Shared Elements of EPR Legislation for Packaging and Paper Products (PPP)

November 2020

Background

In October 2019, the Product Stewardship Institute (PSI) and the Flexible Packaging Association (FPA) launched a year-long dialogue on how to manage flexible packaging within a potential regulatory context. Those participating represented 18 FPA member companies, 20 PSI state and local government agencies from states that had introduced or were developing extended producer responsibility (EPR) legislation, 2 statewide environmental groups, and 3 recyclers (see ***Attachment 1***). PSI designed and facilitated the dialogue process, which included stakeholder interviews, five web-based calls, and a two-day in-person meeting. Through this process, FPA member companies, PSI member agencies, and other stakeholders learned about each other's interests in managing flexible packaging, as well as unique challenges and opportunities, from manufacturing and design to post-consumer collection, reuse, and recycling.

Agreements

The group succeeded in reaching agreement on the following:

- beneficial attributes of flexible packaging
- problem statement describing the challenges managing flexible packaging
- the desired end state for the recycling system
- attributes of an effective system for managing flexible packaging
- 8 key elements of a packaging and paper products (PPP) EPR bill

The first four agreements (bulleted above and detailed in ***Attachment 2***) laid the foundation for discussions on the type of EPR system to which all stakeholders could agree. For these discussions, PSI used its *Elements of an Effective EPR for PPP Bill* to facilitate conversation on 19 key elements to consider in the development of packaging EPR bills. PSI developed the *Elements* document with its state and local government members most knowledgeable about packaging EPR in the U.S. The document provides a common framework for state bills, which can help harmonize legislation on key bill provisions. The FPA/PSI dialogue group discussed these elements in detail, including best practices, options, and key considerations.

Packaging Legislative Elements Most Important to FPA

The dialogue group made considerable progress toward reaching consensus on 13 of the 19 elements but, over the course of discussions, FPA determined that 8 elements were most relevant to its membership, which is comprised of manufacturers of flexible packaging and material/equipment suppliers to the flexible packaging industry, but not consumer brand owners. While all dialogue participants recognized the importance of the full 19 elements in EPR for PPP legislation, the group agreed to focus discussions on the 8 elements of highest priority for FPA. For the remaining 11 elements, the group determined that it would be most appropriate for brand owners (the "responsible party" in an EPR for PPP system) to engage in dialogue on these items as they will be more directly involved in EPR program implementation.

Ultimately, dialogue participants developed a shared vision for an EPR for PPP program that includes flexibles. **Participants reached agreement on the following 8 elements of a PPP EPR bill** (see ***Attachment 3***).

Covered Materials/Products/Market Sector	Performance Standards/Recycling Targets
Covered Entities	Design for Environment and Incentives
Responsible Party/Responsible Entity	Pre-emption and Related Laws
Funding Mechanism/Covered Costs	Administrative Fees

State EPR for PPP Legislative Discussions

In addition to discussing elements of EPR for PPP legislation, PSI and FPA representatives met with local government officials in several states developing EPR for PPP bills. PSI will continue to facilitate these state-by-state conversations with representatives from FPA, using the 8 elements agreed upon by the full group as a reference and discussion tool for these discussions.

PSI's *Elements of an Effective EPR for PPP Bill* (see ***Attachment 4*)** has been used to inform or develop most of the near dozen EPR for PPP bills in development over the past two years in the U.S.

For More Information

PSI and FPA invite other brand owners, producers, haulers, recyclers, agencies, and organizations to participate in similar discussions.

Contacts: FPA's Alison Keane, akeane@flexpack.org, and PSI's Scott Cassel, scott@productstewardship.us.

ATTACHMENT 1

The following companies, agencies, and organizations participated in the PSI/FPA dialogue.

FPA Members

- Amcor Flexibles
- Belmark Inc
- Berry Global
- Charter Next Generation
- Constantia Flexibles LLC
- Dow
- Flex Films (USA) Inc.
- Glenroy, Inc.
- NOVA Chemicals, Inc.
- Novolex
- Plastic Packaging Technologies, LLC
- Printpack
- ProAmpac
- Sealed Air Corporation
- Smart Plastic Technologies LLC
- Sonoco Flexible Packaging
- Sun Chemical Corporation
- Windmoeller & Hoelscher Corporation

PSI Members

- State Agencies
    - California Department of Resources Recycling and Recovery
    - Connecticut Department of Energy and Environmental Protection
    - Oregon Department of Environmental Quality
    - Maine Department of Environmental Protection
    - Massachusetts Department of Environmental Protection
    - New York Department of Environmental Conservation
    - Vermont Department of Environmental Conservation
    - Washington State Department of Ecology

