**Packaging Material Exemption Request for Packaging Stewardship Program**

Section 13(D) of 38 M.R.S. § 2146 requires the Department to review packaging material associated with products covered by the following federal laws and regulations to determine if it should be excluded from the *packaging material* definition under subsection 1, paragraph I:

* [Section 321 of the federal Food, Drug, and Cosmetic Act](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section321&num=0&edition=prelim#:~:text=%C2%A7321.%20Definitions%3B%20generally%20For%20the%20purposes%20of%20this,of%20Columbia%2C%20and%20the%20Commonwealth%20of%20Puerto%20Rico.)
* [United States Food and Drug Administration under 21 Code of Federal Regulations](https://www.ecfr.gov/current/title-21/chapter-I)
	+ [Part 200](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-C/part-200?toc=1)
	+ [Part 300](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-D)
	+ [Part 800](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-H)
* [United States Food and Drug Administration under 21 Code of Federal Regulations, Section 211.132](https://www.ecfr.gov/current/title-21/chapter-I/subchapter-C/part-211/subpart-G/section-211.132)
* [Poison Prevention Packaging Act of 1970](https://www.ecfr.gov/current/title-16/chapter-II/subchapter-E/part-1700)

The Department reviewed the indicated federal laws and regulations and did not identify any content or construction standards that preclude or significantly diminish a producer's ability to increase the recyclability or reduce the volume of packaging material. However, given the complexity of these laws and regulations, the Department invites producers that believe there are content or construction standards that preclude or significantly dimmish their ability to increase the recyclability or reduce the volume of the packaging material to submit an exemption request. The Department will review exemption requests, and, if the Department determines that any such packaging material should be excluded from the *packaging material* definition, the Department shall adopt an exclusion by rule. Any exclusions to the *packaging material* definition will involve major substantive rulemaking.

**Exemption requests are due by May 20, 2024.**

Criteria for exemption:

1. **Significantly diminished ability to increase recyclability.** The Department will not exempt packaging material where there are opportunities to increase recyclability through design changes. For the purposes of 38 M.R.S. § 2146, *recycling* means—

*the transforming or remanufacturing of an unwanted product or the unwanted product's components and by-products into usable or marketable materials. "Recycling" does not include landfill disposal, incineration or energy recovery or energy generation by means of combusting unwanted products, components and by-products with or without other waste.* (38 M.R.S. § 1771 (7))

The Department will not consider the potential for infrastructural and technological advances to increase the recyclability of packaging material as a means by which a producer can increase the recyclability of its packaging material.

1. **Significantly diminished ability to reduce volume.** The Department will not exempt packaging material where design changes can increase the ratio of product sold to packaging material produced. This includes transitions to reusable and refillable packaging material unless there are federal laws and regulations that would prohibit these distribution methods.

An exemption request must answer the following questions, in the following order:

1. Which federal laws or regulations preclude or significantly diminish a producer’s ability to increase the recyclability or reduce the volume of packaging material? Please provide specific citations and language.
2. If content or construction standards are not directly specified in the citations referenced in response to Question 1, please explain how the cited federal laws or regulations indirectly specify content or construction standards.
3. To which product or group of products do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply?
4. Do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply to some or all packaging material associated with the product or group of products identified in response to Question 3? If some, identify the packaging material that is affected.
5. Who should the Department contact with questions regarding this exemption request?