



March 9, 2026

Submitted via email: mde.epr@maryland.gov

Maryland Department of the Environment
1800 Washington Blvd
Baltimore, MD 21230

RE: Packaging and Paper Products Extended Producer Responsibility Rulemaking – Comments

Dear Maryland Department of the Environment,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the Maryland Department of the Environment (“the Department” or “MDE”) to submit written comments regarding the draft of regulations for the EPR for Packaging and Paper Products Advisory program (“Program”) and the draft Compliance Guide for Regulations (“the Guide”). AMERIPEN respectfully submits this comment letter for the Department’s consideration as it develops this phase of the Program regulations to implement Senate Bill 901 (2025) (“SB 901”).

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 significant presence in Maryland, as well as many more that import packaging materials and products into the state. The packaging industry, including its suppliers and customers, supports more than 15,000 jobs and generates more than \$4.8 billion in total economic output in Maryland.

The written comments and clarifying questions below from AMERIPEN, organized by proposed Code of Maryland Regulations (COMAR) regulation and by section of the Guide, address the entirety of the contents of the proposed regulations and the draft Guide that the Department released for comment in Volume 53, Issue 3 of the Maryland Register on February 6, 2026.

DRAFT COMAR 26.04.14 PACKAGING AND PAPER PRODUCTS - PRODUCER RESPONSIBILITY

COMAR 26.04.14.02 Definitions.

Waste Reduction: SB 901 and the draft regulations use the term “waste reduction,” and derivative terms, but they are left undefined. It is important to acknowledge that “waste reduction” activities do not equate to packaging “source reduction,” which is a different concept and is not used in SB 901 or the proposed regulations. Rather, “waste reduction” encompasses the removal of packaging from the waste stream (i.e., landfills) and movement toward recovery and higher uses such as recycling and



composting. AMERIPEN recommends that the Department add a definition for the term and proposes the following: “Waste reduction’ means to divert material away from the disposal stream and toward recycling, refill, reuse, or composting.” Alternatively, AMERIPEN recommends that the Department add a provision stating that each program plan proposal is responsible for defining the scope of “waste reduction.”

Alternative Collection Program: The definition of “Alternative Collection Program” in subsection (B)(2) is unnecessarily restrictive. First, it appears limited to collection of a single covered material category per program, despite programs being able to collect multiple types of materials through the same infrastructure. Second, it does not fully acknowledge that a given covered material category may be collected by both curbside and non-curbside means, which may become increasingly prevalent as materials transition towards recyclability, reuse, and compostability. To address these issues while maintaining the original intent of the definition, AMERIPEN recommends amending subsection (B)(2) as follows:

“Alternative Collection Program’ means the collection of a specific covered material category that is, or specific covered material categories that are:

(i) Not generally collected through curbside services; or

(ii) Collected via means in addition to curbside services.”

Compostable: The definition of “compostable” and “compostable products” lacks reference to ASTM standards for compostability, such as ASTM D6400, ASTM D6868, and ASTM D841, which are used in other states’ EPR programs. AMERIPEN encourages the Department to review the definition of “compostable material” from Minnesota’s packaging and paper EPR law, for example, for a more thorough definition.

Covered Entity: The definition of “covered entity” in subsection (B)(10) remains open-ended due to the use of the word “includes” in paragraph (B)(1)(b), similar to the statute. It would be helpful to define it further and set limits in addition to those locations listed in the law to the extent possible, particularly for entities that may already contract privately for covered services and operate outside the commingled system. AMERIPEN asks that such sites (e.g., sports stadiums and other for-profit venues) should clearly and explicitly be excluded from the definition of a “covered entity.” Additionally, paragraph (B)(10)(g) is a new provision when compared to the corresponding statutory language and it allows the Department portions of buildings not affiliated with a government entity. This is a positive addition in concept, but requiring Department approval creates an unnecessary burden for entities that would have otherwise have to pay for services out of scope of the Program. AMERIPEN recommends amending the end of the subparagraph as follows: “[...] governments, ~~as approved by~~ upon notification to the Department.”

