



Elements of EPR for PPP in Minnesota – WORKING DRAFT
Updated 5/13/2022

This document provides a menu of legislative "elements" and options for state and local officials to use when developing extended producer responsibility (EPR) bills for packaging and paper products (PPP). This is a technical document that provides guidance on components of effective EPR legislation. **The Base Model was developed by the Product Stewardship Institute (PSI) and a working group consisting of PSI's state and local government members. It also reflects PSI's 2020 mediated agreement between local and state governments and the Flexible Packaging Association.** Options and Additional Considerations are also based on best practices and expert recommendations. These columns are provided to show what the MN EPR for PPP Committee discussed and considered before adapting the elements to best fit Minnesota's needs. **The "MN Model" reflects discussions and agreements made through the MN EPR for PPP Committee calls in 2021-2022. This is the content that will inform MN's EPR for PPP legislation in 2023.** This document is a working draft that is updated continuously. Contact sydneyh@productstewardship.us for the latest version and additional resources.

ELEMENT	PSI BASE MODEL	OPTIONS AND ADDITIONAL CONSIDERATIONS	MN MODEL
<p>1. COVERED MATERIALS/ PRODUCTS</p> <p>Materials/products that are subject to the EPR program</p>	<p>Definition of Covered Materials: Covered Materials include all packaging and paper products regardless of recyclability.</p> <p>Definition of Packaging: Packaging is defined by its functions: containment and/or protection of a product. 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).</p> <p>The definition of packaging must include all materials that fit the description above, not just plastic materials.</p> <p>Definition of Paper Products: Paper products include paper sold as a product and all printed materials other than literary, text, and reference bound books.</p> <p>Institutional, Commercial & Industrial (ICI) Materials: ICI Materials are not initially included in the program, although they could be phased in over time. In states where it is difficult to differentiate between residential materials and ICI materials, the program may include one or both 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 would need to be adjusted to align with covered material - see Element #2.</p>	<p>Reusable packaging could be exempted, for example (adapted from VT H 142, 2022 dialogue): <i>"The term "packaging" does not include reusable containers or materials, where "reusable" refers to covered materials that are capable of being refilled or reused for their original purpose and the producer provides a program for the consumer to refill the covered material; or provides a program where the covered materials is collected and refilled or reused by the produce or similar producers, provided such programs meet or exceed any recovery, recycling, and/or reuse targets set forth in this Act."</i></p> <p>Alternatively, reusables could be included (for the purposes of reporting) but exempted from material fees (under Element #6) as long as they are part of an effective reuse/refill/return program, as described above.</p> <p>Include other single-use materials sold as products to consumers: Ziploc bags, utensils, a sleeve of cups, etc.</p> <p>Bottle Bill Exemption: In states with existing bottle deposit programs, deposit containers should be exempt from the EPR legislation.</p> <p>Additionally, the law can specify that nothing shall preclude the future passage of a container deposit/return system, and/or that nothing shall prevent the PRO from implementing a deposit/return system on any covered materials.</p>	<p>Definition of Covered Materials: <i>"Covered Materials" means, regardless of recyclability, compostability, and material type, any packaging material, paper products, or single-use materials.</i> (Adapted from MD HB 36, 2021 and U.S. HR 5845, 2020, also known as the Break Free From Plastic Pollution Act)</p> <p>Packaging, for the purposes of this Act: <i>Note: Packaging will be defined specifically for this Act because existing definitions of packaging in MN statute are not as comprehensive.</i></p> <ul style="list-style-type: none"> • Primary (touches the product), secondary (second layer), and tertiary (shipping/handling) consumer packaging • Service packaging (carry-out bags, takeout & home delivery food serviceware) • Primary, secondary, and tertiary packaging used at Commercial, Institutional, and Industrial (CII) facilities <i>Note: In MN, CII materials are commingled with residential materials. There is typically a 60/40 to 70/30 split of household vs. commercial materials, so it is most practical to cover all of them together under an EPR program.</i> <p>Single-Use Materials & Products</p> <ul style="list-style-type: none"> • Packaging-like items (cutlery, straws, etc.) provided to customers at point-of-sale • Single-use products sold to customers (e.g., box of plastic forks) <p>Paper Products: <i>Note: Paper makes up more than 50% of recyclables by weight in Minneapolis.</i></p> <ul style="list-style-type: none"> • Printed paper (flyers, newspapers, magazines, etc.) • Office paper (copy paper, writing paper, etc.) <p>Exemptions:</p> <ul style="list-style-type: none"> • Packaging exemptions: reusable containers are exempt from fees, but not exempt from the program entirely (i.e., there is a strong incentive to use reusable containers because they will not be subject to material fees, but producers will still need to report on how many reusables they introduced into the market each year) <p>Paper exemptions: bound books, "dirty" paper (tissues, TP)</p>

		<p>In states with no existing bottle deposit law: Stringent recovery, reuse and/or recycling targets may be placed on beverage containers, either in statute, rules, or in the stewardship plan. If these targets are not met in a given timeframe, the law could require a deposit/return system to be implemented – also see Element #9.</p>	
<p>2. COVERED ENTITIES</p> <p>Stakeholders that may use the EPR program.</p>	<p>The following are considered covered entities:</p> <p>Single & Multi-Family Residences: Both single-family and multi-family residences are included in the program. 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.</p> <p>Depots/Drop-offs/Transfer Stations: Producers shall use existing infrastructure to the extent it is technologically feasible and economically practical, including existing depots, drop-off sites and transfer stations.</p> <p>Public Places: Through the statute or regulatory process, the state should require that the stewardship plan include expansion of the existing (baseline) recycling program to include public places where they are not already covered within a set timeline. Under municipal reimbursement, collection in public places should be a reimbursable expense.</p> <p>Institutional, Commercial & Industrial (ICI) Facilities: If the existing local government recycling service combines residential service with service to ICI sectors, and the EPR program includes more than residential PPP in covered materials (see #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 covered by the program).</p>	<p>Some legislation covers only entities currently served by or eligible to be served by municipalities (either directly or through a contract between the muni and a private entity).</p> <p>Alternatively, covered entities may also have their recycling costs covered if they are served directly by private service providers (e.g., subscription communities, ICI facilities).</p>	<p>The program will include recycling collection from:</p> <ul style="list-style-type: none"> • Single & Multi-Family Residences • Depots/drop-offs/transfer stations • Public places (parks, trailheads, downtowns, municipal offices...) • Commercial, Institutional, and Industrial (CII) facilities <p>Recycling collection must be covered by the PRO (either directly or indirectly – see element #7 for details) wherever state or local law requires recycling. <i>Note: In MN there are state requirements on which industries must have recycling – all multi-units, many counties/cities have stricter requirements</i></p> <p>The program will also cover processing of covered materials at:</p> <ul style="list-style-type: none"> • MRFs • Certain composting facilities: Certain facilities accepting certified compostable covered materials may be covered under the program, depending upon the results of the Needs Assessment and subsequent plans for targeted investments in the approved stewardship plan.
<p>3. COLLECTION & CONVENIENCE</p> <p>The minimum level of collection convenience that a stewardship plan must provide to Covered Entities</p>	<p>Maintaining & Expanding Current (“Baseline”) System: 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 a minimum, continue (via statute) the same level of service as the existing recycling program (e.g., state, municipality/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 baseline recycling services. The Advisory Council can recommend future program expansions and improvements (see Element #4).</p> <p>Subscription Communities: In communities with private subscription services, the PRO must ensure that residents are provided free recycling collection. All covered entities (e.g.,</p>	<p>Creating a uniform list of recyclable materials: The Agency/PRO/Advisory Committee could be charged with developing a statewide list of “recyclable” materials that are suitable for collection within the program. For example: <i>“The Agency shall regularly publish a list of readily recyclable materials, developed through coordination with the producer responsibility organization and material recovery facilities or other entities managing covered materials. The Agency shall provide for a transitional period between the time that a type of covered material is determined to be readily recyclable or to not be readily recyclable and the time that such determinations will be effective for the purposes of determining producer payments and collector reimbursements... The Agency may amend the list of</i></p>	<p>Maintaining & Expanding Current (“Baseline”) System: Existing recycling services shall continue throughout the state – especially curbside recycling services, wherever they are currently offered. (In other words, there can be no decrease in recycling convenience after the law takes effect.)</p> <p>The PRO/s must work with existing infrastructure (from collection through processing) throughout the state to ensure there are no stranded assets.</p> <p>Subscription Communities: The PRO/s shall directly provide for recycling collection where municipalities do not – see Element 7 for details.</p> <p>Convenience Standards: All “covered entities” (see Element 2) must have access to convenient recycling collection services, either through a municipality or tribe, or through the PRO/s. Recycling collection must be as convenient as the collection of trash in each jurisdiction.</p>

