

Extended Producer Responsibility (EPR) Basics for Proposed Legislation (June 2019)

Legislation that incorporates an EPR approach must include the following elements that CalRecycle considers critical to best achieve successful program implementation in a comprehensive, fair, and transparent manner. CalRecycle is available to provide assistance.

State Oversight Agency. A lead State oversight agency is clearly identified.

Definitions. Key terms are clearly defined, including, but not limited to, definition of Producer, covered product(s), and responsible entities.

- **Must Include Tiered Definition of Producer.** Important for streamlined enforcement at first point of entry into California, lower fiscal impacts to the State oversight agency, and for providing a level playing field to all Producers:
 - (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.

Funding.

- Program funds are managed by the Producer or Stewardship Organization to implement the Stewardship Plan and reimburse the State oversight agency for oversight/enforcement expenses.
- Cost internalization (i.e., assessment is not visible on receipt, similar to other costs of doing business) or a visible assessment should be determined on a case-by-case basis.
- The Producer or Stewardship Organization must demonstrate to the State oversight agency that its Annual Budget, whether funded via a visible assessment or cost internalization, is sufficient to achieve the program goals.

Program Goals.

- Program goals and the frequency by which they are reviewed and revised by the State oversight agency are set in statute.
- Must be meaningful, clear, enforceable, and quantitative in order to enable enforcement action against the Producer or Stewardship Organization if its program fails to achieve the statutory goals.

Stewardship Organization.

- Producers must operate under an approved Stewardship Plan individually or as members of a Stewardship Organization.
- The Stewardship Organization must be organized as a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.
- The Producer or Stewardship Organization cannot use Program funds to pay penalties or costs for litigation against the State.

Stewardship Plan, Annual Reports, Budgets.

- Producer or Stewardship Organization must submit and implement a Stewardship Plan that will result in achievement of the program goal(s) required by statute and/or set by the State oversight agency.
- Stewardship Plan must include a mechanism to transfer program funds to another entity if deemed necessary.

- Producer or Stewardship Organization must submit an Annual Report, including independently-audited financial statements, that contains the data needed for the State oversight agency to determine if goals are being achieved.
- Producer or Stewardship Organization must submit an Annual Budget to the State oversight agency that demonstrates the program allocations and expenditures are appropriate and sufficient to achieve the program goals.
- Producer or Stewardship Organization must coordinate with and address concerns of stakeholders, at a minimum, during development of the Stewardship Plan, Annual Report, and Annual Budget.

Oversight & Enforcement. State oversight agency:

- Conducts compliance determinations of Stewardship Plans, Annual Reports, and Annual Budgets for approval, conditional approval, or disapproval.
- Conducts inspections and takes enforcement actions to ensure a level playing field among Producers.
- Receives reimbursement by a Producer or Stewardship Organization for its full costs of oversight and enforcement.
- Audits the Producer or Stewardship Organization for compliance with statute and regulations.