Covered Materials: Paragraph (B)(11)(b) introduces unnecessary specification to the “covered materials” definition that states that the definition includes “[p]ackaging materials” and “[p]ackaging



or paper products that are multimaterial.” This addition does not add clarity and may actually introduce confusion. AMERIPEN recommends deleting that language and making conforming changes so that the definition only encompasses the substantive contents of paragraph (B)(11)(a).

Covered Services: Subparagraph (B)(13)(b)(i) adds “[L]itter cleanups where covered materials are collected, sorted, transported and processed for recycling” within the scope of “covered services.” This goes beyond what is outlined in statute and in most state extended producer responsibility (EPR) laws for packaging. Furthermore, adding litter cleanups does not enhance recycling, reuse, or composting in Maryland, nor is litter something under the control of producers. The costs of the Program should not be expanded in this manner and AMERIPEN thus calls for deletion of subparagraph (B)(13)(b)(i).

Environmental Impact: Subsection (B)(15) defines “environmental impact,” but the definition will require further interpretation and contextualization. AMERIPEN suggests making determination of the process for measuring “environmental impacts” a component of program plans.

Exempt Materials: Paragraph (B)(16)(a) lists distinct types of covered material that are considered “exempt materials,” consistent with exemptions provided in SB 901. However, the subparagraph specifies that it applies only to the primary packaging, thereby excluding secondary and tertiary packaging from the exemptions. However, this approach is not reasonable for several reasons. First, the language in section (l) of Environment Article § 9–2501, Annotated Code of Maryland makes no distinction as to the type of packaging exempted; in fact, paragraph (n)(2)(i) provides that “packaging” includes “[p]rimary, secondary, and tertiary packaging intended for the consumer market.” Second, subparagraph (E)(1)(II)(1) of Environment Article § 9–2504, Annotated Code of Maryland requires reimbursement rates for covered services to be calculated “exclusive of exempt materials and producers.” As a result, even if exempt materials include more than just primary packaging, they will not contribute to “free-riding” because they will not contribute costs under the program. Finally, limiting the scope of exemptions to primary packaging generally would compromise harmony among other states’ EPR programs because it would be inconsistent with their construction; this includes Oregon¹, Colorado², California³ (including as proposed in its regulations)⁴, Minnesota⁵, or Washington⁶. Therefore, AMERIPEN recommends deleting “primary” throughout the paragraph and revising paragraph (b) accordingly as follows: “Exempt material ~~does not mean~~ includes secondary or tertiary packaging associated with products listed in (a).”

Subparagraph (B)(16)(a)(xi) provides that “exempt materials” includes “[p]rimary packaging used to contain hazardous or flammable products regulated under the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard that prevent the packaging from being waste

¹ Oregon Revised Statutes Section 459A.863(6)(B).

² Colorado Revised Statutes Section 25-17-703(13)(b).

³ Subparagraph (e)(2) of Section 42041 of Public Resources Code.

⁴ Proposed paragraphs (a)(6) and (b) of Section 18980.2 of Title 14 of the California Code of Regulations.

⁵ Subdivision 16 of Section 115A.1441 of 2025 Minnesota Statutes.

⁶ Paragraph (19) of Section 70A.208.020 of the Revised Code of Washington.



reduced or made reusable, recyclable, or compostable, as determined by the Department.” AMERIPEN seeks additional clarity regarding this provision, specifically for the following questions:

- Will exemptions be tied to specific OSHA hazard classes or categories?
- Is United State Department of Transportation (DOT) regulation a prerequisite for exemption?
- If a product is hazardous pursuant to Occupational Safety and Health Administration (OSHA) regulation but is not DOT-classified, would its packaging still qualify for the exemption?