	<p>residents, businesses) use the system for free – they do not pay service fees or incur costs for the collection of their recyclables. To address concerns of a monopoly if PRO takes over collection in subscription communities: the bill should specify that the PRO shall use existing infrastructure and services to the maximum extent feasible.</p> <ul style="list-style-type: none"> ● For example, from NY: “[the stewardship plan shall describe] how the producers, or the producer responsibility organization, will work with existing waste haulers, material recovery facilities, recyclers, and municipalities to operate or expand current collection programs to address material collection methods.” ● Another example from VT – allows any hauler to “opt-in” to the system: PRO must provide payment at the determined “reasonable rate” to any vendor who wants it. <p>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.</p> <p>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.</p> <p>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 preemption & related laws, #16).</p> <p>Alternative Collection Programs: 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.</p>	<p>readily recyclable materials as needed.” (MA H878, 2021-2022)</p> <p>Also see OR SB 582 (2021) SEC. 22: <i>Uniform statewide collection list and producer-collected materials.</i></p> <p>Other options for convenience standards: Producers must provide at least one drop-off location within each town/jurisdiction (if “as convenient as trash disposal” is not appropriate). Curbside collection could be required in jurisdictions with a large enough population (or population density) – numeric threshold to be determined as appropriate for a given state.</p> <p>Stipulations around Alternative Collection Programs (adapted; full text in ME LD1541, 2021): “In determining whether to approve a proposed alternative collection program, the Agency shall consider:</p> <ol style="list-style-type: none"> (1) Whether the program will provide year-round, convenient, free, statewide collection opportunities (2) To what extent the program intends to manage materials through reuse, recycling or incineration. (3) Whether the education and outreach strategies can be expected to significantly increase consumer awareness of the program throughout the State; (4) How the program intends to measure the amount of each material type collected, reused, recycled, incinerated or otherwise managed under the program; (5) To what extent approval of the program may disproportionately impact any community in the State.” <p>Option to limit approval of waste combustion/resource recovery/waste to energy (WTE): The Agency may not approve a program that proposes management by incineration unless that material is not readily recyclable or compostable and the program proposes a process to begin reuse, recycling or composting of that type of packaging material within a period of 3 years or less.</p> <p>Annual reporting for Alt. Collection Programs: “In accordance with rules adopted by the Agency, a producer or producers managing an approved alternative collection program shall report annually to the PRO/s and to the Agency:</p>	<p>“A producer or producer responsibility organization shall provide for widespread, convenient, and equitable access to collection opportunities for the covered materials and products identified under the producer or producer responsibility organization’s plan at no additional cost to all covered entities. Such opportunities shall be provided to all residents of [the state] in a manner that is as convenient as the collection of municipal solid waste.” (Adapted from NY S-1185C, 2021).</p> <p>Defining “recyclable” materials: The Agency (MPCA) shall publish a statewide list of “recyclable” covered materials that are suitable for collection within the program, with input from the PRO/s, the Advisory Council, and other key Minnesota stakeholders (e.g., REC, RAM, MNCC). The list shall incorporate existing data and recommendations available in the state. The PRO/s must communicate the list to all participating producers and any entity receiving reimbursement for recycling services, as well as to the general public (see Element 10 for details). All covered materials on the statewide list must be collected for recycling in all jurisdictions across the state.</p> <p>Alternative Collection Programs: The PRO/s – or any producers operating individually or as a small group – may propose “alternative collection programs” for covered materials that are <i>not</i> on the statewide recyclables list, or that they feel are best managed separately from other covered materials (e.g., thin film flexible plastics). A producer or group of producers must submit a proposal to the Agency (MPCA) for any “alternative collection programs” they wish to run, which must include all of the details required for a standard stewardship plan (see Element 13 for details). For materials managed through an Agency-approved “alternative collection program,” producers may not need to pay material fees into the PRO/s (because they are instead directly financing the take-back and management of those materials through the alternative program). However, these materials are still subject to the same performance targets established in statute (see Element for details).</p> <p>“A producer or group of producers may develop and operate an alternative collection program to collect and manage a type or types of covered material sold, offered for sale, or distributed in or into the State by the producer or producers. A producer that manages a type of covered material under an approved alternative collection program through reuse, recycling, composting, and, where approved by the Agency, energy recovery, may wholly or partially offset the producer’s payment obligations under the packaging stewardship program with respect to that same type of material only.” (Adapted from ME LD1541, 2021).</p>
--	---	--	---

