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**IN SUPPORT – LD 1306 An Act to Continue the Exemption for Polystyrene Foam Disposable
Food Service Containers Prepackaged at Wholesale**

April 9, 2025

Dear Senator Tepler - Chair, Representative Doudera - Chair, and members of the committee on Environment and Natural Resources,

My name is Christine Cummings and I am the Executive Director of the Maine Grocers & Food Producers Association (MGFPA). The Retail Association of Maine and the Maine Grocers and Food Producers Association are testifying in joint support for LD 1306 'An Act to Continue the Exemption for Polystyrene Foam Disposable Food Service Containers Prepackaged at Wholesale'. Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise retailers, and convenience stores, food and beverage manufacturers, distributors and supporting partners — together representing more than 450 members statewide. Maine's retail sector employs more than 85,000 Mainers.

We strongly support the continued use of polystyrene trays and packaging for meat, poultry, seafood, and eggs. As the July 1, 2025 deadline approaches, we must acknowledge the significant challenges this restriction presents to Maine's grocery stores, particularly our rural and independent grocers. This will create unnecessary disruptions in the food supply chain and exacerbate existing challenges related to food pricing and availability.

We are not asking to overturn the broader polystyrene ban, but rather to maintain a critical exemption that allows for the continued use of a material that remains the most viable option for meat and poultry packaging. We urge you to consider the real-world implications of ending the permitted use of polystyrene packaging for raw protein. By repealing the sunset provision, the Legislature can provide much-needed relief to Maine's local grocers and help ensure that consumers continue to have access to affordable and fresh meat and poultry.

Accepting of No State Preemption:

Currently, Maine's polystyrene ban does not include state preemption, meaning that local ordinances on polystyrene will continue to supersede state regulation. As of 2019, at least 14 municipalities in Maine had enacted local bans on polystyrene food and beverage containers including Freeport, Portland, South Portland, Cape Elizabeth, Rockland, Camden, Belfast, and Bar Harbor. Therefore, this legislation is targeted in its relief for rural, non-coastal grocers.

Maine’s Prohibition on Polystyrene Packaging Makes Maine an Outlier:

In 2021, LD 1631 ‘An Act To Amend the Laws Banning Polystyrene Foam Regarding Packaging for Meat, Poultry, Fish, Seafood and Eggs’ passed in the 130th providing temporary relief acknowledging the market challenges of sourcing alternatives. However, with no other states prohibiting the packaging material to date, the market has not adjusted to the pending demand and we find ourselves subject to the lack of production of available alternatives.

Maine’s proposed ban on polystyrene (EPS) foam meat and poultry trays will place it at odds with other states that recognize the material’s practical and economic benefits. In our review of the United States landscape of polystyrene bans, eleven states including Maine have forms of polystyrene bans. Only Maine and New Jersey prohibit polystyrene packaging for raw protein.

New Jersey initially banned EPS foam food service products in 2022 but it was granted a two-year exemption for meat and fish trays, acknowledging their functional necessity in packaging raw products. These exemptions, established by the Law, were set to expire on May 4, 2025, and as of January 2025, the New Jersey Department of Environmental Protection has extended the exemption for an additional year, until May 4, 2026. Affected businesses have provided detailed documentation that alternatives are not currently cost-effective or readily available. ****State of New Jersey Department of Environmental Protection - POLYSTYRENE FOAM FOOD SERVICE PRODUCT EXEMPTION EXTENSION letter attached to this testimony.***

No Cost-Effective and Readily Available Alternative:

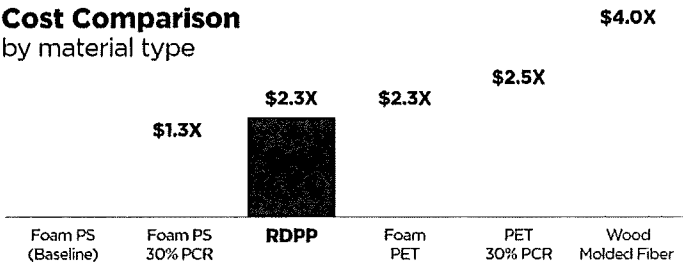
The transition away from polystyrene trays will be costly and logistically challenging. Alternatives to polystyrene trays are significantly more expensive, with cost estimates at 4 times more than traditional options.