Additionally, regarding the OSHA-related exemption, many workplace chemicals are concentrates, which already reduce packaging material use. These products are more likely to meet OSHA hazard classifications due to concentration levels. As a result, a sizable number of products could fall within the exemption’s scope. A product-by-product written approval process, therefore, would create substantial administrative burden for both the Department and regulated entities. A more streamlined approach – such as qualification based on use of a safety data sheet (SDS) with audit authority or clearly defined categorical eligibility – may better balance regulatory oversight with administrative practicality. AMERIPEN thus requests that the Department allows producers to claim the exemption by maintaining an applicable SDS with relevant information as a means of qualification subject to Department audit. AMERIPEN also requests that the Department be allowed to approve classes of products and to approve them proactively without submission of requests where sufficient evidence exists.

Long-term Packaging: Subsection (B)(19) defines “long-term packaging,” but that term is not used elsewhere in the proposed regulations nor in SB 901. AMERIPEN asks whether the Department intends to use this term in the second phase of rulemaking; otherwise, it should be deleted to avoid confusion. If the intent is to correspond to the exemption for “packaging used for the long-term protection or storage of a product that has a lifespan of not less than 5 years,” paragraph (B)(19)(b)’s exclusion of “packaging for consumables, or products that diminish in quantity or degrade with use” is not merited. The exemption intends to exempt materials that are not expected or intended to enter the waste stream, so the nature of the underlying product is immaterial. Even if a product diminishes or degrades over time, the long-term packaging is still needed to contain it and continues to serve its role as long-term packaging. Therefore, AMERIPEN requests that paragraph (B)(19)(b), as well as corresponding portions on pages 5, 6, 15, and 16 of the Guide, be deleted.

Packaging: Subsection (B)(21) clarifies that the definition of “packaging” does not encompass “packaging that is sold as a product that is empty at the time of sale.” AMERIPEN greatly appreciates and supports this provision, as it is necessary to distinguish between material that performs a packaging role (and should therefore be regulated by SB 901) from material that functions as a product instead. However, AMERIPEN is concerned by subparagraph (B)(21)(b)(iv), which would treat “[l]abels affixed to packaging or products” as “packaging” and therefore as “covered materials.” The Act’s definition of “packaging” only encompasses “a material, a substance, or an object that is used to



protect, contain, transport, serve, or facilitate the delivery of a product that is sold or supplied with the product [...].” A label cannot realistically be deemed to “protect,” “contain,” “transport,” “serve,” or “facilitate the delivery of” a product. **Therefore, AMERIPEN striking this subparagraph to properly align with the statutory definition of “packaging.”**

Producer: The definition of “producer” in subsection (B)(25) largely reflects what is provided in statute and in both Minnesota’s and Washington’s laws, which is helpful in providing interstate harmony for a fundamental aspect of EPR. However, it would benefit from further clarification that manufacturers of components of packaging who are not obligated producers pursuant to this definition should not be considered the producer of the covered material. This will avoid risking confusion as to whether these component manufacturers should be obligated under the law even though they do not control packaging decisions for consumer products. It should also be noted that components are typically provided in business-to-business transactions that will not be covered under the Act. **AMERIPEN thus recommends adding a tenth paragraph to subsection (B)(25) that excludes obligation for “A manufacturer of a component part or parts, if another entity is obligated as the producer for the packaging to which the component part is, or component parts are, affixed.” Relatedly and for clarity, AMERIPEN recommends adding a definition of “component” as follows: “‘Component,’ with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function.”**

Refill and Reuse: Subsection (B)(31) defines “refill” and subsection (B)(35) defines “reuse.” Refill and reuse are emerging formats in the packaging industry with limited standardization. Definitions and treatment vary significantly across existing state EPR programs, providing harmonization challenges for producers and regulators alike. It is advisable to provide flexibility in this area during the early years of an EPR program to allow for harmonization with forthcoming requirements in other states, to the extent practicable **AMERIPEN recommends that, instead of directly defining both terms, the rules specify that the PRO or independent producer, as applicable, has responsibility for determining the standards for what qualifies as “refill” and “reuse.”** Should the Department not make this change, **AMERIPEN recommends the Department specify the process and/or criteria it will use to determine when something is durable, as provided in paragraph (B)(35)(b). AMERIPEN also recommends that in-home refill be acknowledged as a management pathway, consistent with California’s EPR statute; this can be achieved by amending (B)(31)(b) as follows: “Supported by adequate logistics and infrastructure to provide convenient access for consumers, including for refill conducted within a home; and[...].”**