		<p>(1) The total tons of each type of material collected, reused, recycled, incinerated or otherwise managed under the program;</p> <p>(2) A list of the collection opportunities that were made available in the State for the materials managed under the program;</p> <p>(3) A description of the education and outreach strategies implemented by the program to increase consumer awareness ... throughout the State; and</p> <p>(4) Any additional information required by the Agency.”</p> <p>Agency Authority to Deem Alt. Program Unsuccessful: “If the Agency determines that an approved alternative collection program is not operating in a manner consistent with the proposal approved under this subsection or the provisions of this subsection, the Agency shall provide written notice to the producer or producers operating the alternative collection program regarding the nature of the deficiency, the actions necessary to correct the deficiency and the time by which such actions must be implemented. If the Agency determines that the producer or group of producers have failed to implement the actions described in the written notice within the required time frame, the Agency shall notify the producers or group of producers as well as the PRO/s in writing that the producer or group of producers are ineligible to offset payment obligations under the packaging stewardship program based on packaging material managed under the alternative collection program.”</p>	
<p>4. RESPONSIBLE PARTY (“PRODUCER”)</p> <p>Defines who is responsible for funding and managing the EPR program</p>	<p>Definition of Producer/Responsible Party: The “Responsible Party” or “Producer” is the party that has legal ownership of the brand of a product that is packaged in or made from covered materials and is sold or distributed into the state, including through online sales. Responsible parties are:</p> <p>(A) First, the manufacturer of a product under its own brand name; or</p> <p>(B) If (A) does not apply, the brand owner or owner/licensee of a trademark who is <i>not</i> the manufacturer but who uses or distributes the covered materials in the state; or</p> <p>(C) Where no brand owner is resident in the state, then the importer and others who are resident in the state who supply the covered materials to consumers or residents in the state; or</p> <p>(D) Where no importer is resident in the state, then the retailer who supplies covered materials to residents or consumers in the state; or, lastly,</p>	<p>Accounting by units vs weight: The law could require producers to report on the overall amount of covered materials by units, rather than by weight. If so, then the language around exemptions for small producers and de minimis/flat fees for mid-sized producers should be adjusted accordingly.</p>	<p>Definition of Producer:</p> <p>“Producer” means the following person responsible for compliance with requirements under this Act for a covered material sold, offered for sale, or distributed in or into this state:</p> <p>(i) For items sold in packaging at a physical retail location in this state:</p> <p>(A) If the item is sold in packaging under the manufacturer's own brand or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the packaged item;</p> <p>(B) If the item is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state; or</p> <p>(C) If there is no person described in (a)(i)(A) or (B) of this subsection within the United States, the producer of the packaging is the person who imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state.</p> <p>(ii) For items sold or distributed in packaging in or into this state via remote sale or distribution:</p>

	<p>(E) An entity determined by the Agency to be the responsible party for a covered product.</p> <p>See also: Longer definitions of “responsible parties” from OR SB582 (2021)</p> <p>Exemptions: The legislation should exempt small businesses. Exemptions 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).</p> <p>De minimis: 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):</p> <p>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</p> <p>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.</p>		<p>(A) The producer of packaging used to directly protect or contain the item is the same as the producer for purposes of (a)(i) of this subsection.</p> <p>(B) The producer of packaging used to ship the item to a consumer is the person that packages and ships the item to the consumer.</p> <p>(iii) For all other packaging that is a covered material, the producer of the packaging is the person that first distributes the packaged item in or into this state.</p> <p>(iv) For paper products that are magazines, newspapers, catalogs, telephone directories, or similar publications, the producer is the publisher.</p> <p>(v) For paper products not described in (a)(iv) of this subsection, the producer is:</p> <p>(A) The person that manufactures the paper product under the manufacturer's own brand; (B) If the paper product is manufactured by a person other than the brand owner, the producer of the paper product is the person that is the owner or licensee of a brand or trademark under which the paper product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state; or (C) If there is no person described in (a)(v)(A) or (B) of this subsection within the United States, the producer of the paper product is the person that imports the paper product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state.” (Adapted from WA SB 5698 – Substitute, 2022.)</p> <p>Exemptions: Producers with less than 100 full-time equivalent employees and an after-tax annual profit of less than \$500,000 are exempt. <i>Note: this is consistent with the current definition of “small business” from existing MN statute (the small business loan program).</i></p> <p>De minimis: “Small producers shall be provided an optional tiered flat fee structure based on annual tons of packaging sold.” (MA H 745, 2019-20)</p>
<p>5. GOVERNANCE</p> <p>Defines roles for program operations, administration, multi-stakeholder input, oversight, and enforcement</p>	<p>PRO Structure: Allow compliance by individual producers, as well as multiple producers that form a Producer Responsibility Organization (PRO) to conduct program management operations and administration on their behalf. Allow the PRO to be either non-profit or for-profit (do not specify in legislation).</p> <p>Multiple PROs: Multiple PROs may be established. If there are multiple PROs, they should work together to coordinate seamless services for residents, municipalities and service providers (haulers, MRFs, etc.) throughout the state. They may form (or the state may form) a coordinating body to help achieve this coordination.</p> <p>Role of the State: The state Agency conducts oversight and enforcement. The Agency reviews stewardship plans and annual reports, and can reject either if it not satisfactory.</p> <p>Advisory Council: A multi-stakeholder advisory council will provide non-binding input and program recommendations to the PRO and the state. The Advisory Council should be appointed by the Agency, with guidelines in statute specifying who shall be represented. The Agency may select an impartial, third-party facilitator to convene and provide administrative support to the advisory council.</p>	<p>Require the PRO/s to be non-profit 501(c)(3) organization/s.</p> <p>Require multiple PROs to submit a single stewardship plan to the Agency: “If multiple PROs register under this chapter, the PROs shall coordinate and submit to the Commissioner one stewardship plan. The multiple PROs may form a third-party entity to implement the requirements of the chapter for all member PROs.” (VT H 142, 2021)</p> <p>Only approve multiple PROs on a case-by-case basis, and then require them to coordinate: If the Agency of Environmental Quality approves more than one producer responsibility program, the producer responsibility organizations with approved programs shall establish a producer responsibility organization coordinating body and submit a coordination plan to the Agency for approval. If requested by the producer responsibility organizations, the Agency may serve as the coordinating body or may form or oversee the coordinating body. (OR SB582 (2021))</p>	<p>PRO Structure & Multiple PROs: Producers form one or more PRO/s. Any PROs must be registered 501(c)(3) non-profit organizations. If multiple PROs form, they must coordinate to ensure seamless services for residents across the state and easy oversight for the state & advisory council.</p> <p>“Producer responsibility organization (PRO)’ means an organization designated by a group of producers to act as an agent on behalf of each producer to develop and implement a stewardship plan.” (Adapted from MD HB 36, 2021)</p> <p>“If more than one PRO is established with respect to a category or categories of covered materials, the Agency may establish a coordinating body to coordinate and manage those producer responsibility organizations, and conduct business between those producer responsibility organizations, collectors, and the Agency.” (Adapted from MA H878, 2021)</p> <p>PRO/Producer Registration with MPCA: By July 1, 2024 and every July 1 thereafter, producers must register with the Agency (MPCA). They can register individually, or, if they join a PRO, the PRO can register on behalf of all its member producers.</p> <p>MPCA is the state oversight & enforcement agency. MPCA must approve the PRO/s’ stewardship plan/s before they can be implemented, and can require changes to the stewardship plan/s at any time (for good cause). The PRO/s must report annually on progress and performance to MPCA. MPCA will make stewardship plans and annual reports available for public comment prior to</p>

Advisory Council: The Advisory Council may be appointed by the Governor, the legislature, or another State entity, or by the PRO, or by a combination of these entities.

The Council may have select decision-making authority. The Advisory Council may be a formal voting body.