- Local Agencies
    - Chittenden County Solid Waste District, VT
    - City of Boston, MA
    - Housatonic Resources Recovery Authority, CT
    - King County Department of Natural Resources, WA
    - Metro Regional Government, OR
    - New York City Department of Sanitation, NY
    - Niagara County, NY
    - Northwest Vermont Solid Waste Management District, VT
    - Onondaga County Resource Recovery Agency, NY
    - Seattle Public Utilities, WA
    - South Shore Recycling Cooperative, MA
    - Tri-County Hazardous Waste & Recycling Program, OR

Other Participants

- EFS-Plastics, Inc.
- SIMS Municipal Recycling
- Serlin Haley
- Natural Resources Council of Maine
- Zero Waste Washington

ATTACHMENT 2

The PSI/FPA dialogue group reached agreement on the following four items, which laid the foundation for discussions on the type of EPR system to which all stakeholders could agree.

Beneficial Attributes of Flexible Packaging

The PSI/FPA dialogue group acknowledged the following attributes of flexible packaging that reflects its importance in keeping products safe through delivery, reducing costs through efficiency, and minimizing environmental impacts:

- Product protection
- Maximize product/package ratio (most resource efficient)
- Lightweight (transportation efficiency)
- Reduces amount of waste needed to be managed
- Fewer raw materials
- Less water usage
- Less energy usage
- Extends shelf-life (less food waste)
- Reduction in GHG

Problem Statement

The dialogue group agreed on the following challenges in managing flexible packaging, noting that many of these problems are not unique to flexibles and may apply to a broad range of packaging types. Use of flexible packages is increasing due to its beneficial attributes, exacerbating these challenges:

1. Lost resources from lack of material recovery
2. Flexible packaging prevalent and visible in the waste stream and as litter, leading to aesthetic impacts, municipal costs, and ocean debris
3. An increasing number and type of packages need to be managed and there are:
    - few systems in place to collect them;
    - few recycling systems in place to process them; and
    - a lack of recycling end markets.
4. Broad confusion about the difference between non-recyclable flexible packages and recyclable flexible packages
5. Recycling contamination including issues with domestic exports and resulting impacts
6. Sold in countries lacking management infrastructure (global concern)
7. The cost of virgin materials impacts the demand for recycled plastics
8. Responsibility for materials management along the supply chain, both upstream and downstream, is not clear and explicit
9. Governments and taxpayers have borne the primary cost of post-consumer management and mismanagement
10. Governments lack adequate funding for recycling and handling increased waste loads
11. Producers and consumers do not bear the true lifecycle costs of the goods they buy (true of all products)

Desired End State

The dialogue group shares a common interest in developing a system that:

- Incentivizes reduction in material use and environmental impacts;
- Maximizes the collection and environmentally beneficial post-consumer management of flexible packaging in the U.S.; and
- Minimizes costs to government and industry.

Attributes of an Effective System

The following are attributes of an effective system for managing flexible packaging:

1. Maintains or enhances the current environmental and performance attributes of flexible packages, including efficiency
2. Reduces environmental impacts and costs (externalities), including from litter
3. Keeps materials out of the open environment (e.g., oceans, rivers)
4. Recycles materials (when that is the best choice from an environmental perspective) and diverts from landfill and waste-to-energy (unless those are the best choice from an environmental perspective)
5. Provides sustainable funding, including funding for R&D and infrastructure
6. Creates a sustainable program with defined roles for key stakeholders
7. Maximizes collection convenience and effectiveness
8. Processes the material effectively and in a manner that retains the material's value
9. Creates multiple and sustainable end markets
10. Provides for comprehensive education and awareness, including labeling
11. Incentivizes the sustainable sourcing of materials (e.g., recycled content)
12. Maintains safety and regulatory compliance
13. Manages all packaging materials under the same system, allowing for different collection methods within that system
14. Treats each material uniquely according to its respective externalities (e.g., eco-modulated fees)

ATTACHMENT 3

FPA/PSI Agreement

Eight Shared Elements
Packaging and Paper Products (PPP) EPR bill

The group's shared vision for an EPR for PPP program that includes flexible packaging is outlined below. During the dialogue process, the group determined that some details of each element are best discussed on a state-by-state basis, as they will depend on each state's unique circumstances, existing infrastructure, and program goals. Aspects of the program to be discussed state-by-state are indicated within each element.