Responsible End Market: Subparagraph (B)(32) defines “responsible end market.” While responsible end markets may be addressed more directly in future phases of rulemaking, section 9–2511(b)(1) and (2) of Environment Article § 9-2508, Annotated Code of Maryland deal with the rules governing responsible end market criteria and validation. **AMERIPEN recommends these forthcoming rules align with the “responsible end market” definition in other states, such as Oregon and California, and work to ensure that the requirements for responsible end markets verification activities are truly feasible for both the PRO and recycling service providers.**



Small Format: Subsection (B)(39) defines “small format” packaging but lacks reference to the Association of Plastic Recyclers SORT-S-02. This is an alternative size sorting test for measuring what materials can pass through a glass screen at a sortation facility. Additionally, some “small format” components like bottle caps can be managed successfully when reattached to the rest of the packaging and producers may even direct consumers to reattach such components. Therefore, AMERIPEN recommends adding language at the end of the definition that states, “‘Small format’ does not include material that achieves the ‘APR Design® Preferred’ category in the Association of Plastic Recyclers SORT-S-02 sorting potential test method. ‘Small format’ does not include a component of packaging that is designed to be reattached before disposal and is actually reattached.”

COMAR 26.04.14.03 Covered Materials.

As a general note, the level of detail provided in this section for the scope of covered packaging and covered paper products is unnecessary for a standalone regulation. These two covered material types are defined already in COMAR 26.04.14.02. If the Department believes it is necessary to retain this language, AMERIPEN recommends shifting the two types into the Definitions regulation for convenience and consolidation.

Subsection (B)(1) provides that “[p]rimary, secondary, and tertiary packaging intended for the consumer market” are all covered packaging, but subsection (B)(11) acknowledges that there are cases where primary packaging is exempt. To avoid a potential inconsistency between these subparagraphs, and if the Department does not extend exemptions beyond primary packaging as requested below, AMERIPEN recommends consolidating them into one subparagraph as follows: “Primary, secondary, and tertiary packaging intended for the consumer market, but excluding exempt primary packaging.”

Paragraph (B)(2)(b) states that covered packaging “includes materials used to affix packaging components to one another.” This scope is overly broad and brings exceedingly small materials under regulation. That in turn necessitates very detailed recordkeeping, reporting, and oversight, the cost of which may not be justified in comparison to the added benefit to the Program. Therefore, AMERIPEN recommends excluding de minimis packaging elements or components by adding the following paragraph to the end of the paragraph: “However, an element of packaging with a de minimis weight or volume, as determined by the Producer Responsibility Organization, shall not be considered ‘covered packaging.’”

To improve clarity, AMERIPEN recommends making a technical correction to paragraph (B)(2)(a) as follows: “[...]to a product **and**”.

Subsection (B)(3) provides that service packaging is covered packaging if it is “designed and intended to be filled at the point of sale.” AMERIPEN supports this provision for reasons similar to the ones provided above regarding the definition of “packaging.”

Subsection (B)(7) governs the scope of covered packaging that is compostable and requires it to be labeled as specified or to be a singular organic material as specified. This framework seemingly allows



unlabeled compostable packaging not to be considered “covered packaging” and thereby allows it to avoid regulation under SB 901. Although such unlabeled packaging may not comply with the state’s labeling requirements, it is unclear why the Program would not consider it obligated. For similar reasons, the regulations should not base compostable packaging’s “covered” status on whether it is a “singular organic material.” Therefore, AMERIPEN recommends replacing subsection (B)(7) so it simply reads as follows: “Compostable products, as defined this chapter.”

Subsection (C)(3) identifies “[m]ultimaterial products that are at least majority paper by volume” as covered paper products. AMERIPEN recommends adding the caveat “that is not packaging” to the end of the provision to avoid potential overlap in scope for packaging and paper products.

COMAR 26.04.14.04 Categories of Covered Materials for Registration.