The Advisory Council may be required to provide written comments or findings to the State and/or the PRO, and the State and/or PRO may be required to provide written responses to these comments, including justification for any comments *not* incorporated in stewardship plans, plan updates, annual reports, etc.

approving them, and will facilitate robust ongoing opportunities for the public to provide feedback on the program. MPCA also appoints a multi-stakeholder advisory council (see below).

Advisory Council: Appointed by MPCA, the Advisory Council represents up to 26 people from across the supply chain and across the state. The Council provides guidance to the PRO/s on *all* program elements, from the needs assessment to the stewardship plan to annual reports, and makes recommendations to MPCA about when to require program changes. The process is formalized, with the Council providing recommendations to the PRO/s and MPCA in writing, and both parties required to provide responses in writing. The PRO/s must provide all comments from the Council to MPCA along with their stewardship plans, annual reports, etc. Advisory Council representatives must be representative of all geographic regions of the state and must represent:

- 2 manufacturers of covered materials (or national trade associations)
- 2 manufacturers of PCR material (or trade associations)
- 2 manufacturers of virgin covered materials (or trade associations)
- 2 MRFs – one public, one private
- 2 waste haulers – one large, one small
- 2 county or muni gov’t waste management programs
- 2 retailers or statewide association
- 1 statewide environmental org
- 1 community based or EJ org
- 2 transfer stations/drop-off centers – one public, one private
- 2 organics processing facilities – one urban, one rural
- 2 reuse-oriented businesses or orgs
- 2 open seats for rotating representation as appointed by MPCA
- 1 non-voting liaison from each PRO
- 1 non-voting liaison from MPCA

No disproportionate representation: *“Each individual serving on an advisory committee may represent only 1 category. A PRO shall ensure that no category has disproportionate representation on an advisory committee.”* ([U.S. HR 5845, 2020](#))

Facilitation & Duties of the Advisory Council: *“(7)(a) The Agency shall provide staff support and facilitation as necessary for the council to carry out the duties of the council. (b) The department may select an impartial, third-party facilitator to convene and provide administrative support to the council.*

(8) The duties of the council include the following:

- (a) Advise and make recommendations to the Agency on the scope of the statewide needs assessment;*
- (b) Review and comment on draft statewide needs assessment prior to its completion;*
- (c) Advise and make recommendations to any registered producer responsibility organization during stakeholder consultation on plans;*

			<p>(d) Review and comment on all new, updated, and revised plans submitted by producer responsibility organizations to the Agency, including making recommendations to the Agency on plan approvals;</p> <p>(e) Advise and make recommendations to any registered producer responsibility organization on annual reports prior to submission</p> <p>(f) Review and comment on all annual reports submitted by producer responsibility organizations to the Agency, including making recommendations to the Agency regarding the need for any plan amendments or other recommendations regarding program activities; and</p> <p>(g) Provide input, review, and comment on any rule making developed by the Agency</p> <p>(9) Advisory council members that are representatives of tribes or tribal and indigenous services organizations or community based and environmental nonprofit organizations must, if requested, be compensated and reimbursed in accordance with [Minnesota statute]. The Agency must include costs related to the advisory council in the estimate of annual costs, including costs for: (a) Agency resources, including staff time; (b) A third-party facilitator; and (c) Expenses related to member participation as established in subsection (9) of this section.” (Adapted from WA SB 5698 – Substitute, 2022.)</p> <p>Written recommendations from the Advisory Council: The Advisory Council will provide written recommendations to the Agency (MPCA) and/or the PRO/s on all program elements it reviews – the stewardship plan, the needs assessment, annual reports, etc. Both the PRO/s and the Agency must respond in writing to the Advisory Council’s written recommendations, including justification for any recommendations were not accepted or incorporated into the program.</p> <p>Public Comments: The Agency (MPCA) must make the stewardship plan, needs assessment, and annual reports available for public comment before approving them, for a period of at least 30 days.</p>
<p>6. FUNDING INPUTS</p> <p>How funding enters the EPR system</p>	<p>Cost-internalization: Fees are paid by producers to the PRO. All producers of covered materials contribute funding, whether or not their materials are recycled. Producer internalized funding covers all recycling program costs (see “Material Fees” below for details).</p> <p>Material Fees: Producers propose a fee structure based on covered materials via the stewardship plan. The state approves or rejects the fee structure via the stewardship plan review process. Legislation may require that material fees be eco-modulated. 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.</p>	<p>No point-of-sale fees: Specify that producers and/or retailers may not identify fees associated with the program at the point-of-sale. For example: “A producer or retailer may not identify the fee charged under this section as a separate line item on a receipt or invoice.” (OR HB 2592, 2021)</p> <p>No fees on reusables: Specify that reusable covered materials are not subject to fees.</p> <p>Set guidelines on eco-modulation, possibly including specific priorities for various outcomes, in statute or rulemaking. For example: <i>“The funding mechanism shall include:</i> <i>(i) incentives for responsible parties based on the ability to reuse covered material, post-consumer recycled content of covered material, and recyclability of the covered material;</i></p>	<p>Cost internalization: Producers must internalize the costs of the EPR program – they do not charge point-of-sale or point-of-collection fees to any covered entities.</p> <p>Material Fees: Producers must pay fees on all covered materials they introduce into the state. Fees are set by the PRO/s, and must be set in a manner that ensures the PRO/s will raise sufficient funds to run the program in a fiscally responsible manner and cover all required expenses.</p> <p><i>A producer responsibility organization implementing a plan on behalf of other producers must develop a system to collect charges from participating producers to cover the costs of plan implementation in an environmentally sound and socially just manner that encourages the use of design attributes that optimally reduce the environmental impacts across the lifecycle of covered products, such as through the use of eco-modulated fees based upon the following criteria, to the extent feasible, in order of priority:</i></p> <ol style="list-style-type: none"> 1. <i>improving reusability;</i> 2. <i>optimizing material to use the minimum quantity of packaging necessary to effectively deliver a product without damage or spoilage while maintaining recyclability;</i> 3. <i>Improving recyclability, and then compostability where appropriate;</i> 4. <i>incorporating post-consumer recycled content;</i> 5. <i>incorporating sustainably and renewably sourced material; and</i>