The PSI/FPA dialogue group used PSI's *Elements of an Effective EPR for PPP Bill* (Attachment 4) to discuss 19 key elements to consider in the development of packaging EPR bills. The group reached agreement on the following eight elements of an EPR for PPP bill, which FPA felt were most relevant for its members.

ELEMENT	NEGOTIATED AGREEMENT
1. COVERED MATERIALS/ PRODUCTS/MARKET SECTOR *Note: Covered Materials and Covered Entities (Element #2) should align (i.e., the program should pick up material that producers are paying for under Covered Materials).*	*Packaging* is defined by its functions: containment and/or protection. Packaging includes consumer-facing (i.e., intended for the consumer market) primary, secondary, or tertiary packaging, as well as service packaging designed and intended to be filled at the point of sale (such as carry-out bags, bulk goods bags, take-out and home delivery food service packaging, and prescription bottles). *Paper products* include paper sold as a product and all printed materials other than literary, text, and reference bound books. Covered Materials include all packaging and paper products regardless of recyclability. *Materials from the commercial and institutional sectors are not included in the program, although they could be phased in over time. In states where it is difficult to differentiate between residential and other sectors, the program may include one or both of those sectors (e.g., if residential and commercial recovery are currently managed together, the state might include both residential and commercial materials under covered materials). In this instance, covered entities (see #2) would need to be adjusted to align with covered materials.*

ELEMENT	NEGOTIATED AGREEMENT
2. COVERED ENTITIES *Note: Covered Materials (Element #1) and Covered Entities should align (i.e., the program should pick up material that producers are paying for under Covered Materials).*	The existing recycling system needs to be stabilized and improved (including expanded) to capture more covered materials. The EPR for PPP recycling program should, at minimum, continue via statute the same level of service as the existing recycling program (e.g., state or municipal/waste district, private subscription, or other existing service – this is the "baseline" program). The stewardship plan shall be required (via statute) to outline how the recycling program will also build on and expand beyond existing recycling opportunities to recover covered materials. If the existing local government recycling service combines residential service with service to other sectors, and the EPR program includes more than residential PPP in covered materials (#1), the level of service in the recycling program should account for these sectors (e.g., if commercial materials are covered, commercial entities would be included in the recycling program). The Advisory Board can recommend future program expansions and improvements (Refer to Additional Agreements at end of document). *Differences in the level of service on a town-by-town basis should be addressed state-by-state. The goal is to harmonize service levels statewide to the extent feasible and to improve upon the system such that residents do not lose services (see "Attributes of an Effective System").* *Expansion of the existing program to include recovery of covered materials from public spaces should be addressed state-by-state.*

ELEMENT	NEGOTIATED AGREEMENT
3. RESPONSIBLE PARTY/ RESPONSIBLE ENTITY ("PRODUCER") *Who is responsible for funding the recycling program, and who is exempted?*	"Responsible Party" means a party that has legal ownership of the brand of a product for sale, use, or distribution in the state, including online retailers who sell into the state, that utilizes covered material. (1) For packaging, responsible parties shall be determined based on the following criteria: (A) A person who manufactures a product under the manufacturer's own brand that uses covered material; (B) If subparagraph (A) does not apply, a person who is not the manufacturer of a product under the manufacturer's own brand that uses covered material, but is the owner or licensee of a trademark under which a covered material is used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not the trademark is registered; or (C) If subparagraphs (A) and (B) do not apply, a person who imports the product that uses the covered material into the state for use in a commercial enterprise, sale, offer for sale or distribution in the state. **De minimis:** The legislation should set de minimis standards to exempt small businesses. The standards could be based on the total weight of all materials they place on the market annually or their total annual gross revenues (*for example, less than one ton of packaging produced or $1 million in gross revenue per year*). The law should also levy a flat fee on small-to-mid-sized businesses on a tiered basis. *For example (these figures are adapted from RecycleBC)*: *a. 1 – 2.5 total tons produced: $600/year* *b. 2.5 – 5 total tons produced: $1,200/year* *c. 5 – 10 total tons produced: $4,000/year* *d. 10 – 15 total tons produced: $6,000/year* Eligible producers can choose to pay the flat fee with no requirement to produce a detailed annual report, or they can provide a detailed report of the amount of PPP supplied and pay fees in accordance with the regular fee schedule. *Paper products and printed paper will also be included in EPR for PPP bills because they are an important component in the recycling stream, but for the purposes of this agreement packaging is the focus. Details around paper producers (and whether municipalities are included in this category) are best discussed state-by-state.*