As a general note, page 11 of the Guide states that the categories listed in this section “are designed to be considered in the order they are presented, linearly” when determining to which category a covered material belongs. However, this is not specified in the rule itself. AMERIPEN recommends adding such direction into section (A).

Section (A) requires covered material to be “identified on the registration form” if it is reported into a category marked with a “*,” and the Guide similarly states that “a description of the specific covered material being reported must be provided” for such material. This is excessive and goes beyond the required reporting in other states. The scope of the covered material categories without asterisks is granular enough to capture a significant range of materials, such that a relatively limited number of materials without less common formats will fall under the asterisked categories. There is no operational need to provide specific description of each one of those materials to a PRO, and doing so would add regulatory burdens for producers with no benefit. AMERIPEN recommends deleting the last sentence of this paragraph and the asterisks in the categories to remove this requirement.

Pertaining to the Covered Material Categories list contained in section (B), it is especially important for program harmonization that the list is aligned with those in other states to the maximum extent possible. AMERIPEN recommends that the Department use the Circular Action Alliance list of covered material categories in Colorado as a benchmark, given the deliberate and comprehensive process used to develop it.

Subsection (B)(1) describes the “Certified Compostable Organics” class of covered materials. Like the compostables labeling issue mentioned above, treating only certified compostables as categories may leave the other compostables unaddressed and unfunded in the Program, despite them meeting the definition of packaging. To address this, AMERIPEN recommends revising the category to encompass all compostable materials regardless of certification.

Both paper product categories and paper packaging categories are grouped together under subsection (B)(2). To make it easier to parse the list, AMERIPEN recommends splitting this class into “Paper Products” for subsections (B)(2)(a) – (e) and into “Paper Packaging” for the remaining subdivisions.



Aseptic and gable-top cartons are composed primarily of fiber, with relatively low amounts of other materials. They are often managed and baled together in recycling processes, either in their own bale grade or as a minor component of a mixed paper bale. As such, and consistent with the treatment in Colorado, AMERIPEN recommends combining paragraphs (B)(2)(l) and (B)(2)(m) together. This would align with the categorizations in the EPR programs in Oregon, Colorado, and Maine.

Paragraph (B)(2)(n) is a category for “Other paper laminates not identified in subsections §B(2)(a)—(m),” and paragraph (B)(2)(o) is a category for “Other paper not identified in §B(2)(a)—(n).” This is an unnecessary distinction, and AMERIPEN therefore recommends eliminating paragraph (B)(2)(n).

The categories under “Rigid Plastic” in subsection (B)(4) reference corresponding resin identification codes (RICs). RICs are used for labeling certain plastic materials to assist in their sortation, but do not impart any recyclability instructions themselves. Categorization should be based solely on the actual composition of a material. Furthermore, AMERIPEN does not support the intermingling of labeling and EPR regulations, as those are separate policies, and variation in state labeling policies is very problematic. Therefore, AMERIPEN recommends removing references to RICs in the list and thus categorizing materials by the resin itself. Additionally, as a technical note, AMERIPEN recommends adding “#5” after “RIC” in paragraph (B)(4)(o) to address the missing number.

The glass material class in subsection (B)(7) separates categories based on whether they are pigmented; this introduces an unnecessary level of granularity into reporting and reduces harmonization with other states. AMERIPEN recommends combining categories so that pigmentation status does not differentiate categories. Furthermore, subsection (B)(7) lacks a small format category. AMERIPEN recommends adding a small format glass category for consistency with other classes and other states’ categorizations. AMERIPEN also supports the grouping together of all pigmented and color-containing glass containers, as provided in paragraph (B)(7)(b).

