



August 11, 2025

*Submitted via email: [MainePackagingEPR@maine.gov](mailto:MainePackagingEPR@maine.gov)*

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

**RE: Initial Packaging Material Types List, Second Draft – 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 second draft of the 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 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 works with legislators, regulators, and stakeholders to develop science-based, data-driven solutions that enhance packaging’s role in product protection and circularity. We have several member companies with a presence in Maine, and many more who distribute packaging materials and products into the state.

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

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

The below written comments and clarifying questions from AMERIPEN, organized by topic, speak to the contents of the second draft of Appendix A that the Department released on July 28, 2025.

**Overarching Concerns**

Finding a packaging material type is not readily recyclable, reusable, or compostable has significant cost implications for consumers, municipalities, and producers alike. It is also the **only factor** that causes any



potential change in municipal recycling behavior to improve recycling locally under the Chapter 428 Rules adopted in December of 2024. It is critically important that this List begin to create driving forces to improve recycling and not simply revert to the lowest common denominator and worst performing municipal recycling systems.

With regard to producer material fees, under the Program rules, a material type that is not readily recyclable must pay at least **“two times the average per ton cost of the most expensive readily recyclable packaging material type during the prior calendar year”** (emphasis added). This alone would represent a substantial cost escalator untethered from the actual cost of managing materials, but it is further escalated: if the “readily recyclable, reusable, or compostable” program goal is unmet, the fee multiplies three, four, or five times, depending on the year.<sup>1</sup> As such, it is crucial that accurate designations are made. Otherwise, producers of packaging for products in Maine will be saddled with tremendous additional costs that are out of step with other states and that come in a period of sustained inflation. Therefore, under the Program rules and proposed List, numerous common material types would still face a major price premium in the near future that is unique to Maine.

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

#### **Inability to Review Underlying Data and Considerations**

Based on previous 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, even though that would mitigate concerns about confidential business information. Therefore, it is exceedingly difficult for the public to vet the accuracy of the underlying information and assumptions that informed the readily recyclable designations of the draft List. Even if an individual were to seek the information directly from each reporting recycling establishment, there is no guarantee that enough establishments voluntarily would provide the information.

AMERIPEN does appreciate the provision of the Readily Recyclable Designation Scoring document (“scoring sheet”) with the second draft of the List, which helps address the concern that it was unclear whether the Department utilized an objective mechanism for determining whether the three

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<sup>1</sup> 06-096 Code of Maine Rules Chapter 428 § 10(A)(2).

recyclability criteria were met. However, there is still no way to review or dispute the evidence the Department considered when assessing each criterion.

To this point, there are confusing outcomes in some of the “scoring sheet” cells that are difficult to understand without further information. For example, polycoated paperboard is found to meet the “MRF collected” and “MRF Recycled” columns under the throughput criterion, implying they are sorted ahead of recycling, but there are no facilities found to accept them in the marketability criterion; this is a counterintuitive result and merits further review for this type and others in similar situations. Another example is the “LDPE (#4) - flexible and film forms type, which satisfies all marketability columns, the “Source Separated (SS) Collected” and “SS Recycled columns,” and the Ratio column, yet is not designated readily recyclable; without further information about the meaning of the “MRF collected” and “MRF Recycled” and why they disqualify the type, this designation appears to contradict the regulatory requirements for recyclability. “MRF collected” and “MRF Recycled” are not criteria that are listed in statute or the Chapter 428 regulations, so using these criteria as disqualifying factors is not supported by the law.

Moreover, there is still no insight as to how the reuse and compostability definitions were assessed. In fact, their respective columns have been removed entirely from the documents provided with the second draft of the List, which is extremely problematic for producers that utilize compostable or reusable packaging.

Ultimately, members of the public are still left with limited clarity as to how the Department determined whether each of the three recyclability criteria was met and are now left completely uninformed about compostability and reusability designations.

This approach contrasts 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.<sup>2</sup>

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<sup>2</sup> 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/>.

- 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.<sup>3</sup> 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.<sup>4</sup> They also helped contextualize the capacity of Oregon's recycling infrastructure for collecting and processing various material types ahead of the creation of its material collection lists via two rulemaking phases. Furthermore, it is worth noting that the PRO is authorized to recommend additions to the collection lists to the state.

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

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

### 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 [...]"<sup>5</sup> The 2024 Recycling Establishment Report form ("form") available on the Department's Recycling Establishment Report

<sup>3</sup> COLORADO NEEDS ASSESSMENT: Executive Summary 2025, Circular Action Alliance. pages 25–28.

<sup>4</sup> "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>.