ELEMENT	NEGOTIATED AGREEMENT
4. FUNDING MECHANISM/ COVERED COSTS *This element describes how funds collected by the PRO are distributed, as well as what program costs are covered. Note: material fees (including eco-modulated fees), are addressed in Element #6 (Design for Environment).*	Fees are paid by producers to the PRO. All producers of covered materials should contribute funding, whether or not their materials are recycled. Producer internalized funding covers all recycling program costs, including collection, transportation, processing, reuse, recycling, other recovery, education, program administration, and government oversight/administration. The funding also covers disposal of contaminated recyclables that arrive at the MRF, as well as contamination (non-recyclable materials) arriving at the MRF and requiring disposal. A portion of fees should be used to develop markets and infrastructure to increase the recovery of covered materials over time, as well as for packaging-related litter/debris prevention and abatement. Regular, independent, standardized state-by-state audits inform funding decisions within each category of covered costs. **On municipal reimbursement:** If a municipal reimbursement model is used, municipalities have the option of not participating in the stewardship program and continuing to use their current system (i.e., they opt out). If they participate in the stewardship program, municipalities should have the option to use their existing transporters and processors and receive a negotiated stipend from the program. Calculations for payments to municipalities must incentivize operational/cost efficiency and contamination reduction. Specific language outlining how a formula for reimbursements should be determined is best addressed on a state-by-state basis.

ELEMENT	NEGOTIATED AGREEMENT
5. PERFORMANCE STANDARDS / RECYCLING TARGETS *This element describes the overall desired outcomes for the program, and how program success is measured. Desired environmental outcomes for covered materials are closely related to program performance, and any outcomes that can be achieved through eco-modulated material fees are described in #6 (Design for Environment).*	The EPR for PPP statute or regulations must include ambitious, achievable program goals. Program performance standards must include reuse, recovery, and recycling, and may also include other beneficial environmental outcomes such as a state-wide waste reduction goal, greenhouse gas emission reductions, reducing toxicity in packaging materials, and other standards. For example, the statute might say: By the end of XXXX (year), a minimum of XX% by weight of all covered materials will be reused or recycled. Program targets should take baseline data into account (i.e., initial targets should be achievable given the state's current recovery and recycling rates, emissions, total or per capita waste generation, and other relevant figures). Covered materials should be managed in accordance with a state's waste management hierarchy and sustainable materials management policy. For reuse, recovery, and recycling targets, performance should be calculated relative to the amount of material producers place on the market. Recycling rates should be calculated using the amount of material processed and sent to recycling markets (not the amount *recovered*). The statute or state regulatory process may set achievable minimum/baseline material-specific reuse, recovery, and recycling targets as a starting point for the program, and the PRO should propose updated material-specific targets via the stewardship plan process over time. When performance targets are revised, they should reflect the state's and PRO's understanding of why they could not be reached (or why they were exceeded). If the state and the PRO do not agree on performance targets, the state has the authority to modify the submitted stewardship plan by setting performance targets. Regular, independent, standardized state-by-state audits will inform setting updated targets and progress towards performance standards.

ELEMENT	NEGOTIATED AGREEMENT
6. DESIGN FOR ENVIRONMENT AND INCENTIVES *This element covers how material fees are set and modulated. Description of how collected funding is used is covered in Element #4 (Funding Mechanism).*	Covered Materials should be designed to minimize their overall environmental and health impacts. The statute or regulatory process will specify the state's general desired environmental outcomes of the program. Examples of desired outcomes include eliminating or reducing the amount of material used, eliminating toxic substances, designing for reuse and lifespan extension, incorporating recycled content, designing to reduce environmental impacts across a product's lifecycle, and improving recyclability. (Recyclability refers to the technical feasibility of recycling the materials, the practical ease of recycling the materials including access to convenient collection, market availability, and consumers' ease in identifying materials as recyclable.) Specific fee amounts will be proposed by the PRO annually as part of the annual report process and will be subject to public input (including producers) and state approval. Fees may be assessed by weight (which inherently benefits light-weighted materials) and/or per customer sales unit or other measure, and eco-modulation will further incentivize the desired environmental outcomes of the program and disincentivize materials that more commonly become litter or aquatic debris.

ELEMENT	NEGOTIATED AGREEMENT
7. PRE-EMPTION AND RELATED LAWS	The law should be as compatible as possible with existing state programs, regulations, and laws, including a deposit return system, pay-as-you-throw, toxics in packaging, and other EPR systems. However, EPR for PPP should not preempt local legislative authority from imposing additional standards or restrictions on products and packaging. Legislation should address any regulatory hurdles that existing laws may impose that would prevent collection, transport, and recycling of flexible packaging. Legislation should not intentionally or inadvertently incentivize disposal over recycling.