Moving forward, AMERIPEN requests that the Department’s development of the list of materials that are recyclable or compostable at curbside due by July 1, 2027, use a transparent scoring system like the process that the Circular Action Alliance used in Colorado. This process was very clear and comprehensive, affording the public and stakeholders direct insight into decision-making and the opportunity to provide feedback and refinement. To ensure regular consideration of new conditions in the recycling and composting markets, AMERIPEN recommends adding a provision into the rules stating that, “The Department shall review and consider updating the list developed pursuant to subsection (A)(1) of Environment Article § 9-2508, Annotated Code of Maryland, at least annually.” To prevent undue delays in implementing amendments to the list, AMERIPEN recommends adding a provision in the rules stating that, “The Department shall provide the list amended pursuant to subsection (D)(1) of Environment Article § 9-2508, Annotated Code of Maryland, to the PRO no later than 10 working days from finalization.”

COMAR 26.04.14.05 Exempt and Excluded Materials

Paragraph (B)(1)(i) states the Department will determine which primary packaging materials are eligible for the exemption relating to hazardous or flammable products. It would be helpful for producers to have more detail about what this process will entail, such as whether it will be application-based and what criteria the Department will assess. Page 14 of the Guide simply states that a producer or PRO “must submit a request in writing to the Department and must receive approval from the Department.” AMERIPEN suggests that the Department specifies in more detail its process for determining when these materials are prevented from being waste reduced or made recyclable or compostable.

AMERIPEN asserts that the Department should add a provision to clarify in the rules that filing of an exemption renewal request can occur before expiration and it will not take effect until after expiration. Otherwise, based on the language of paragraph (E)(5)(II) of Environment Article § 9-2508, Annotated Code of Maryland, a producer would be forced to reapply for an exemption after their exemption lapses, leaving to uncertainty as to the treatment of the covered material in the meantime.

COMAR 26.04.14.06 Producers

Paragraph (A)(1)(c) allows a producer to have its own Individual Producer Responsibility Plan (IPP) for a specific covered material and to join a producer responsibility organization (PRO) for others. AMERIPEN supports this hybrid option to give producers flexibility in determining how best to manage their materials.

As a technical note, AMERIPEN recommends replacing “report” with “be reported by the producer” in subsections (B)(1) and (B)(2). Additionally, there appears to be an error in the beginning of subsections (B)(3) (“Required reporting and shall be...”) and AMERIPEN asks the Department to correct this sentence.

COMAR 26.04.14.07 Registration Requirements and Associated Fees

Section (A) requires producers and the PRO to report covered materials “by weight” in multiple provisions. However, the Act does not require reporting by weight in its analogous provisions. As such, the addition of this “by weight” reporting exceeds statutory authority. Moreover, it poses several logistical challenges because it asks for detailed reporting on a very compressed timeframe (i.e., a matter of months for the 2026 reporting) and for which material categories have not been established. Finally, it unnecessarily subjects producers to potential exposure of confidential business information. AMERIPEN therefore requests that references to “by weight” reporting be removed from this section.

Subparagraphs (A)(1)(a)(ii) and (A)(1)(b)(i) require a PRO or individual producer to report a “list of the brands” participating in the PRO or of the producer, as applicable. This requirement would be cumbersome for producers with numerous brands. To simplify this approach, AMERIPEN recommends



additionally allowing any producer to report to the PRO or to the Department, as applicable, an internet link to a website containing a current list of its brands.

Subparagraph (A)(1)(b)(ii) requires producers pursuing an IPP to include in their registration form a “list of covered materials of the producer, by category[...], by weight distributed into the State during the previous calendar year.” This may pose an issue for these producers because it would require them to report sales data in a manner that is not anonymized or aggregated. Therefore, AMERIPEN recommends adding a sentence to this subparagraph stating that “The list shall be treated as confidential business information.”

Subsection (A)(2) allows a PRO to identify the annual producer reporting deadline in its Producer Responsibility Plan. AMERIPEN supports this provision because it will enable a PRO to harmonize Maryland’s reporting deadline with other states.

Subsection (C)(2) restricts annual registration fees collectively from exceeding “the cost of fees paid by [producers’] PRO to the Department for registration [...]” AMERIPEN greatly appreciates and supports this fiscal protection language, which caps annual producer costs at the amount actually paid to the Department for Program implementation.