One of the state’s three grocery wholesale suppliers estimates that this mandate will result in an annual expense of more than \$1M for independent stores to absorb for this one packaging change.

Another independent grocery supply partner provided data that current PS foam trays cost an average .07 - .08 cents and PET alternatives average .25 - .27 cents each; approximately a 112.5% price difference. The average package of PET tray alternatives is offered in smaller units than the polystyrene foam tray packs, meaning that the alternative products are not as readily available as the polystyrene trays.

One packaging manufacturer, who is currently offering a limited alternative supply, has provided the following information:

Cost Comparison
by material type



- Please note:**
- Cost of recycled PCR foam is dependent on the % claimed; current assumption shown based on 30% input
 - RDPP and Wood Molded Fiber expected to be available late 2024
 - Foam PET trays currently in the market are being imported.

*Check locally, may not be recyclable in your area



Material comparison chart

Material Type	Includes Recycled Content	Recyclable*	Material Impact (density)	Cost**
Foam PS (baseline)	-	-	-	-
Foam PS 30% PCR	✓	-	1.0 X	\$1.3 X
RDPP	Capable	✓	2.3 X	\$2.3 X
Foam PET	-	-	1.9 X	\$2.3 X
PET 30% PCR	✓	✓	2.5 X	\$2.5 X
Wood Molded Fiber	✓	✓	4.0 X	\$4.0 X

*Check locally, may not be recyclable in your area

**Cost of material with PCR is dependent on the % claimed; current cost based on the 30% input

This cost increase will ultimately be passed on to consumers, many of whom are already struggling with rising food prices. Independent grocers, who operate on thin margins (1-2%), will be disproportionately affected, and they will have no choice but to raise prices, potentially limiting access to fresh meat and poultry in our rural communities. Unfortunately, eliminating this packaging option without viable, affordable alternatives will impose higher costs on both businesses and consumers.

The supply chain for PS alternative packaging materials has not kept pace with demand. Many independent grocery suppliers project difficulty in sourcing adequate inventory of acceptable substitutes, creating uncertainty. If polystyrene trays are no longer permitted, there is a real risk that supply shortages could disrupt the availability of fresh meat and poultry across Maine.

Meat and poultry trays are specifically designed to accommodate automated wrapping machines and hand wrapping stations. Unfortunately, one of the leading alternative suppliers of PET trays {name withheld} who makes these meat-specific packing trays does not have capacity to take on additional customers and is struggling to keep up with their current demand. This alternative manufacturer would cost on average 3 times higher than current polystyrene trays.

Performance Concerns:

The simple fact remains that due to its functionality, polystyrene foam is particularly suited for food packaging, in particular raw proteins that have many challenges due to the moisture and risk of food spoilage from exposure. Switching to another type of packaging is not as simple as changing the material because there is no perfect substitute. Many alternative forms of packaging are simply not robust enough to provide the same performance as polystyrene, cannot be made in the same size and shape as polystyrene, and changes in the materials used in the packaging process can also require a change of equipment.

Foam trays provide thermal benefits, keeping food cooler during transport and storage. PET trays may not match the thermal insulation properties of polystyrene foam, which could impact temperature-sensitive products during extended transport or storage resulting in meat discoloration. Meat discoloration is primarily linked to myoglobin oxidation, where the pigment transitions from oxymyoglobin (red) to metmyoglobin (brown) due to oxygen exposure and other factors like light, temperature, and packaging permeability. Meat discoloration typically conveys that the meat has gone bad and leads to food waste and customer refunds.

Maine's unilateral PS packaging ban will disadvantage local businesses by forcing costly transitions to alternatives that may not meet the same performance standards (e.g., moisture resistance, and durability). Polystyrene raw meat trays are moisture-resistant and lightweight.