ELEMENT	NEGOTIATED AGREEMENT
8. ADMINISTRATIVE FEES	Administrative fees should be set annually and paid by the PRO. Fees should be reasonable and sufficient to cover actual state agency oversight costs, including rule writing, planning, plan review, annual oversight, compliance, enforcement, and other directly related tasks. All fees must be allocated to the PPP EPR program and should not become part of the state's general fund. The law may specify that the fees support one or more staff positions within the oversight agency to administer the program. Any limitations on administrative fees may be addressed on a state-by-state basis.

Additional Agreements: In addition to the consensus reached on 8 priority elements as outlined below, the group agreed to the following key concepts:

- A multi-stakeholder Advisory Board can provide input into all aspects of the stewardship plan, including making recommendations on future program expansion and improvements.
- The state oversight agency will have authority to approve (or disapprove) all aspects of the stewardship plan, including proposed program improvements/expansions and requiring changes to any proposed performance targets included in the plan.
- Local governments should not set distinct recovery or recycling targets for covered materials.
- The intent of an EPR for PPP program is to direct the majority of program funding toward operations, rather than administration. States should seek to continuously increase efficiency in program administration, e.g. through regional coordination.

Attachment 4

Elements of Packaging and Paper Products (PPP) EPR Legislation

Updated June 2020

This document provides a menu of legislative "elements" and options for state and local officials to use to develop extended producer responsibility (EPR) bills for packaging. The document provides guidance on elements that are necessary components of effective state EPR legislation in the United States. It is also intended to harmonize state legislation across the country. The document was developed by the Product Stewardship Institute (PSI) and a working group consisting of PSI state and local government members and will be updated periodically as appropriate. If you are developing an EPR bill for packaging, please contact PSI's Sydney Harris (sydneyh@productstewardship.us) for additional resources. ***Note*****:** *the following elements do not reflect agreements made during PSI's dialogue with the Flexible Packaging Coalition, which took place following the development of this document.*

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
1. COVERED MATERIALS/ PRODUCTS/MARKET SECTOR	*Packaging* is defined by its functions: containment and/or protection. Packaging includes consumer-facing (i.e., intended for the consumer market) primary, secondary, or tertiary packaging, as well as service packaging designed and intended to be filled at the point of sale (such as carry-out bags, bulk goods bags, take-out and home delivery food service packaging, and prescription bottles). *Paper products* include paper sold as a product and all printed materials other than literary, text, and reference bound books. Covered Materials include all packaging and paper products regardless of recyclability.	**Note: When determining what materials and what entities will be covered, keep in mind that Covered Materials and Covered Entities (Element #2) should *align*** (i.e., the program should pick up material that producers are paying for under Covered Materials). Options to include in Covered Materials: • Single-use plastic products (e.g., cutlery). • Packaging-like products (e.g., aluminum pie plates, sandwich bags, corrugated cardboard moving or file boxes, plastic wrap, aluminum foil). *Rationale: Consumers don't distinguish between PPP and these products, which are often put in recycling bins but are not Covered Materials under the base model. Therefore, producers that pay into the recycling system would subsidize the recycling of these other products. [Packaging-like materials are currently under consideration for inclusion in the British Columbia program (though they were not added during the most recent program revision).]* • PPP marketed to the industrial, commercial, and institutional (ICI) sectors. *Rationale: To maximize recovery rates and completely shift responsibility to producers, a comprehensive EPR program would cover* all *PPP materials, regardless of what market they flow through. However, if a state has well-established, effective, privately managed ICI recycling programs, a state may choose not to include ICI in Covered Materials. (While Canadian EPR programs typically do not cover these materials, the European Union directive for packaging does cover packaging from* all *sectors. In the case of Belgium, for example, there are separate stewardship organizations to manage waste from residential packaging and to manage waste from commercial and industrial packaging.)*