Subsection (C)(3) provides that “[f]ees may not be prorated due to termination, acquisition, or merger.” Requiring payment of a full year’s fee for less than a full year of activity could trigger overcollection, especially in the case of terminations. This may unfairly increase producer costs. AMERIPEN believes this language should be deleted, and, if the Department intends to ensure fees are fully collected despite changes in ownership, AMERIPEN suggests replacing it with the following: **“In the event of a change in ownership, including a merger or acquisition, remaining fees for covered material shall be collected in full from the responsible producer after the change in ownership.”**

Section (D) establishes provisions that address “free ridership” that are generally supportable. However, as a technical note, AMERIPEN recommends replacing “For those entities” with “Entities” in subsection (D)(1). AMERIPEN also recommends amending subsection (D)(2) as follows to make the policy more functional in reality: “If a PRO, ~~or anyone who works with or contracts with the PRO,~~ is aware of, **or if anyone who works with or contracts with the PRO is aware and informs the PRO of,** a producer that is likely subject to these regulations, that has failed to register or report data to the PRO, the PRO shall:”.

COMAR 26.04.14.08 Alternative Collection Program

Section (C) requires an alternative collection program (ACP) to “improve and provide a dedicated collection program for the applicable covered material.” Requiring an ACP to improve an existing program is counterproductive because it effectively prohibits new ACPs from being established, as a nonexistent program cannot be improved. AMERIPEN recommends amending this paragraph as follows: “An alternative collection program shall ~~improve and~~ provide a **new** dedicated collection

program for the applicable covered material or improve an existing one, and may only be established for the purpose of recycling, composting, or reuse.”

Subsection (E)(1) requires self-certification that the final destination of an ACP is for recycling. However, this excludes composting and reuse as viable management pathways, contradicting SB 901 and this rule section. AMERIPEN recommends adding those pathways by amending the subsection as follows: “Self-certification that the final destination is for recycling, composting, or reuse and is going to a responsible end market, as defined in this chapter. [...]”

Subsection (E)(3) establishes convenience standards for ACPs. Paragraph (a) requires “year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each of the 23 counties and Baltimore City.” This is far too prescriptive, given that some forms of packaging may be used seasonally and/or regionally. Paragraph (b) requires at least 50% of the weight of covered material produced in Maryland in the prior year to be collected and managed, but there is no guarantee that an ACP’s targeted material will be regularly disposed of within one year. Paragraph (c) requires at least 90% of Maryland residents to be within 15 miles of a collection site and paragraph (e) requires an additional collection site for every 50,000 residents, but both ignore the disparate needs and product usage of rural and urban communities. Subdivision (d) requires collection sites to be provided “year round,” without defining what “year round” means and without acknowledging that some covered material may be used more seasonally. AMERIPEN recommends against establishing these one-size-fits-all standards and instead proposes deferring the appropriate service levels to those established in an approved ACP plan, as approved by the Department. If the Department does not remove these prescriptive standards, AMERIPEN urges that, at a minimum, subsection (3) be added to allow the Department to waive any of the convenience standards in subsection (2) as it deems appropriate. Additionally, AMERIPEN recommends adding language that ensures producers participating in a given ACP pay to cover the entire cost of that ACP so that its costs do not shift to nonparticipating producers.

As a technical note, AMERIPEN notes that the phrase “be provided” in subsection (E)(5) may be superfluous and should be deleted.

Subsection (H)(1) provides that ACPs “are eligible for reduced fees associated with producer responsibility plans when they meet the minimum requirements outlined in this regulation.” It is unclear what level of discount is envisioned, but it would make sense if it were equivalent to the costs to the PRO avoided because of the ACP. AMERIPEN recommends adding language to that effect or else clarifying the intent of the reduced fees in this provision.

COMAR 26.04.14.09 Record Keeping, Reporting and Production of Records

Section (B) requires compliance documents and records to be maintained for at least 10 years. This is far longer than the records retention requirement in other states: for example, California requires

three years and Colorado and Oregon require five years.⁷⁸⁹ AMERIPEN recommends aligning the requirement more closely with those of other states by modifying it from ten years to five years.

