic substances and for material quantity, as the other suggested measures better capture recyclability and compostability more holistically. Additionally, specific criteria for these concerns will be incredibly difficult to track, particularly during the early implementation of an EPR system in Minnesota. Other criteria to consider include:

- The potential for consumer education and outreach to increase collection rates and reduce contamination.
- The existence and development of material design standards (e.g., APR Design Guide) that increase uniformity and ability to recycle or compost materials.

3(i): ACPs are an important component of the recycling and composting system that complement other methods of collection. While the ACP list is required to be “statewide” for collection, the Agency should implement some flexibility for convenience. Convenience standards for ACPs should differ by density, and by region if usage of the material varies regionally (e.g., due to climate). AMERIPEN opposes establishing fixed numerical requirements tied to geographical boundaries (such as one site per county); instead, AMERIPEN prefers population-based requirements that could be tied to Needs Assessment regions (e.g., one site per X residents in each region). AMERIPEN recommends that consideration should be unique to the needs of each material in an ACP; some materials are easier to return than others, and some are not generated as frequently and may only need collection events rather than year-round collection.

3(j): At a minimum, ACPs should be required to measure the amount of covered materials collected, including contamination, and the amount ultimately sent to responsible markets.

Topic Four (Statewide requirements and measurement):

4(c): For all statewide requirements generally, the Agency should consider imposing the requirements at a practically feasible level rather than one that is excessively aspirational. To address affordability, the Agency should also consider the requirements' imposition of new costs for consumers and businesses alike and should prioritize their minimization.

Regarding the waste reduction statewide requirement, the Agency must consider that the Act defines "waste reduction" as more than just simple "source reduction" or material redesign. By cross-reference, it means any "activity that prevents generation of waste or the inclusion of toxic materials in waste" other than refill.⁵ AMERIPEN therefore urges the Agency to clarify in rule and to accept in practice that any activities that reduce waste would be acceptable forms of "waste reduction," such as "increasing the life span of a product" and "changing procurement, consumption, or waste generation habits to result in smaller quantities or lower toxicity of waste generated".⁶ Additionally, recycling and composting volumes should serve as some basis for waste reduction performance, since they reduce waste generated and sent to a landfill. Full consideration of all of true waste reduction activities affords a full suite of options to achieve the goals envisioned in the Act.

Topic Five (Stewardship plan and annual reports):

5(a): The following stewardship plan requirements in Minn. Stat. § 115A.1451 merit further clarification:

In Subd. 3:

- Generally, provide a list of covered material types with definitions so the public is aware of what they are in a central location.
- For clause (3), clarify explicitly that any producer or group of producers can submit a request for exemption to a Producer Responsibility Organization (PRO).
- For subclause (9)(ii), specify that a PRO may utilize material design guides when fulfilling its role to "foster the improved design of covered materials" through fee incentives. This will allow for recognized standards to form the basis of these incentives.
- For clause (13), require the PRO to protect information at least as stringently as would be required of the state under the law if the information were submitted to the state.
- Related to clause (15) and other requirements, allow the PRO to use existing works that can fulfill the requirements, in order to avoid duplication of effort.
- For subclause (15)(i), clarify that the labeling assistance is offered voluntarily and producers are not subject to labeling requirements under the Act.

⁵ Minn. Stat. § 115A.1441, subd.40.

⁶ Minn. Stat. § 115A.03, subd.36b.

In Subd. 6:

- Regarding paragraph (b), and consistent with comments above, clarify that the methodology for measuring waste reduction is broad enough to encompass the entire scope of waste reduction as defined in the Act.

In Subd. 7:

- For paragraph (e), clarify that a PRO's role to "ensure the statewide requirements are met" is fulfilled under the Act's provisions regarding fee-setting, eco-modulation, and assistance for producers. This paragraph should not be read as creating authorities beyond what is otherwise provided in the Act.

In Subd. 8:

- For paragraph (b), allow the PRO to modify ACP details once an ACP is implemented, such as by changing the number and location of collection opportunities, as long as compliance with paragraph (a) is maintained. This allows for ACPs to adapt and optimize without waiting for subsequent plan approval or amendment.

5(b): The following PRO annual report item in Minn. Stat. § 115A.1456 merits further clarification:

In Subd. 1:

- For clause (9), it is unclear what constitutes "out of compliance". AMERIPEN believes that it should be clarified to refer only to failure to perform administrative duties such as registration, reporting, and payment of fees. Including failure to meet targets would be out of step with the Act's language and would be an excessive approach, as individual producers cannot be responsible for statewide, aggregated requirements.

5(c): A PRO should annually detail its revenues and expenses, including overhead and administrative costs with line items. In its program plan budget, a PRO should provide detailed methodological information about how fees are developed, including base fees, incentive rates, and reimbursement rates.

5(d): It would be helpful to clarify that a PRO can submit plan amendments and pursue the plan amendment process at any time. This appears to be the intent in Minn. Stat. § 115A.51, subd.4, but it is not made explicit.

Topic Six (Other topics):

Foremost, AMERIPEN raises concerns regarding the cumulative effect of other state packaging EPR laws and the potential for conflicting policies. In particular, eco-modulation incentives and mandates under the laws may send mixed and conflicting directions to producers. For example, California's source reduction mandate requires plastic reduction, while Minnesota's waste reduction targets may promote lightweighting that encourages more plastic use. This highlights the need to maximize harmonization among state programs to the extent possible, including for definitions and categories. AMERIPEN cautions against adding any requirements in rule that would result in substantial conflicts or added burdens compared to provisions in other states, such as creating novel mandates regarding responsible markets.

AMERIPEN requests that a PRO or individual producer be allowed to delay implementation of eco-modulation incentives until the third program year. This will allow time to gather covered material supply data and to let producers adjust to fees and requirements under the Act. California adopted a similar approach via regulation.⁷

Related to the collection lists criteria discussed in Topic Three, AMERIPEN encourages the commissioner to review and potentially update the lists regularly, including at least annually during the first program plan period, to ensure they are considering the latest developments in system conditions and covered material design.

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

AMERIPEN thanks you for your consideration of these written comments regarding potential rulemaking to implement the Act and is available to provide technical assistance with any of the items raised in this letter. Please contact me (daniellew@ameripen.org) or Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any further questions.

Sincerely,



Danielle F. Waterfield, Esq.

Policy Director and General Counsel

⁷ 14 California Code of Regulations (CCR) § 18980.6.7