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
2. COVERED ENTITIES (groups that may use the producer funded recycling program free of charge)	The program should cover the existing municipal recycling program, such as curbside service to households (including single and multi-family dwellings), subscription services paid directly by residents, recycling services at transfer stations, and public recycling services for places such as sidewalks, plazas, and parks. The statute should define the existing program. Producers and the state may negotiate expansion of service (e.g., to multi-family dwellings where service does not currently exist) through the stewardship plan process, which may be needed to meet performance requirements.	• If Covered Materials include those from ICI sectors, Covered Entities should include entities from the ICI sectors. • If ICI materials and entities are *not* covered by the bill, states could choose to include one or more of the following as a Covered Entity. Otherwise, the materials recovered from these entities would essentially be "free rider" materials under the base model. ○ Small businesses *Rationale: For example, in places where small businesses historically have been allowed to drop off recyclables at municipal waste facilities for free, a state may choose to allow them to continue to use the recycling system for free to avoid disruption of this service.* ○ Public events ○ Farms ○ Schools (K-12) ○ Colleges and universities
3. RESPONSIBLE PARTY ("PRODUCER") (who is responsible for funding the recycling program, and who is exempted?)	A "responsible party" is one that makes, licenses, or imports packaging or paper products for sale, use, or distribution in the state, or that distributes service packaging, and that has revenues of more than $1,000,000 or produces more than one ton of packaging and paper products. Note that amounts apply to a whole company (i.e., not just one location or facility). The definition of responsible party should be tiered to provide clarity: "Responsible Party" means a party that has legal ownership of the brand of a product for sale, use, or distribution in the state, including online retailers who sell into the state, that utilizes covered material. (1) Responsible parties shall be determined based on the following criteria: (A) A person who manufactures a product under the manufacturer's own brand that uses covered material; (B) If subparagraph (A) does not apply, a person who is not the manufacturer of a product under the manufacturers own brand that uses covered material, but is the owner or licensee of a trademark under which a covered material is used in a commercial enterprise, sold, offered for sale or distributed in the state, whether or not the trademark is registered; or (C) If subparagraphs (A) and (B) do not apply, a person who imports the product that uses the covered material into the state for use in a commercial enterprise, sale, offer for sale or distribution in the state. Franchisors are obligated to report for resident franchisees.	• A state may set the minimum revenue figure at $0.25 per capita. • Although many 501(c)(3) organizations will fall under the de minimis guidelines, a state can also opt to exclude *all* 501(c)(3) organizations. However, Covered Materials from these organizations put onto the market (e.g., flyers and mailers, packaging for items they sell, etc.) will become "free riders" paid for by Covered Entities. • A state may opt to exclude municipalities (see above).

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
4. STEWARDSHIP ORGANIZATION(S) (or Producer Responsibility Organization, PRO) (groups of producers who work together to collect and recycle PPP)	Allow compliance by individual producers, as well as multiple producers that form a stewardship organization and discharge their responsibilities to that organization. Multiple stewardship organizations may be established. Stewardship organizations operating on behalf of multiple producers should be non-profit 501(c)(3) institutions. If there are multiple stewardship organizations, there should be a coordinating body. A state agency can take the role of, or create an entity to undertake, program management and coordination.	• Require an advisory board consisting of stakeholders with an interest in the existing recycling system, such as MRF's, local governments, and PPP manufacturers to be established. The board should not include private entities that would bid on or enter contracts with a PRO, nor should it include Responsible Parties. The advisory board should provide expertise to the PRO, but not serve a regulatory function. • To maintain a manageable number of PROs, require each PRO to represent a minimum market share or a minimum number of companies, or to pay a registration fee to establish the PRO.
5. FUNDING MECHANISM (method of defining producers' financial obligations)	Producer internalized funding covers all recycling program costs, including collection, transportation, processing, reuse, recycling, other recovery, disposal, education, program administration, and government oversight/administration.	• Require producers to reimburse municipalities for disposal costs associated with the portion of PPP that is not recyclable or not recycled. Costs could be based on conducting waste audits demonstrating the amount of PPP in the waste stream, and then allocating a portion of municipal waste disposal costs to producers accordingly, unless demonstrated that the product was designed in the environmentally preferred manner. *<u>Rationale</u>: Packaging EPR programs typically cover the cost to manage materials that flow through the recycling system. The cost to manage materials that never enter the recycling stream (either because they are not recyclable or people dispose of them) are still borne by municipalities and taxpayers through the municipal solid waste stream.* • Require producers to contribute to the cost of litter programs, including contamination of compost from PPP materials such as plastic bags. • Require producers to apportion fees by weight and material type, and to account for one or more of the following: material management costs, a material's relative impact on the environment, lifecycle impacts, recycled content, and reuse. If credit is given for reusable items, specify a basis for determining that the items are in fact reused a minimum number of times in practice (e.g., an evaluation to show they are typically used 5 times). • In a shared financing model, producers cover a majority of net recycling program costs and municipalities are responsible for the remainder.
6. PERFORMANCE STANDARDS	PPP should be managed in accordance with a state's waste management hierarchy or sustainable materials management policy. A plan must include ambitious, achievable targets for the collection and recycling of material by material type, subject to the state's approval in the stewardship plan, and producers should strive for continuous improvement. The state should have the authority to raise targets. Specific targets should be set and performance measured in relation to the amount of material on the market (i.e., percent of material on market). By the end of 2025, a minimum of 65% by weight of all PPP will be reused or recycled, with the following minimum targets for materials: • 55 % of plastic; • 60% of wood; • 75% of ferrous metal; • 75% of aluminum; • 75% of glass; and	• A state may choose to adopt environmental outcome-based measures (e.g., reduction in greenhouse gas emissions or energy consumption). • Avoid performance standards that are expressed simply in terms of total weight for all PPP (and not individual material targets), as this could discourage lightweighting or material reduction.