Alternatives Require Meat Pads to Absorb and Avoid Discoloration:

Stores typically use 1-4 pads per tray (depending on the size and kind of meat involved), and typically meat pads cost just shy of \$0.02 each. Interestingly, an alternative tray manufacturer {name withheld} is offering a unique Honeycomb designed with divots in the base of all of their PET trays to collect and retain purge (meat juices) to reduce leakage. This innovation will eventually eliminate meat pads that they currently use to collect purge and is required for the meat juice liquid when alternatives to EPS are required. This manufacturer has not been secured as an alternative supplier as their annual capacity to meet the anticipated demand based on current tooling and manufacturing practices is unknown. The 'honeycomb innovation efficacy' has not yet been performed to understand its use at market. Although, future innovative products will allow for a bit of savings, stores would still be paying more per tray than the equivalent EPS tray.

Polystyrene Alternatives Landscape:

Our independent grocer wholesale suppliers have reached out to PET packaging manufacturers and they have NO plans to increase the variety of sizes offered nor do they have any plans to increase their capacity, despite the state legislation. Suppliers are actively working to source additional manufacturers and just recently they've reported that they have more than one singular manufacturer in the production of PET alternative trays available to source.

Other alternatives that are being researched and evaluated include Cryovac Bags, Molded Fiber/Paperboard Trays, and other alternatives include recent innovations with Sealed Air and TekniPlex developing compostable options, but these also are anticipated to come at a much higher premium.

Currently, the traditional independent suppliers offer estimates of the following inventory break-out: Thirty-One (31) different sizes of polystyrene trays vs. only three (3) Clear PET trays sizes – 2D, 4D, and 9D. These three (3) tray options do not provide adequate size variations for the range of small to family-sized meat and poultry packaged meats, which are crucial to raw protein offerings. Alternative packaging options do not offer enough variation to provide the same performance as polystyrene, and they cannot be made in the same size and shape as polystyrene.

The Overall Environmental Footprint of Alternatives:

Alternative materials come with distinct environmental impacts and generally incur higher shipping and transportation costs compared to polystyrene. Because polystyrene is lightweight and primarily manufactured domestically, its shipping and storage requirements are less demanding. In contrast, alternative products are typically imported and shipped on wooden or plastic pallets, a process known as "palletizing." This shipping method necessitates more truck space, additional storage capacity, and increased labor for handling.

One of the primary advantages of expanded polystyrene is its lightweight nature. EPS is composed of over 90% air, making it significantly lighter than other packaging materials for cold foods and meats, EPS packaging preserves cool temperatures, ensuring freshness and preventing spoilage. This thermal insulation capability is a decisive factor in maintaining the quality of food products from preparation to consumption. EPS production

consumes less energy and generates fewer greenhouse gases compared to other packaging materials, further contributing to its eco-friendly advantages.¹

Risk of Significant Supply Chain Disruption:

Maine's current polystyrene packaging ban law, come July 1, 2025, will also prohibit prepackaged items purchased at wholesale in polystyrene. This was put into statute (via LD 1631 in the 130th) to address a Commerce Clause issue of prohibiting in-state vs out-of-state packaged goods.

We express significant concerns that larger, out-of-state protein manufacturers may not be moving towards compliance and we risk a meat and poultry supply chain disruption. Our supplier partners, both regionally and nationally have not been able to confirm large protein manufacturers move to alternatives to accommodate the Maine-specific upcoming EPS prohibition.

The food and beverage polystyrene packaging prohibition may extend beyond protein and impact yogurt containers, butter tubs, ice cream tubs, coffee creamer cups, mac and cheese cups, and cheese packaging, to-go soup containers, and other vegetables. As we brace for the unknown impact of tariffs and other supply chain uncertainties, it is imperative that we do not add additional burdens on grocery store inventory.

To further complicate the issue, retailers would need to remove items from their existing packaging when possible and re-pack those items in the store. This will result in food waste and trash due to the discarding of the noncompliant packaging.