		<p>(ii) <i>(ii) penalties or increased fees for responsible parties for covered materials that disrupt the solid waste or recycling or composting systems in the State, are a common source of litter, or may only be managed through landfill disposal;</i></p> <p>(iii) <i>considerations based on a life-cycle analysis of covered materials; and other considerations relevant to establishing an equitable mechanism.” (Adapted from VT S236, 2022)</i></p>	<p>6. <i>eliminating toxic substances.</i></p>
<p>7. FUNDING ALLOCATION</p> <p>How EPR program funds are spent</p>	<p>Covered Costs: Covered costs include recycling collection, transportation, and processing; reuse, recycling, education, program administration, and government oversight/administration. 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.</p> <p>Full EPR vs Muni Reimbursement: Municipalities always have the option of not participating in the stewardship program and continuing to use their current system (i.e., they opt out). Under Full EPR, munis may opt in by acting as contractors/service providers for the PRO, or may choose to have the PRO directly provide recycling services in their jurisdiction. If they elect to participate as service providers to the PRO, they should have the option to use their existing transporters and processors and receive a negotiated stipend (a “reasonable rate”) from the program. Under Muni Reimbursement, municipalities receive “reasonable” reimbursements for their recycling costs from the PRO. In either model, calculations for payments to municipalities must incentivize operational/cost efficiency and contamination reduction. Specific language outlining how a formula for municipal reimbursements should be determined is best addressed on a state-by-state basis. Municipalities must report recycling costs to be reimbursed.</p> <p>A Hybrid Approach is also possible: PROs are responsible for reimbursing municipalities that elect to receive reimbursements, and otherwise must provide recycling free of charge to all covered entities (this applies in subscription communities as well).</p> <p>Funding Stipulations:</p> <ul style="list-style-type: none"> Regular, independent, standardized state-by-state audits or another form of needs assessment will inform funding allocations within each category of covered costs. 	<p>Dedicated funding for reuse: Covered costs can include direct investments into reuse operations and infrastructure, in addition to consumer education on reuse/refill opportunities and best practices. Funding could be distributed in the form of grants, reimbursements, and/or direct investments by the PRO, as well as technical assistance provided by the PRO to participating producers to encourage a transition to reusables where appropriate. For example language, see OR SB 582 (2021) SEC. 32: <i>Waste prevention and reuse.</i></p> <p>Dedicated funding for composting: Covered costs can include targeted investments into infrastructure to capture compostable PPP materials, in addition to consumer education on proper end-of-life disposal options for compostable materials and the removal of compostables from MRFs, where they are a contaminant. Funding could also cover removal of non-compostable PPP materials from composting facilities, where they are a contaminant. Funding could be distributed in the form of grants, reimbursements, and/or direct investments by the PRO, as well as technical assistance provided by the PRO to participating producers to encourage a transition to compostables where appropriate.</p> <p>Additional funding stipulations: Do not allow a PRO to use program funds to pay civil penalties, fines, or legal fees for enforcement actions. For example (from CA AB 842, 2021): <i>“A PRO shall not use the funds collected pursuant to this section to pay a civil penalty imposed on the PRO pursuant to the Agency’s enforcement of this chapter or to pay costs associated with litigation between the PRO and the state.”</i></p> <p>Administrative Fees: There are several options for the PRO to cover administrative costs:</p> <ol style="list-style-type: none"> The state may set an initial program fee, to be paid annually by the PRO. If this fee does not 	<p>Program funds collected by the PRO are spent on the following:</p> <p>Statewide Needs Assessment: <i>“A statewide needs assessment shall be conducted prior to the approval of a producer responsibility plan. The statewide needs assessment shall be funded by the producers or producer responsibility organization, and shall be conducted by an independent third party approved by the Agency. The needs assessment shall include an evaluation of the capacity, costs, gaps, and needs for the following factors, and shall utilize any available data provided by the Agency:</i></p> <ol style="list-style-type: none"> <i>current funding needs, both operational and capital, impacting reuse and recycling access and availability;</i> <i>existing state statutory provisions and funding sources for recycling, reuse, reduction, and recovery;</i> <i>the collection and hauling system for recyclable materials in the state;</i> <i>the processing capacity and infrastructure for recyclable materials in the state and regionally and identifying necessary capital investments to existing and future reuse and recycling infrastructure;</i> <i>the market conditions and opportunities for reusable and recyclable materials in the state and regionally;</i> <i>consumer education needs for recycling, reuse, and reduction of covered materials and products;</i> <i>existing composting infrastructure capturing compostable covered materials, opportunities for strategic investments to improve the capture and processing of compostable covered materials, and opportunities and gaps in consumer education on proper end-of-life disposal of compostable covered materials;</i> <i>current reuse, recovery and recycling rates in the state by material type; and</i> <i>estimated initial and ongoing state administration costs to oversee the program” (adapted from NY S-1185C, 2021 and draft VT bill 2022).</i> <p>Recycling System Costs (“Hybrid Model”): The PRO/s reimburse/s local or tribal governments who run recycling programs for all recycling costs – collection, transportation, sorting, processing, marketing materials, etc. Reimbursements are based on a reimbursement formula that has been developed in consultation with the Advisory Council and approved by MPCA. The formula will include incentives for efficiency to keep costs reasonable. Where there are no municipal or tribal recycling programs in place, the PRO must step in to ensure services are provided to residents that are as convenient as the collection of trash, by working directly with service providers. Recycling costs include sorting out recyclables from WTE/landfills before disposal and removing contaminants from MRFs.</p>

	<ul style="list-style-type: none"> • Legislation may specify that a minimum or maximum of XX% of producer funding shall be spent on a certain category of covered costs. • Producers shall use existing infrastructure to the extent it is technologically feasible and economically practical. <p>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.</p>	<p>cover the state’s full costs, then the state may be reimbursed for additional expenses.</p> <ol style="list-style-type: none"> 2. The state may report its costs to the PRO and receive a reimbursement on a regular basis. 3. The needs assessment may help to determine the initial costs for the state. 	<p><i>“A producer responsibility organization shall be responsible for calculating and dispersing funding at a reasonable recycling program funding rate, as approved by the Agency, and such reasonable rate may be varied based on population density rates, for municipal services utilized by a producer responsibility organization if the municipality elects to be compensated by the producer responsibility organization in the recovery, recycling, and processing of covered materials and products, whether such services are provided directly by the municipality or through a contracted service provider.</i></p> <p><i>“If a municipality does not elect to provide service, the producer responsibility organization shall be responsible for ensuring that services are provided by a private entity and shall be responsible for calculating and disbursing funding at a reasonable recycling program rate for collection, recycling, recovery, and processing services provided by the private sector entity.</i></p> <p><i>“The program funding mechanism shall be based on the cost of residential curbside and other means of collection, including the cost of curbside containers where relevant, as well as processing costs for each readily-recyclable material, the cost of handling non-readily recyclable material types collected as part of a recycling operation, recycling transportation costs for each material type, and any other cost factors as determined by the Agency (MPCA).</i></p> <p><i>“To facilitate the producer responsibility organization's determination of the cost of recycling, participating municipalities and private sector haulers shall report data related to their costs and the value of materials to the producer responsibility organization. Cost calculations shall take into consideration revenue generated from recyclable materials.” (Adapted from NY S 1185C, 2021).</i></p> <p>The PRO may establish standards for the collection of covered materials that must be met in order for covered entities to be eligible for payments.</p> <p>Additional Covered Costs:</p> <ul style="list-style-type: none"> • “Pre-disposal recycling sorts” (sorting out recyclable covered materials from WTE/landfills before disposal) • Removal of contamination from recycling facilities • Recycling Infrastructure Investments: The PRO will make direct investments into reuse, recycling, and composting infrastructure in the state, based on the results of the Needs Assessment. For recycling infrastructure beyond mechanical recycling, the PRO must propose investments to MPCA as part of its stewardship plan, along with information about potential environmental impacts and processing efficiency: <ul style="list-style-type: none"> ○ <i>The PRO shall: “Ensure that any material that will be marketed for use through a method other than mechanical recycling will be transferred to a responsible end market, including:</i> <ul style="list-style-type: none"> ▪ <i>A description of how the proposed method will affect the ability of the material to be recycled into feedstock for the manufacture of new products;</i> ▪ <i>A description of how the proposed method will affect the types and amounts of plastic recycled for food and pharmaceutical-grade applications;</i> ▪ <i>A description of any applicable air, water and waste permitting compliance requirements; and</i>
--	---	---	---