<sup>5</sup> Maine Revised Statutes § 2101-A(5).



webpage<sup>6</sup> 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, even after revisions in the second draft. The translation from the form to the List is further complicated by the “Other” material types and subcategories, which also do not align and which require making assumptions about how materials are categorized between the form and the List.

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 comprised of RIC #2 or RIC #4 into another category, potentially creating overlapping reporting for RIC #4.) This approach glosses over nuance in the management of each plastic RIC and between forms within each RIC. This becomes a problem in the List because the material types are in fact delineated by RIC and further by forms within each RIC. For plastics with a RIC between #3 and #7, inclusive, it is unclear how the reporting from the forms can inform the recyclability of material types within each RIC, since the reporting is not broken out so specifically. As discussed below in this letter, some of these plastic resins and forms have been found to be widely recyclable, necessitating use of reporting at the resin level and even at the form level. **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 disagreed with the sequential approach of conducting the three-part test for determining if a type is readily recyclable as outlined in the documentation for the first draft. Doing so would prevent 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 appreciates the Department instead provided a more comprehensive assessment of each type through the scoring sheet.

### **Inconsistency with Other States**

AMERIPEN greatly appreciates the clarity provided in the scoring sheet as to whether a material type on the draft List meets paragraph (a) of 06-096 Code of Maine Rules Chapter 428 § 4(C)(1), related to the number of recycling facilities, or paragraph (b) of that same provision, related to throughput. This removes a challenge for the public in determining whether the Department’s assessments are accurate and what data is needed to supplement its findings.

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

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<sup>6</sup> “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>.

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, gable-top and aseptic cartons were found recyclable in California, Colorado, and Oregon, yet they are not proposed to be designated as readily recyclable in Maine; this is particularly confounding given the investments made into recovery infrastructure and markets for the cartons. These matters highlight that there are issues underlying the designations in the draft List that will leave Maine's Program significantly out of step with the rest.

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

- Glass -other forms
- Aluminum – other forms
- Tin/steel -other forms
- Polycoated corrugated cardboard
- Polycoated paperboard
- Aseptic and gable-top cartons
- Paper – other coated forms and laminates
- Paper – other forms
- PET (#1) colored bottles, jugs, and jars
- PET (#1) colored other rigids
- HDPE (#2) carbon black bottles, jugs, and jars
- HDPE (#2) – bulky rigids
- HDPE (#2) – bulky nursery (plant) pots and trays
- HDPE (#2) squeeze tubes
- HDPE (#2) – flexible and film forms
- HDPE (#2) – others form
- LDPE (#4) bottles, jugs, and jars
- LDPE (#4) – flexible and film forms
- LDPE (#4) – other forms
- PP (#5) – bulky rigids
- PP (#5) – bulky nursery (plant) pots and trays
- PP (#5) squeeze tubes
- PP (#5) – other forms
- PS (#6) expanded/foam cushioning [for white expanded/foamed cushioning]

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

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

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

### **Clarification for Marketability Criterion**

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

### **Throughput Criterion is Subjective**

In the background document provided with the first draft of the List, the Department interpreted the throughput criterion as follows: “Material included in a reportable recyclable that is presently collected and supplied to a recycling market is considered material that is common enough to warrant sortation.

However, material included in a reportable recyclable that is considered contamination or that is not a target material is not considered common enough to warrant sortation.” On its face, this appears to be a straightforward standard whereby a material that is reported under the recycling establishment reports and sent to a market without causing contamination is assumed to be compliant.

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

If the Department is creating new and more restrictive criteria than what is conveyed in the Program rules and does not assume a material’s presence on another state’s recyclables list is adequate for proving throughput, AMERIPEN requests that the Department **provides a clear numeric or objective threshold for throughput and recycling access**. For example, California’s EPR program relies on a related law that establishes recyclability in part by identifying which packaging material categories are sorted at material recovery facilities (MRFs) that serve at least 60% of the state’s recycling programs; this approach was based on a systematic survey of recycling facilities and subject to an extended public input process.<sup>7</sup> While Maine is not subject to such a requirement, the standard for throughput in its rules is relatively straightforward. If the Department believes a more exacting method of measurement is warranted, AMERIPEN requests it revise its rules and pursue an objective, statistics-based standard.

### **Non-Municipal Recycled Designation**

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

Stewardship Organization investment to improve recycling will require access to supply. Supply requires opportunities to collect post-consumer materials to ensure sufficient data is collected to understand what changes and investments would be needed to ensure successful recycling of the materials. Recognizing and designating non-municipal collection systems within the statewide recycling list and supporting on-ramps is essential to achieve recycling and recyclable packaging design innovation. Therefore, AMERIPEN asks the state to reconsider this and evaluate how source separated, non-curb

<sup>7</sup> California Business and Professions Code Section 17580.

collection supported by the Stewardship Organization (outside of a full alternative collection program) could be recognized as a viable pathway for recycling. This will help increase the recovery of packaging materials and decrease landfill of these valuable inputs.

