

Maine's Implementation of Its Extended Producer Responsibility Law

On July 13, 2021, Governor Janet Mills signed into law LD 1541, **“An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money”** making Maine the first state to enact an extended producer responsibility (EPR) law for packaging. The intent of law is to provide support to municipalities in their recycling efforts with the ultimate goal of improving recycling of packaging material in Maine.

The law covers most types of consumer packaging and will require that producers make payments to a stewardship organization. The money will go into a fund that will be used to pay local governments for packaging management costs. The law also includes an eco-modulation system meant to incentivize companies to create packaging that is easier to recycle and reuse. Unlike other state enacted EPR legislation, the program in Maine has significant government oversight. The law places full authority for the development of the program in the hands of the state's Department of Environmental Protection (DEP).

Program Goals

Maine's EPR program for packaging seeks to reduce the volume and toxicity and increase the recycling of packaging material. While there are no defined targets, the program will focus on the following:

- Access to recycling
- Collection rates
- Material-specific recycling rates
- Litter reduction
- Recycled content usage

The legislation did not set minimum targets for the program goals. These numbers will be determined during the development of the stewardship program and included in the program plan. In addition, the law requires producers to cover 100 percent of municipalities' recycling costs for consumer packaging. To be eligible for such reimbursements, a municipality must share with the stewardship organization certain data regarding its recycling and waste management costs and must provide for the collection and recycling of packaging material generated in the municipality.

Covered Materials

The law covers paper and plastic consumer packaging. The law does not list specific packaging materials but characterizes packaging material by its function - for the containment, protection, delivery, presentation, or distribution of a product. For example, this includes items such as plastic bags, plastic food containers, plastic packing pillows, cardboard boxes, paper food cartons, and paper parcel stuffing.

The law contains exemptions that include packaging for long-term storage or protection of a durable product for a period of at least 5 years, beverage containers subject to a deposit system, paint containers, and federally regulated perishable foods. The legislation also directs the state to develop a list of packaging that would be excluded such as childproof pill bottles required by the U.S. Food and Drug Administration.

August 20, 2022

Packaging Stewardship Organization

This law establishes a stewardship program for packaging material, to be operated by a packaging stewardship organization (PSO) contracted by the DEP. The DEP will select a single PSO via a competitive bidding process. The winning proposal must cover a 10-year operation of the program. The PSO is required to reimburse local governments for the costs of managing packaging material, including collection, transportation, and processing.

The PSO stewardship organization will be responsible for day-to-day operation of the program with the DEP providing oversight. Costs to fund the PSO and DEP oversight will be funded by producer payments. The PSO will use producer fees to reimburse local governments for operation costs including collection, transportation, and sorting of packaging waste. In addition to covering the costs of administration and enforcement, producer fees will cover the costs of investments in infrastructure and improvements in recycling education.

Needs Assessment

The law requires a needs assessment, however, there is no date established in the statute for completion. The needs assessment will be carried out by the PSO evaluating funding needs for recycling, capacity, costs, and needs for collection and transportation, market conditions and opportunities, and consumer education needs.

Producers

Under the program, all “producers” of products contained, protected, delivered, presented, or distributed in or using packaging material pay into a stewardship fund based on the amount by weight of packaging material associated with the products they sell, offer for sale, or distribute for sale in or into Maine.

There are several types of producers that are excluded, and they include the following:

- Producers with gross revenue within the state with less than \$2 million in the previous year, or if the producer sold, offered for sale, or distributed products containing less than 1 ton of covered packaging material in the previous year; and
- For the period from one to three years after the effective date of the program contract, producers with less than \$5 million in revenue during the previous year are exempt; and
- Producers that sell, offer for sale, distribute to retailers, or sell direct to consumers products with perishable food that were contained, protected, delivered, presented, or distributed in or using less than 15 tons of packaging material in total; and
- Low-volume producers and a franchisor of a franchise located in the state but does not include the franchisee operating that franchise;
- Any 501(c)(3) registered nonprofit organization.

Fees and Production Incentives

Fees will be determined by the DEP and will be based on weight or volume and adjusted or eco-modulated to incentivize more environmentally friendly characteristics. These may include aspects such as the increased use of recycled content recyclability of a packaging material, the decreased toxicity in a packaging material, a decreased amount of packaging material used, and the increased reuse of packaging material. Consideration will also be given for materials that are readily recyclable and those which are not, and these will be defined via rulemaking.

Producers will be individually responsible for compliance. Low-volume producers may elect to pay a flat fee on a tiered basis in lieu of a material-specific producer payment. Low-volume producer means a producer that sold, offered for sale, or distributed for sale in or into the state products using more than one ton but less than 15 tons of packaging material in total in the previous year.

August 18, 2022

Alternative Collection Program

The DEP may approve a producer or group of producers that choose to develop and operate an alternative collection program to collect and manage a type or types of packaging material sold, offered for sale, or distributed for sale in or into Maine.

Producer Deadlines

Due to the expected time frame for development of implementing regulations, it is expected that the packaging law will take several years to be fully implemented. A full year will be devoted to stakeholder outreach for rule development, and the deadline for the Maine Board of Environmental Protection (BEP) to initiate rulemaking is December 2023. The adoption of routine and technical rules, as well as major substantive rules by BEP will be due in the summer of 2024. The following are the deadlines and actions for the implementation of the legislation:

- July 2022 – December 2023 - Stakeholder outreach for rule development
- December 31, 2023 – Deadline to initiate rulemaking with the Board of Environmental Protection
- Summer 2024 – Anticipated adoption of routine/technical rules and provisional adoption of major substantive rules by Board of Environmental Protection
- February 15, 2025 – First program update report due to legislature
- January 2025 – Submittal of major/substantive rules to the legislature for approval
- Spring/Summer 2025 – Anticipated final adoption of major substantive rules by the Board
- Fall 2025 – Issue RFP for stewardship organization
- 2026 – Selection of a stewardship organization
- 2026 – First producer payments – Payments due no more than 180 days after effective date of stewardship organization contract
- 2027 – First payments to municipalities
- February 15, 2028 – Program report to legislature requiring comprehensive review of the rules and outlining any proposed changes to rules and law
- July 2035 – Reissue bid for stewardship organization

Penalties

The stewardship organization will maintain and provide a list of producers that are participating in the program and are compliant, and if known to the stewardship organization, a list of producers that are not participating in the program and are not compliant with the program's requirements.

The BEP will make the information of compliant and non-compliant producers available on its publicly accessible website. The BEP will conduct outreach to retailers to provide notification of the information and any changes to such information.

Outreach and Education

The stewardship organization will biannually provide for the expenditure of funds within the packaging stewardship fund that are designed to improve recycling education and infrastructure.

August 18, 2022

Resources

- [Maine Extended Producer Responsibility Program for Packaging](#) A dedicated webpage.
- [Summary of Maine LD 1541](#) Summary of the law.
- [Maine LD 1541](#) Full text of the law.
- MainePackagingEPR@maine.gov Send an email to be added to the DEP email list to receive a quarterly newsletter outlining progress to date in development of the program and dates of upcoming activities.

Disclaimer

The information published in this summary is derived from trusted sources and is believed to be the most accurate information at the time of publication, August 18, 2022. Due to the development of regulations and guidance, the information in this publication may become inaccurate or obsolete.

PRINTING United Alliance seeks to keep the printing industry updated on workplace requirements related to environmental compliance. For more information, or if you have questions on this or any other state regulatory issue, please contact Marci Kinter at mkinter@printing.org or Gary Jones at gjones@printing.org.

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