			<ul style="list-style-type: none"> ▪ <i>An analysis of the environmental impacts for the proposed method compared to the environmental impacts of mechanical recycling, incineration and landfill disposal as solid waste.</i> (Adapted from OR SB582 – Enrolled, 2021). <ul style="list-style-type: none"> • Reuse & Composting Infrastructure: For reuse and composting, the PRO must explain in the stewardship plan how it will set aside program funds to be either directly invested, distributed through grants or reimbursements, or to fund technical assistance to help producers with design change or implementation of reuse/refill systems, based on the results of the Needs Assessment. • Market Development: The PRO will also invest in end markets for covered materials throughout the state and regionally as appropriate. • Outreach & Education: The PRO will fund both direct outreach and will reimburse munis and tribes for their own outreach & education to residents pertaining to covered materials. See Element 10 for details. • Administrative Costs: The PRO/s will provide an annal upfron payment to the Agency (MPCA) at the time of their registration. Payment amounts will later be reconciled with actual Agency costs to oversee and enforce the program each year. <p>Funding Stipulations: <i>“Any funds directly collected pursuant to this title shall not be used to carry out lobbying activities on behalf of the producer responsibility organization.</i></p> <p><i>“No retailer may charge a point-of-sale or other fee to consumers to facilitate a producer to recoup the costs associated with meeting the obligations under this title.</i></p> <p><i>“Nothing in this title shall require a municipality to participate in a producer responsibility program.” (Adapted from NY S 1185C, 2021).</i></p> <p><i>“The provisions of this chapter do not:</i> <i>(a) Obligate a county, city, or town that utilizes its contract authority for collection of source separated recyclable materials from residents or a city or town that undertakes collection of source separated recyclable materials from residents to participate in a plan implemented by a producer or a producer responsibility organization;</i> <i>(b) Restrict the authority of a city; or</i> <i>(c) Restrict the authority of a county.” (Adapted from WA HB 1118, 2021)</i></p> <p><i>“[The stewardship plan must specify] how the producers, or the producer responsibility organization, will work with existing waste haulers, material recovery facilities, recyclers, organics & composting processing facilities, reuse organizations, and municipalities to operate or expand program services.” (Adapted from NY S 7718, 2020)</i></p>
<p>8. DESIGN FOR ENVIRONMENT</p> <p>Provisions beyond eco-modulated fees that minimize environmental and</p>	<p>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</p>	<p>Ban certain materials outright within the legislation, such as PFAS used in packaging.</p> <p>List of toxics: Require that a standard list of toxic substances or chemicals of concern is generated. For example: <i>“Beginning one (1) year after passage... the Agency shall establish a toxic substances list, and may</i></p>	<p>The statute will include a section establishing intent and overarching goals: Producers must minimize the environmental and human health impacts of all covered materials. The stewardship plan must incorporate design for reuse, recycling, composting, and reduced toxicity as program objectives.</p>

<p>health impacts of Covered Materials</p>	<p>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.)</p>	<p><i>reference existing toxic or hazardous substances lists created by other state agencies and the Interstate Chemicals Clearinghouse. Any person may petition the Agency to add a chemical or chemical class substance to the list based on scientific evidence. The Agency shall review and update the list of toxic substances at least every three years. Covered material categories or types shall not be considered readily-recyclable, recyclable, compostable, or reusable if they contain toxic substances as defined in this section.” (MA H878, 2021-2022)</i></p> <p>Specific requirements on certain material types: The law may, for instance, require certain food-adjacent items to be certified compostable.</p> <p>Compliance with Toxics in Packaging Act: Require the PRO to assist the state in ensuring producer compliance with the Toxics in Packaging Act (where applicable). The Agency may request a Certificate of Compliance for any category of covered materials or from a certain producer through the PRO. The PRO will provide Certificates of Compliance to the Agency upon request, and must ensure that participating producers are aware of their obligations to comply with the Toxics in Packaging Act.</p>	<p><i>“The Stewardship Plan shall include a description of how producer fees and fee modulation will incorporate design for reuse, recycling, and composting, and reduced toxicity as objectives.” (Adapted from WA HB 1118, 2021)</i></p> <p>Producers must comply with MN Statute 115A.956 - prohibition on selected toxics in packaging and ##### (placeholder for additional MN toxics laws as applicable; awaiting final input from MPCA). The PRO must provide information and technical assistance to help participating producers comply with such laws.</p>
<p>9. PERFORMANCE STANDARDS</p> <p>Requirements and metrics to gauge the success and progress of the EPR program</p>	<p>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.</p> <p>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</p>	<p>Include litter reduction/prevention targets.</p> <p>Include source reduction targets. For example (from CA AB 842, 2021): <i>“The stewardship plan must also include targets and mechanisms to achieve source reduction of single-use packaging and single-use products and provisions and targets for transitioning from single-use packaging and single-use products to reusable or refillable alternatives and recovery for reuse.”</i></p> <p>Include specific recovery and reuse/recycling targets for beverage containers or other packaging formats. If the targets are not met within a given timeframe, a deposit-return system or other actions may be triggered.</p> <p>Include Post-Consumer Recycled Content Requirements. For example language, see WA SB 5697-S (2022), starting at the bottom of p. 53.</p>	<p>Overarching Targets in Statute: Reduction, Reuse, Recovery, Recycling</p> <ul style="list-style-type: none"> By Jan 1, 2028 (2 years into plan implementation): Min. 55% of all covered materials are reused or recycled, with min. 5% reused By Oct 1, 2030 (4 years into plan implementation): all covered materials to be reduced, to the maximum extent practicable, and by not less than 25% per capita, statewide, as measured by the amount of discarded covered materials delivered to waste and recycling facilities By Jan 1, 2031 (end of first 5-year plan cycle): all covered materials must be reusable, recyclable, or compostable, and min. 75% of all covered products are reused or recycled, with min. 10% reused. <p>Material-specific Targets in Stewardship Plan: all statutory targets plus PCR content <i>“The Stewardship Plan shall include minimum postconsumer recycled content, reduction, recovery, reuse, and recycling rates for each type of covered material. The minimum rates shall be varied for each covered material type and shall include paper, glass, metal, rigid and flexible plastic.” (NY S1185B, 2021)</i></p> <ul style="list-style-type: none"> By Jan 1, 2031 (end of first 5-year plan cycle): all material-specific targets set in the approved stewardship plan must be met. Each 5-year stewardship plan must include a new set of performance targets, which must be met by the conclusion of the plan. <p>If performance targets are not being met, the PRO must submit a revised stewardship plan and take corrective actions to adjust the program. MPCA can require a stewardship plan to be</p>