Commerce Clause Concerns:

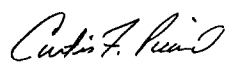
Food producers will struggle to alter their packaging for the Maine market alone. We are concerned that prohibiting the sale of polystyrene-packaged goods—when those goods are packaged outside of Maine—raises significant constitutional issues under the Commerce Clause. Article I, Section 8, Clause 3 of the U.S. Constitution, empowers Congress to regulate trade between states, with foreign nations, and with Native American tribes. This authority not only allows Congress to oversee interstate commerce but also limits the extent to which individual states can enact laws that interfere with it. This limitation, often referred to as the "Dormant Commerce Clause," restricts states from enacting measures that hinder interstate commerce—even in the absence of specific federal regulation. According to the U.S. Supreme Court, two key principles guide this doctrine: first, states generally cannot enact laws that discriminate against out-of-state economic interests; and second, states are also prohibited from passing regulations that, while appearing neutral, place an excessive burden on interstate trade. If implemented, the ban on polystyrene foam would make Maine the first state in the country to mandate that food retailers reject products from manufacturers and suppliers whose packaging does not meet Maine's legal standards.

We appreciate your consideration in supporting the sunset repeal or considering a two-year extension on the prohibition. Thank you for your time and attention to this time sensitive matter.

Sincerely,



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¹ www.bunzldistribution.com



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POLYSTYRENE FOAM FOOD SERVICE PRODUCT EXEMPTION EXTENSION

N.J.S.A. 13:1E-99.125 et seq (Law) restricts persons from selling or offering for sale any polystyrene foam food service product in the State. In addition, no food service businesses shall provide or sell any food in a polystyrene foam food service product.

For a period of two years beginning 18 months after the effective date of the Law (May 4, 2022), certain polystyrene foam food products were exempted from these restrictions. These exemptions, established by the Law, have been extended and are set to expire on May 4, 2025. The Law provides that the Department may extend the exemptions for additional periods not to exceed one year upon a written determination that there is no cost-effective and readily available alternative for the item. The Department has decided to extend the exemption period for the following items.

- Meat and fish trays for raw or butchered meat, including poultry, or fish that is sold from a refrigerator or similar retail appliance.

The Department will be extending this exemption for an additional year, until May 4, 2026. Affected businesses have provided detailed documentation that alternatives are not currently cost-effective or readily available. Alternatives to foam trays that can withstand the moisture from raw meat, poultry or fish's and risk of food spoilage from exposure come with an undesirable discoloration effect that may increase food waste. Moreover, extending this exemption would grant affected industries additional time so that alternative products can become available, and the costs of such alternatives would be more reasonable.

- Any food product pre-packaged by the manufacturer with a polystyrene foam food service product.

The Department will be extending this exemption for an additional year, until May 4, 2026. A large number of businesses that use polystyrene foam egg cartons have provided the Department with sufficient documentation to support the claim that supply for alternative packaging is too low to replace current demand, but that in time, alternatives will be available. One of the most common alternatives to foam are pulp cartons, but research indicates that there are only two manufacturers of these cartons nationwide and they do not have the capacity to meet the current demand by May 4, 2025. Other manufacturers that produce prepackaged products have contacted the Department to seek an extension due to documented concerns regarding the availability of alternative products.

These businesses include ramen noodles prepackaged in polystyrene cups. These manufactures are currently working to source alternative packaging or are in research and development to create compliant alternatives that still maintain the integrity of their product. These manufactures seek to remain in compliance with the Law, however, they are seeking additional time to achieve compliance.

- Any other polystyrene foam food service product as determined necessary by the Department.

The Department will be extending this exemption for an additional year, until May 4, 2026. This exemption allows the Department to reserve the right to continue exemptions should there be industry-wide barriers not identified in the previous exemptions identified above, that make alternatives to foam products not cost effective, readily available, or feasible to use.

Questions on these extensions can be directed to Julia Rossi at singleuseplastics@dep.nj.gov.