Subsections (D)(2) and (D)(3) allow producers to report their supply on a prorated national basis if state-specific data is unavailable or infeasible to generate, subject to Department approval. Allowing data to be reported on this basis is supportable, given the complexity and novelty of tracking packaging supply data in a state-by-state manner. However, requiring Department approval to do so is inadvisable and, in fact, not a practice used in other EPR states. It will create excessive burdens for the Department and producers, particularly smaller ones that do not have the resources to obtain state-level data should their request be denied. AMERIPEN recommends deleting “upon approval from the Department.” Alternatively, AMERIPEN recommends expanding the Department’s authority to approve data estimation more broadly by providing the Department the discretion to grant approval for all producers proactively rather than considering approval for each one individually; this can be achieved by adding the following sentence to both subsections: “The Department may elect to approve use of prorated national data for all producers or for categories of producers.” Additionally, as a technical note, AMERIPEN recommends replacing “producer” with “producer that is a member of a PRO” to comport with subsection (D)(3).

COMAR 26.04.14.10 Timeline

Section (C) sets “July 1, 2028 or by a later date identified by the Department” as a deadline for producers that intend to pursue an IPP. However, this does not address situations after that date in which a producer initially belonging to a PRO decides it wants to leave the PRO and pursue an IPP. AMERIPEN recommends adding a sentence stating: “After that date, a producer that wishes to pursue compliance through an IPP in a given calendar year must submit its IPP to the Department by July 1 in the preceding calendar year.”

COMAR 26.04.14.11 Enforcement Provision

Subsection (B)(2) establishes preconditions before a penalty may be imposed on a producer or PRO. It is crucial the rules also specify that the Department must consider a penalty’s fiscal impact and cost-benefit ratio when deliberating whether to impose it. AMERIPEN therefore recommends adding a subsection (B)(5) stating that: “The Department may waive a penalty for a performance goal reported as missed in an annual report if the Department determines the penalty would inhibit achievement of statutory goals.”

⁷ California Public Resources Code § 42051.1(m)(4).

⁸ 6 Colo. Code Regs. 1007-2 § 18.1.5(A).

⁹ Oregon Revised Statutes § 459A.962(2).



COMAR 26.04.14.12 Producer Responsibility Advisory Council

Section (B) provides that the Advisory Council membership must be between 15 and 25 members. AMERIPEN appreciates and supports entities like the Advisory Council providing oversight and recommendations based on balanced membership. However, Maryland’s advisory body is already larger than other states’, and expansion to as many as 25 members risks making proceedings too difficult to manage and consensus too difficult to attain. AMERIPEN therefore recommends limiting its membership to no more than the current level of 21 members, and further lowering it to 18 members by not allowing for new appointments while the Advisory Council has 18 or more members.

DRAFT COMPLIANCE GUIDE FOR REGULATIONS:

On page 12, the Guide states, “Certified compostable food serviceware requires specific labeling in order to register under that category. All other materials do not need to be labeled for registration.” AMERIPEN appreciates and agrees with the policy that materials generally need not be labeled. However, as raised earlier in this letter, labeling compostable food serviceware (or any material) does not determine whether it is a covered material subject to the law. AMERIPEN disagrees with the interpretation that it does and recommends revising the Department’s approach to not consider labeling.

On pages 26 and 27, the Guide states, “[t]here must be an evenness of representatives between material industry groups, materials management groups, environmental advocacy groups and the general public.” However, neither the statute nor the proposed regulations require “evenness” or something similar. Rather, the regulations would require any additions to the Advisory Council to “increase the evenness of representation.” This is a material distinction. AMERIPEN recommends the Guide at this part be revised to reflect the actual language of the proposed regulations.

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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 packaging circularity, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN looks forward to 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 proposed Program regulations and the draft Guide. AMERIPEN appreciates the consideration of the Department staff during this process. Please contact me or Gregory Melkonian (GMelkonian@serlinhaley.com) by email with any questions on the AMERIPEN positions outlined in these comments.

Sincerely,

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

Danielle F. Waterfield, Esq.
Policy Director and General Counsel
AMERIPEN