	<p>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.</p>		<p>amended at any time, especially if it appears from annual progress reports that the PRO is not on track to meet performance targets. The Advisory Council can also recommend to MPCA anytime to require an amended plan (with justification). (See also: Element 12)</p> <p>Additional Stipulations: “(1) To meet the reuse and recycling performance requirements established in this section, a producer must: (b) Demonstrate that the covered products collected by the program were managed consistent with this act; and (c) Authenticate, verified by an independent third party, the reuse, recycling, and post-consumer recycled content rates of covered products, as specified under subsections (2) through (4) of this section, and provide the verification to the Agency as part of the annual reporting requirements.</p> <p>(3) For the purposes of this chapter, the amount of recycled material must be measured at the following calculation point for each material category of covered products included in the plan: (a) Rigid plastic material or flexible plastic material that: (i) Does not undergo further processing before entering pelletization, extrusion, molding, or advanced recycling for plastic polymers; (ii) Is flaked and does not undergo further processing before use in a final product; or (iii) Is compostable and is delivered to an industrial composting facility under an agreement with that facility. (c) Paper material that: (i) Does not undergo further processing before entering a pulping operation; or (ii) Is compostable and is delivered to an industrial composting facility under an agreement with that facility. (d) Aluminum material that does not undergo further processing before entering a metal smelter or furnace. (e) Steel material that does not undergo further processing before entering a metal smelter or furnace. (f) Glass material that does not undergo further processing before entering a glass furnace or the production of filtration media, abrasive materials, glass fiber insulation, and construction materials. (g) For materials that are not included in the material categories listed in (a) through (f) of this subsection, the calculation point must be proposed and described by the producer responsibility organization in its plan and annual report and is subject to approval by the Agency in order to be included in the reuse and recycling rate calculation.” (WA HB 1118, 2021)</p>
<p>10. OUTREACH & EDUCATION REQUIREMENTS</p> <p>Provisions to ensure that consumers, retailers, and other key stakeholders are</p>	<p>Producers must educate consumers across the state through various media 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. The stewardship plan must include a proposal for how producers will evaluate the reach and effectiveness of multi-media consumer education campaigns over time. Educational materials must include a website with recycling instructions specific to the state. Producers</p>	<p>Include requirements to educate consumers about litter prevention. For example (MD HB 307, 2022): “[The stewardship plan shall] provide information on how to prevent litter of packaging materials.”</p> <p>In addition to the overall consumer education proposal, require the stewardship plan to describe how labels will be used to educate consumers about proper end-of-life management of covered materials and include a proposal</p>	<p>The PRO must create and use consistent, easy-to-understand educational materials on how to treat all covered materials that are customizable and available for all participating local governments and service providers to use. The PRO must also maintain a public website that provides information about the program, stewardship plans and annual reports, and the needs assessment. All materials must be available in languages spoken by communities across the state.</p> <p>The PRO shall describe in the stewardship plan how it will both run statewide education campaigns and provide funding for local education efforts. The stewardship plan must also include a description of how the PRO intends to assist participating producers in using and improving on-</p>

<p>informed about the EPR program</p>	<p>must develop outreach and education for the diverse ethnic populations in the state. The PRO should coordinate and fund outreach and education with solid waste management entities.</p> <p>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. If existing efforts are found to be insufficient or ineffective, government may request additional efforts.</p>	<p>for how labeling will improve over time, including the creation of consistent national labeling standards that are also applicable to the local level.</p> <p>Include requirements to educate consumers about proper end-of-life management for compostable covered materials, as applicable.</p>	<p>product labels, over time, to educate consumers about proper end-of-life management for covered materials, including any relevant information on how the PRO may work towards consistent labeling or a labeling standard at the national level.</p> <p>The PRO's website includes a way for residents to contact the PRO with questions, and includes a directory of participating local units of govt/tribes, as well as service providers where the PRO is providing services directly, so that residents know who to contact with any questions the PRO can't answer.</p>
<p>11. EQUITY AND ENVIRONMENTAL JUSTICE</p> <p>Components that encourage equitable and just practices</p>	<p>Provisions should be included in the bill to move the state toward a more equitable recycling and waste management system, and to seek environmental justice for communities impacted by covered materials and their end-of-life management. Provisions may include the following:</p> <ul style="list-style-type: none"> • Equity studies conducted by the state on improving access to recycling for underserved communities (e.g., multifamily residences); • Equity studies conducted by the state on improving social equity within the recycling system, such as ensuring equitable employment and economic development opportunities; • Recommendations by the state and/or a multi-stakeholder advisory council including environmental justice and community-based organizations to improve the EPR program; • A requirement that the PRO guarantee products are transferred to responsible end markets that meet environmental and public safety standards, such as the Ten Principles of the UN Global Compact; • Requirements that all contracts made by the PRO include language guaranteeing a livable wage and quality benefits to workers; and • Requirements for the PRO to translate all educational materials into the languages spoken by local populations (see element #10, Outreach & Education), and to ensure collection infrastructure is accessible to disabled residents 	<p>Require the PRO to collect data on the impacts of program on underserved communities as part of the needs assessment: <i>[The needs assessment shall include:]</i></p> <p><i>“An evaluation of worker conditions, wages, and benefits at MRFs; the availability of opportunities in the recycling system for women and minority individuals; the availability of opportunities in the recycling system for small businesses in the state; and recommendations for improving equity and equitable outcomes for underserved population in the State’s recycling system, including recommendations for new responsibilities of producer responsibility organization and recommendations for funding the new responsibilities.” (MD HB307, 2022)</i></p> <p>Require responsible sourcing for the manufacturing of covered materials.</p>	<p>Equity Study & Recommendations: MPCA will conduct a study of equity in the state’s recycling system to assess: worker conditions, wages, and benefits, opportunities & barriers in reuse, recycling, and composting for women & minority individuals, recycling access and education.</p> <p><i>“The Agency, in consultation with local governments and the Advisory Council, shall conduct a study of equity in the State’s recycling system to determine conditions and make recommendations, including goals to achieve continuous improvement. The Agency shall provide public involvement opportunities for underserved communities during the study. The study must include, but need not be limited to:</i></p> <ul style="list-style-type: none"> <i>(a) An evaluation of commingled recycling processing facility worker conditions, wages and benefits;</i> <i>(b) The availability of opportunities in the reuse, recycling and composting system for women and minority individuals and the barriers to company ownership in the recycling industry for women and minority individuals;</i> <i>(c) The sufficiency of local government requirements related to multifamily recycling services and their implementation;</i> <i>(d) The sufficiency of recycling education programs relative to desired equity outcomes; and</i> <i>(e) The availability of opportunities in the recycling system for businesses in the State and region.” (OR SB 582, 2021)</i> <p>Responsible Service Providers and End Markets: To be eligible for reimbursement/payment from the PRO, service providers, both public and private, must ensure that collected materials are provided to responsible end markets – meaning they are environmentally and socially responsible. The PRO must provide technical assistance to ensure this requirement is met.</p> <p><i>“Responsible end market” means a materials market in which the recycling or recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.”</i></p> <p>Requirements for “responsible end markets” include:</p> <ul style="list-style-type: none"> <i>(i) The type and general locations of end markets that may use the material collected from covered products in the manufacture of new products;</i> <i>(ii) Whether any of those end markets are certified for environmental and social sustainability by certification programs approved by the Agency under this Act;</i> <i>(iii) How the organization will follow the state hierarchy of materials management options;</i>