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
	• 75% of paper and cardboard. By the end of 2030, a minimum of 75% by weight of all PPP waste will be reused or recycled, with the following minimum targets for materials: • 65 % of plastic; • 75% of wood; • 85% of ferrous metal; • 85% of aluminum; • 85% of glass; • 85% of paper and cardboard Include audit requirements for data collection and material disposition.	
7. CONVENIENCE STANDARDS	Producers must provide convenient, free, and on-going consumer access to collection facilities and/or collection services that are as convenient as trash disposal. Where curbside pickup is not available, producers are required to provide convenient, equitable access to permanent collection facilities that are within a reasonable drive time to 95 percent of the population. If there are existing state or local laws that set standards for service (e.g., curbside pick-up, plastic bag drop off, etc.), producers must meet or exceed those standards (also see Related Laws #13). If the state oversight authority agrees that a material (such as plastic bags) is not suitable for the most convenient means of collection available, another means of collection can be used.	**Note**: free access applies to Covered Entities (#2) and should be specified in the Stewardship Plan (#9). **Note**: Outreach & Education (#11) addresses consumer awareness of collection facilities and services.
8. DESIGN-FOR-ENVIRONMENT	Covered Materials should be designed to minimize their overall environmental and health impacts. To minimize the impacts of extraction, manufacture, use, and end-of-life management, producers should consider such adjustments as: eliminating or reducing the amount of material used, eliminating toxic substances, designing for reuse and lifespan extension, incorporating recycled materials, designing to reduce environmental impacts across a product's lifecycle, and improving recyclability. (Recyclability refers to the technical feasibility of recycling the materials, the practical ease of recycling the materials, and consumers' ease in identifying materials as recyclable.)	• Any lifecycle analysis used to guide management of materials should be conducted by an independent third party using accepted standards, should involve the state during the analysis process, and should be subject to approval by the state. • Management options considered for a particular program should be aligned with the infrastructure in the program area. (For example, biodegradability of materials may be a consideration if industrial composting and closed loop recycling systems exist and are accessible to Covered Entities.) **Note:** Producer fees can be structured to incentivize design-for-environment (see #5, Funding Mechanism).
9. STEWARDSHIP PLAN CONTENTS	Producers submit a 5-year plan for initial review and subsequent review at 5-year intervals. The state should have the authority to require that a plan be revised before its time period ends if targets are not being met or if there is a change in circumstances that warrants a revision. The plan should describe Covered Materials, Covered Entities, and responsible parties covered under the plan; stewardship organization structure; funding, including how fees will be structured and collected; performance targets; material collection methods, consumer convenience and geographic coverage, consumer education,	

