



July 9, 2025

Submitted via email: mde.epr@maryland.gov

RE: Items to Address in SB 901 Rulemaking

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 (“Department”) to submit areas that should be addressed during the rulemaking for the recently-adopted packaging and paper products extended producer responsibility (EPR) program (“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 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 significant presence in Maryland, and many more who import packaging materials and products into the state. The packaging industry in Maryland supports over 15,000 jobs and accounts for roughly \$4.8 billion in total economic output.

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.

AMERIPEN has identified the following as a preliminary, non-exhaustive list of areas to be addressed in the Department’s rulemaking for implementing SB 901:

1. 9–2501(f): The definition of “covered entity” is left somewhat open-ended in statute. It would be helpful to define it further and set limits beyond the locations listed in law to the extent possible. AMERIPEN suggests that things like sports stadiums and other for-profit venues should clearly be excluded from the definition of a “covered entity.”
2. 9–2501(k): Similarly, it would be helpful to further define and contextualize “environmental impact” or perhaps more simply to make it an element of the PRO plan to determine the process for measuring this attribute.
3. 9–2501(l)(11): AMERIPEN suggests that the Department should specify its process for determining when these materials are prevented from being waste reduced or made recyclable/compostable.
4. 9–2501(l)(14): Similarly, we suggest the Department should specify the process and/or criteria for it to determine when something is durable.

5. 9–2501(n)(2)(ii): The regulations should clarify that service packaging does not include materials sold empty, in order to avoid confusion that they are within the scope, which is currently causing conflict in some other states.
6. 9–2501(p): AMERIPEN recommends addressing how franchisors and franchisees are treated in the “producer” definition and suggests that language in Section 18.2.2(E) of Colorado’s regulations may serve as a model.¹
7. 9–2501(v) and (w): AMERIPEN recommends specifying that the PRO has responsibility for determining the standards for what qualifies as “refillable” and “reusable,” which will allow it to harmonize with forthcoming requirements in other states, to the extent practicable.
8. 9–2505(b)(3): The regulations are required to establish a sales ban date; in California, it is the date on which the program plan is supposed to take effect. There is no defined date for that in SB 901, as it is up to six months after program plan approval. AMERIPEN suggests July 1, 2028, as a potential option in order to give producers ample time to prepare for the implementation of SB 901 without leading to disruptions for consumers.
9. 9–2505(c)(1)(iii): Note that this provision **clearly** states that the performance goals are developed by the PRO and proposed in the plan process, not another entity or via regulation. The PRO is in the best position to assess the current capacity for achieving performance goals and to drive progress towards them accordingly.
10. 9–2505(c)(1)(v): It might be useful to define what “waste reduction” entails since it used throughout the law. Alternatively, and more simply, the PRO could be assigned responsibility for doing so. AMERIPEN asserts that “waste reduction” activities do not equate to packaging source reduction, but the removal of packaging from the waste stream (i.e. landfills), and moved toward recovery and higher uses such as recycling and composting.
11. 9–2505(e)(1)(v): AMERIPEN supports specification in this area about the Department's process for designating an independent auditor.
12. 9–2505(e)(3)(ii)(2)(A) and (B): The PRO should be designated clear authority to establish what “high” and “low” recycled content levels would be benchmarked against.
13. 9–2505(e)(3)(ii)(3): This section should include a process for PRO consultation and harmonization of bonus and malus fees with other states, in order to drive consistent packaging outcomes from state-to-state.
14. 9–2505(j)(5)(ii): The Department should clearly identify what it would propose as initial and future/repeat administrative penalties for public review and comment.

¹ <https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11813&fileName=6%20CCR%201007-2%20Part%201#page=306>



15. 9–2508(a)(1): AMERIPEN requests that the Department's development of the recyclables/compostables list must use a transparent scoring system (similar to the process that CAA uses in Colorado).
16. 9–2508(d)(1): Under this section, AMERIPEN asserts that the rule should provide for a review of this list annually.
17. 9–2508(d)(2): The Department should specify that it will officially provide the list to the PRO, no later than 10 working-days from finalization.
18. 9–2508(e)(5)(ii): AMERIPEN asserts that the rules should clarify that filing of an exemption renewal request can occur *before* expiration, but it will not take effect until *after* expiration. Otherwise, this would force people to re-apply after their exemption lapses.
19. 9–2511(b)(1) and (2): The rules under this section should align these factors with the “responsible end market” definition in in other states and work to ensure that the requirements for responsible end markets verification activities are truly feasible for both the PRO and recycling service providers.
20. 9–2512(c): The rules should provide for a scenario where the Department may waive a penalty for a missed performance goal in an annual report if the Department determines it would inhibit achievement of statutory goals.

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AMERIPEN strives to offer a good-faith and proactive approach that integrates elements from other established packaging producer responsibility programs with hopes of developing a plan that will incentivize recycling growth and the beneficial impacts that come along with that in Maryland. AMERIPEN continues 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 input regarding the forthcoming regulations for SB 901 and appreciates the Department staff’s time and assistance during the implementation of the law. Please feel free to contact Gregory Melkonian by email (gmelkonian@serlinhaley.com) with any questions on AMERIPEN’s positions.



Sincerely,

A handwritten signature in black ink, appearing to read 'G. Melkonian', written over a light gray rectangular background.

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