### **Treatment of Gable-top and Aseptic Cartons and Other Polycoated Packaging**

The second draft List's categorization of gable-top and aseptic cartons is improved compared to the first draft's. Previously, gable-top cartons were proposed for the "coated paper forms" type and aseptics were proposed for the "multi-material paper forms" type. They now appear together in their own "Aseptic and gable-top cartons" type, reflecting their wide recognition and management within the recycling industry as 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")<sup>8</sup> and the EPA has measured gable-top and aseptic cartons together. Furthermore, Oregon's EPR rule for recycling collection requirements groups together polycoated cartons (including milk cartons) and aseptic cartons.<sup>9</sup>

However, it still must be noted that 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 twenty-five 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. The Department may consult with the Carton Council if interested in further information or specific data.

Pertaining to polycoated paper packaging more broadly, there is evidence from studies by the Poly Coated Paper Alliance (PCPA) that polycoated paper products perform well in tests for sortation,

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<sup>8</sup> "Aseptic Packaging and Gable-Top Cartons – ISRI SPECS." n.d. [https://www.isrispecs.org/orpheus\\_resource/aseptic-packaging-and-gable-top-cartons/](https://www.isrispecs.org/orpheus_resource/aseptic-packaging-and-gable-top-cartons/).

<sup>9</sup> Oregon Administrative Rule 340-090-0630(2)(d).



recovery yield, and appropriate baling. AMERIPEN recommends DEP consult with PCPA for specific data and details pertaining to polycoated paper materials' performance in the recycling system.

### **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 products like 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 products alike is to increase the use of postconsumer recycled (PCR) content. While progress has been made in this area, using PCR in food grade applications faces steep 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 on the supply of materials 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.<sup>10</sup>

A review of The Recycling Partnership's Community Recycling Program Acceptance Data<sup>11</sup> (which is discussed later in this letter) demonstrates significant rates of acceptance for multiple forms of various material types across Maine. AMERIPEN recommends the Department consider this evidence that these types are found to be worthwhile for collection and sortation in advance of provision to end markets.

### **Applicability of Alternative Collection Methods and Recyclability**

Given the current documentation, it appears that the Department did not consider materials collected via existing alternative collection programs, such as store drop-off and retail takeback methods, as being readily recyclable. However, neither the statute nor the rules for the Program constrain recyclability to materials collected via a commingled or curbside system. The Department stated at the April 16, 2025, stakeholder meeting that material drop-off at retail establishments would likely be adequate when considering **access** and **throughput** for the entire state of Maine. Moreover, drop-off programs by their nature tend to contain less contamination and non-target materials than commingled collection and thus are an important source of recyclable materials. Therefore, AMERIPEN believes non-curbside collection programs should be considered when deciding whether a type is recyclable in some fashion – even if it is not collected via municipal programs. It is wholly unreasonable to penalize packaging materials collected via alternative collection methods under the punitive fee structure of the rules: they are indeed being recycled, just not by a municipality or MRF. Some other way of designating these materials as readily recyclable is necessary.

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<sup>10</sup> 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>.

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



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

### **Additional Resources Provide More Evidence of Recyclability**

AMERIPEN 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.<sup>12</sup> 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.<sup>13</sup> 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.

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<sup>12</sup> ecomaine. n.d. "2023 Annual Report." ecomaine. [https://www.ecomaine.org/wp-content/uploads/2023/12/ECO-011-Annual-Report-2023\\_r4\\_PROOF.pdf](https://www.ecomaine.org/wp-content/uploads/2023/12/ECO-011-Annual-Report-2023_r4_PROOF.pdf).

<sup>13</sup> "Community Recycling Program Acceptance Data." 2024. The Recycling Partnership. September 23, 2024. <https://recyclingpartnership.org/recycling-data/>.

### Consideration of Certain Reusable Materials

AMERIPEN is aware of certain formats of materials that are reused in business settings that should be considered reusable under the Program, including in Maine.<sup>14<sup>15</sup></sup> Such programs enable the repeated utilization of materials across multiple customers and reduce demand for single-use materials. AMERIPEN accordingly asks that the Department at the very least consider creating specific packaging material types for packaging types that have demonstrated reusability systems and designate them as reusable.

### Consideration of Compostability

Under the first draft List, no materials were 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 the Biodegradable Products Institute (BPI) and Compost Manufacturing Alliance (CMA) use to certify products under the “BPI Commercial Compostability Certification Scheme - 2.5”<sup>16</sup> and CMA’s requirements<sup>17</sup>. 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 or CMA certification must be designated “compostable” under the Program.