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
	and a customer service process (e.g., a process for answering citizen or customer questions and resolving issues); sound management practices for worker health and safety; design-for-environment provisions; how producers will work with existing recycling programs and infrastructure; how producers will consult with state and local governments and any other important stakeholders; and plans for market development.	
10. REPORTING REQUIREMENTS	On an annual basis, producers must report at minimum: production and collection amounts; management of materials relative to the state's waste hierarchy or sustainable materials management policy (amounts by method, recycling rates based on a percentage of PPP produced, and amounts sent to end markets); data on the final destination of materials, including the form of any materials exported (e.g., whether they were mill-ready); contamination in the recycling stream; stewardship organization board and/or advisory committee composition; collection service vendors, collection locations, population coverage, and accessibility (geographic distribution of collection, distance to population, hours or frequency); expenses; efforts to reduce environmental impacts at each stage of a product's lifecycle; educational efforts and results; customer service efforts and results; performance relative to targets in the approved plan; and ***any other information the agency deems appropriate or directs the producers to include.*** The report must be published online. Reporting should fit with a state's existing waste tracking plans (e.g., data tracking for overall trash generation and reduction) to provide consistency and enable comparisons across programs.	• For states using outcome-based performance standards, include greenhouse gas, energy impacts, and other environmental impacts in the reporting requirements. If including, specify standards for estimating impacts. **Note:** Requiring consistent reporting across states and over time will facilitate comparisons of program performance.
11. OUTREACH & EDUCATION REQUIREMENTS	Producers must educate consumers across the state on proper end-of-life management for Covered Materials, as well as provide the location and availability of curbside and drop-off collection opportunities. Recycling instructions should be consistent statewide, easy to understand, and easily accessible. Producers should also be required to include labels on Covered Materials that are easy to read and align with the recycling program (i.e., the labels should indicate that a material is recyclable and instruct people specifically on how to recycle the material in the producers' program, or should indicate that a material is *not* recyclable under the program to reduce contamination). If performance targets are not being met, the producer is required to conduct an evaluation of outreach and education efforts to ensure that such efforts are sufficient and effective, as well as to provide information that can be used to target and improve outreach and education efforts.	**Note:** If a state chooses to provide its own outreach and education program, such programs should aim for messaging and design that is consistent as possible across the entire state.

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
12. ANTI-TRUST AND COMPETITION	A producer or stewardship organization is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, if such conduct is a violation of antitrust laws, to the extent the producer or stewardship organization is exercising authority to carry out the provisions of the law.	
13. PREEMPTION / RELATED LAWS	This law should not preempt existing state or local laws that are more stringent, nor preempt future enactment of more stringent laws. State legislation that preempts or erodes the ability of local governments to address solid waste problems should only be considered when it is agreed to by local government and would create a more effective and beneficial statewide program (for further information, see PSI's Preemption Policy Statement). Make sure that this law is consistent with bottle bill, pay-as-you-throw, toxics in packaging, or other related laws in the state.	
14. PENALTIES FOR VIOLATION	Provisions to ensure compliance must be included to ensure a level playing field. A producer may not sell, use, or distribute Covered Materials (including products packaged in Covered Materials) in the state unless the producer has an approved stewardship plan or is participating in a stewardship organization with an approved plan. Provisions to ensure compliance may include assessing penalties against producers and stewardship organizations, and may also include seeking the issuance of orders requiring compliance with the law. Producers participating in an approved plan or stewardship organizations on their behalf should be allowed to take legal action against non-compliant producers.	
15. ADMINISTRATIVE FEES	Administrative fees should be paid by producers, and should be sufficient to cover state agency oversight costs, including rule writing, planning, plan review, annual oversight, compliance, enforcement, and other directly related tasks. Such fees should only be allocated to the PPP EPR program. The law may specify that the fees support one or more staff positions within the oversight agency to administer the program.	
16. AUDIT REQUIREMENT	Annual reports should include an independent financial audit.	• A state may include a requirement for a periodic materials flow audit (to determine amounts and characteristics of Covered Materials in the solid waste stream). If included, add the audit to the plan and reporting requirements. • A state may include a requirement for audits ensuring all facilities involved in the collection and processing of materials through final disposition are managed in a manner protective of human health and the environment, including worker safety, with an understanding that government oversight may include monitoring to ensure compliance. If included, add audits to the plan and reporting requirements.

ELEMENT	BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS
17. GOVERNMENT ROLES	The government provides program oversight and enforcement, including reviewing, approving, amending, and rejecting stewardship plans as appropriate. Program plans should include provisions to consult with state and local governments.	• A state may require government representation on producer responsibility board and/or advisory committee (see #4, Stewardship Organization).
18. TRANSITION/ IMPLEMENTATION SCHEDULE	Producers must submit a stewardship plan within six months of enactment of this legislation. The state has 90 days to review the plan, plus a 30-day public comment period. If a plan is rejected, the producers must submit a revision within 60 days. The stewardship plan must be implemented within one year of plan approval. The state has 60 days, plus a 30-day public comment period, to review subsequent 5-year plans. Require that stewardship organization(s) operate on an annual basis that is consistent with state recordkeeping (i.e., fiscal or calendar) to simplify reporting and comparisons across packaging and other stewardship or waste management programs.	
19. INFRASTRUCTURE AND MARKETS	Producers shall use existing infrastructure to the extent it is technologically feasible and economically practical.	• A state may require that a minimum percentage of stewardship program expenditures go toward market, sorting, and reprocessing research and development activities, including investments in equipment or facilities.