

## CalRecycle Extended Producer Responsibility (EPR) Legislation Checklist

MFR/PR = Manufacturer/Producer      SO = Stewardship Organization

Proposed legislation with an EPR approach should consider attributes including, but not limited to:

### Scope

- Provides a tiered definition of Manufacturers/Producers<sup>1</sup>. MFR/PRs may carry out their roles and responsibilities either individually or as members of a SO.
- Defines what is a “covered product” and what is exempt.
- Covers new, historic, and orphan products.
- Covers all sales, including Internet sales.
- Requires statewide coverage, both urban and rural.
- Considers harmonizing with EPR legislation in other states to reduce the administrative and operational burden on the SO, MFR/PRs, retailers, and other affected stakeholders.

### Measurement & Effectiveness

- Requires goals that are meaningful, clear, quantitative, and enforceable.
- Sets goals in statute or provides a date by which state oversight agency must set goal(s).
- Requires program performance to be demonstrated by the SO or individual MFR/PR, not the state oversight agency.
- Requires the SO or individual MFR/PR to submit and implement a Stewardship Plan that would result in achievement the goal(s).
- Requires the SO or individual MFR/PR to submit an Annual Report and Budget with the data needed for the state oversight agency to determine if the goals are being achieved and to enforce the requirements of the law.
- Allows for comparisons among similar programs (e.g. using specific metrics<sup>2</sup>).
- Requires SO or MFR/PR to coordinate with and address concerns of a multi-stakeholder Advisory Committee, at a minimum, during development of Stewardship Plan, Budget, and Annual Report and prior to submittal to the state oversight agency.
- Considers incentives to SO or individual MFR/PRs (e.g., lesser reporting requirements for achieving certain targets).

---

<sup>1</sup> 1<sup>st</sup> Tier – Manufacturer of the product within the state, 2<sup>nd</sup> Tier – Importer/Distributor of the product within the state, 3<sup>rd</sup> Tier – Retailer who sells the product within the state. A sample definition follows:

“Manufacturer” means any of the following:

- (1) The person who manufactures the covered product and who sells, offers for sale, or distributes the product in the state.
- (2) If there is no person who is the manufacturer of the product for the purpose of paragraph (1), the manufacturer of the covered product is the person who imports the product into the state for sale or distribution.
- (3) If there is no person who is the manufacturer for the purpose of paragraphs (1) and (2), the manufacturer is the person who sells the product in the state.

<sup>2</sup> The CalRecycle Sample Metrics Table provides a set of metrics which cover program cost, environmental management and impacts, program effectiveness, and job impacts. These metrics represent the kind of data to measure, evaluate, compare, and track effectiveness of EPR or other programs. Also consider tracking impacts to jobs (see the Jobs Analysis Template for suggestions).

- Allows sales of products covered under an approved plan. Specifies a sales ban of non-covered products at the MFR/PR level only. This must be coupled with tiered definition of MFR/PR for streamlined enforcement, lower state fiscal impacts, and lower overall program costs. For most products, bans on the sale of non-covered product at the retail level significantly increases the number of regulated entities required for the state oversight agency to enforce; if the state oversight agency is unable to provide sufficient enforcement then it is unable to provide a level playing field.
- Provides enforcement provisions (e.g., disposal ban of covered product/product category to encourage recycling; fines for noncompliance, or mandating a product bounty if goals are not met; other).

### **Transparency & Accountability**

- Makes SO or individual MFR/PR responsible for developing product stewardship plans.
- Provides a plan, annual report, and budget submission and approval process. Plan is periodically updated, or upon state oversight agency request.
- Describes plan, annual report, and budget contents (see next page for topics to consider in plan).
- Allows individual and collective product stewardship programs.
- Requires an independent, third-party audit of a SO or individual MFR/PR's financial systems and outcomes. Provides for an independent, third party audit of the recycling and reclamation or disposal systems and outcomes.
- Requires online posting of plans, annual reports, budgets, and lists of compliant SO, individual MFR/PRs and brands.

### **Financing**

- Makes those who benefit from a product pay for the EPR program costs.
- Requires program costs to be internalized similar to other costs of doing businesses. Otherwise, requires front-end financing mechanisms (e.g., point-of-sale as opposed to fees charged when old products are collected or disposed).
- Contains anti-trust provisions to allow SOs to establish sustainable financing mechanism for their program(s).
- Budgets must be sufficiently detailed to indicate program costs and expenditures and provide transparency so that funds collected in California are spent on the California program.
- Requires insurance/bonds or other financial assurances for program operations, as appropriate.
- Authorizes state oversight agency to recover its full costs associated with oversight and enforcement.
- Authorizes an account at state oversight agency to accept fees/penalties dedicated to program-related enforcement and oversight activities.

### **Fairness**

- Establishes and collects penalties for non-compliance or provides incentives to encourage participation that levels the playing field among MFR/PRs.
- Ensures that any penalties assessed on SO or individual MFR/PR are not paid for using assessments but rather paid for by MFR/PR.
- Requires stakeholder consultation by SO or individual MFR/PRs both during early program development (e.g., well in advance of plan submission) and on an ongoing basis (e.g., SO or individual MFR/PRs must report on their consultation efforts annually).
- Costs for state services are minimized yet adequate for oversight and enforcement activities.

### **Environmental Protection**

- Adheres to California's solid waste hierarchy and ensures products are managed for highest and best use (e.g., address source reduction and reuse in addition to recycling; incineration is not considered recycling in California).

- Encourages domestic processing and utilization of recycled materials.
- Requires best management practices and program performance levels for materials management operations (e.g., reuse, recycling, disposal) that minimize negative environmental outcomes within the state and elsewhere.
- Ensures products are properly managed for disposal if they are hazardous and not recyclable.

#### **Education & Outreach**

- SO or individual MFR/PR has lead role for marketing, outreach, training, and/or education of stakeholders, including consumers.

#### **Product Design**

- Provides guidance mechanisms/incentives/fee structures to encourage products are designed for reuse or recycling in order to realize the associated environmental benefits.

#### **Product Stewardship Plan Elements Checklist**

- Contact information for participating MFR/PRs
- Description of the covered product(s) and associated brands covered by the plan
- Description of how the goals will be achieved and how results will be measured. For example:
  - Unit of covered product collected (e.g., volume/weight/number)
  - Total program cost (\$)/unit diverted
  - Percent of targeted material collected (e.g., as percentage of what was discarded)
  - Percent of material recovered (e.g., as percentage of annual sales)
  - Tons of greenhouse gas emissions reduced
  - Reuse rate, recycling rate, and other processing methods.
- Roles and responsibilities of key players along the product chain; names and location of transporters, recyclers, and disposal facilities; description of how product and components will be collected, transported, and managed.
- Financing methods and evidence of adequate insurance and financial assurance for collection, handling and recycling/disposal operation. Tracking of program cost. Include itemized budget.
- Strategies for managing and reducing the life cycle impacts of a covered product, e.g., SO or individual MFR/PR may identify goals that address the use of virgin material in the manufacture of a covered product, recycled content and recyclability; consumption of water or energy; use or generation of hazardous substances; carbon footprint; product's longevity.
- Education and outreach activities.
- Consultation process used to consult with affected stakeholders prior to plan submittal and ongoing feedback during implementation.
- Market development opportunities for collected materials.