Moreover, the first draft’s 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. AMERIPEN asks for reconsideration of “Wood/cork forms” to determine they are inherently compostable and recommends parsing the category to separate untreated forms if necessary to apply the compostable designation.

### Other Material Type Categorization Matters

Based on the material type descriptions, there may be an overlap in the way certain paper materials are categorized, particularly if they are compostable. For example, an uncoated paperboard food boat that

<sup>14</sup> “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/>.

<sup>15</sup> “Discover How CHEP Works and CHEP Pallet Locations | CHEP USA.” n.d. <https://www.chepp.com/us/en/why-chepp/how-chepp-works>.

<sup>16</sup> “BPI Commercial Compostability Certification Scheme - 2.5” June 2023. <https://storage.googleapis.com/bpiworld-org/documents/BPI-Commercial-Compostability-Certification-Scheme-2.5.pdf>.

<sup>17</sup> [Certification and Acceptance Requirements – Compost Manufacturing Alliance](#)

is capable of undergoing composting pursuant to ASTM D8410 could be categorized in both the “Uncoated paperboard” and “Compostable paper forms.” In scenarios like this, a producer and the Stewardship Organization do not have clear direction as to how to categorize their materials. AMERIPEN seeks the Department’s guidance as to how ambiguities like this will be decided – in this specific example, would the reporting producer be able to select the packaging type that is most fitting?

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

The background document for the second draft List states that “straddling’ occurs 3 times,” meaning that three Colorado reporting categories correspond to multiple Maine material types and are bolded accordingly. However, “straddling” appears to occur much more than three times when reviewing the comparison document. For one, the “Rigid -Plastic: Plastic -Small Format” category is matched to multiple plastic resin types; AMERIPEN notes this appears to be a technical issue that can be corrected by using the full category name that includes the resin type. Beyond that, the following categories are repeated for different material types and AMERIPEN asks that they be bolded for consistency or that the Department clarify why they are not despite the “straddling.”

- Rigid -Plastic: HDPE (#2) Bottles, Jugs and Jars (Pigmented/Colored)
- Rigid -Plastic: HDPE (#2) Nursery (plant) pots & trays
- Plastic -Other: Plastic Packaging – Hazardous or Special Products
- Plastic -Flexible: HDPE (#2)/ LDPE (#4) Flexible and Film Items HDPE (#2)
- Rigid -Plastic: PP (#5) -Containers, Cups, Lids, Plates, Trays, Tubs
- Rigid - Plastic: PP (#5) - Nursery (plant) pots & trays
- Plastic -Flexible: Plastic Laminates and Other Flexible Plastic Packaging

The comparison document shows that the “Mixed resin (#7) – other forms” type corresponds with a Colorado reporting category called “Rigid – Plastic: Other/Mixed Rigid Plastic” reporting category. However, there is no such reporting category in Colorado. AMERIPEN requests this category name be corrected to the appropriate category.

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



### **Importance of Tracking Latest Market Conditions**

It is vitally important that the Department regularly update the List and engage with producers and other recycling market participants when doing so. The law requires the Department's rules to include a "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 and public schedule of annual rulemaking to revise the List (including initiating the process every January to ensure sufficient time to navigate the process); and (2) proactively engage stakeholders to gather up-to-date information beyond the recycling establishment reports.

### **Lack of Clarity Regarding List Terminology Markings**

The second draft List indicates when a material is designated "readily recyclable" by use of a "Y" indicator. However, the "Aluminum – aerosol containers" and "Tin/steel aerosol containers" material types have a "Y\*" indicator, with the meaning of the asterisk unexplained. Additionally, asterisks appear in the scoring sheet in material type rows other than the aerosol ones, again without explanation. At the August 5, 2025, stakeholder meeting, the Department explained that the asterisks indicate additional work is requested to achieve recyclability, but the materials are not disqualified from being readily recyclability. AMERIPEN requests the Department provide written explanation of the purpose of these different asterisks and confirmation that it does not impact the recyclability of the material types.

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

# # #



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 open dialogue with the Department while collectively balancing the myriad of needs for the packaging industry, sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone that ultimately assist in 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 second draft of the List A and appreciates the Department staff’s time and assistance during this process. Please feel free to contact Andy Hackman ([AHackman@serlinhaley.com](mailto:AHackman@serlinhaley.com)) or Gregory Melkonian ([GMelkonian@serlinhaley.com](mailto:GMelkonian@serlinhaley.com)) by email with any questions on AMERIPEN’s positions.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Melkonian".

Gregory Melkonian  
Regulatory and Government Affairs Associate  
Serlin Haley, on behalf of AMERIPEN