			<p>(iv) How the organization will ensure that responsible management is maintained through to final disposition of the covered product;</p> <p>(v) Arrangements the producer responsibility organization has made with processors to ensure that materials are recycled at a responsible end market, including any investment intended to be made to support processors; and</p> <p>(vi) For any material that will be marketed for use through a method other than mechanical recycling, an analysis of the environmental impacts for the proposed method compared to the environmental impacts of mechanical recycling or the environmental impacts of disposal as solid waste.” (OR SB 582-1, 2021)</p> <p>Just Contracts: To be eligible for reimbursement/payment from the PRO, local/tribal governments must use service providers that have sufficient health, safety, and wellness conditions for employees.</p> <p>“A local government, the local government’s service provider or an intermediate facility may not deliver to a commingled recycling processing facility commingled recyclables that were collected to provide the opportunity to recycle unless:</p> <p>(a) The processor ensures the health, safety and wellness of workers at the facility regardless of whether the workers are employees, independent contractors or employees of another business.</p> <p>(b) The processor provides workers at the facility with a living wage and supportive benefits.” (OR SB 582, 2021)</p> <p>Equitable Access: “Any entity providing recycling collection services must ensure that container placement is accessible to residents, including children and individuals who use a wheelchair” (Adapted from OR SB 582, 2021)</p>
<p>12. ENFORCEMENT AND PENALTIES FOR VIOLATION</p> <p>Measures to ensure compliance with the EPR law</p>	<p>Compliance and enforcement provisions must be included to ensure a level playing field. The State provides program oversight and enforcement.</p> <p>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 PRO with an approved plan.</p> <p>Provisions to ensure compliance may include assessing penalties against producers and PROs and may also include seeking the issuance of orders requiring compliance with the law.</p> <p>Producers participating in an approved plan or PROs acting on their behalf should be allowed to take legal action against non-compliant producers.</p> <p>The state may request a revision to the stewardship plan if performance targets are not being met.</p>	<p>Direct any penalties or fines toward additional solid waste management costs. For example (MA H878, 2021-2022): “Any funds collected ... in an action in which the Attorney General has prevailed shall be deposited in the trust, and shall be used to administer grants and loans to businesses, non-profits and collectors, as defined in section 330 of chapter 94 of the Massachusetts General Laws, to reduce environmental impacts related to the collection and recycling of the covered material category for which the penalty was exacted.”</p>	<p>No one may sell or distribute covered materials into the state unless they are registered with MPCA (either individually or through a PRO) and participating in an approved stewardship plan. Anyone in violation of this requirement is subject to civil penalties.</p> <p>If performance targets – either from the statute or the stewardship plan – are not being met, the PRO must submit a revised stewardship plan and take corrective actions to adjust the program. MPCA can require a stewardship plan to be amended at any time, especially if it appears from annual progress reports that the PRO is not on track to meet performance targets. The Advisory Council can also recommend to MPCA anytime to require an amended plan (with justification).</p> <p>“A producer that does not achieve the reuse and recycling performance requirements established in this Act, either individually or through a producer responsibility organization, must submit a revised plan to the Agency no later than 90 days after submitting an annual report, in which the failure to achieve the reuse and recycling performance requirements are identified. The revised plan must include changes to the plan specifying how the program will be modified to meet the requirements of this section.” (WA HB 1118, 2021)</p> <p>Civil penalties:</p> <p>(a) “Except as otherwise provided in this section, any person or entity that violates any provision of or fails to perform any duty imposed pursuant to this Act or any rule or regulation promulgated pursuant thereto, or any term or condition of any registration or</p>

	<p>The state may request a revision to the stewardship plan if performance targets are not being met.</p>		<p>permit issued pursuant thereto, or any final determination or order of the Agency made pursuant to this Act shall be liable for a civil penalty not to exceed five hundred-dollars for each violation and an additional penalty of not more than five hundred-dollars for each day during which such violation continues.</p> <p>(b) Any producer or producer responsibility organization who violates any provision of or fails to perform any duty imposed pursuant to this Act or any rule or regulation promulgated pursuant thereto, including compliance with requirements related to the stewardship plan, or any term or condition of any registration or permit issued pursuant thereto, or any final determination or order of the Agency made pursuant to this Act shall be liable for a civil penalty not to exceed five thousand dollars for each violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues. For a second violation committed within twelve months of a prior violation, the producer or producer responsibility organization shall be liable for a civil penalty not to exceed ten thousand dollars and an additional penalty of not more than three thousand dollars for each day during which such violation continues. For a third or subsequent violation committed within twelve months of any prior violation, the producer or producer responsibility organization shall be liable for a civil penalty not to exceed twenty thousand dollars and an additional penalty of six thousand dollars for each day during which such violation continues.</p> <p>(c) Civil penalties under this section shall be assessed by the Agency after an opportunity to be heard pursuant to the provisions of XXXXX <i>[state provisions on civil penalties]</i>, or by the court in any action or proceeding pursuant to <u> </u> <i>[standard enforcement court]</i>, and in addition thereto, such person or entity may by similar process be enjoined from continuing such violation and any permit, registration or other approval issued by the Agency may be revoked or suspended or a pending renewal denied.</p> <p>(d) The Agency and the attorney general are hereby authorized to enforce the provisions of this Act and all monies collected shall be deposited to <u> </u> <i>[place where state env't enforcement funds go]</i>." (NY S1185-C, 2021)</p>
<p>13. STEWARDSHIP PLAN CONTENTS</p> <p>Minimum components of a stewardship plan describing how Responsible Parties will implement the EPR program</p>	<p>Producers submit a 5-year plan to the state for initial review and subsequent review at 5-year intervals. The state reviews, approves, amends, and rejects stewardship plans as appropriate. The state should have the authority to require that a plan be revised before its time ends if targets are not being met or if there is a change in circumstances that warrants a revision. Stewardship plans should include provisions to consult with state and local governments.</p> <p>The plan should describe Covered Materials, Covered Entities, and responsible parties covered under the plan; PRO structure; funding, including how material fees will be structured and collected; performance targets; material collection methods, consumer convenience and geographic coverage; consumer education; 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, the Advisory Council, and any other important stakeholders; and plans for market development.</p>	<p>Specify that the PRO must engage interested stakeholders in the drafting or updating of stewardship plans. For example (from WA HB 1118, 2021):</p> <p><i>"Prior to submitting a new, updated, or revised plan to the Agency, a producer or producer responsibility organization must conduct a consultation process to solicit and respond to input from stakeholders and from the Advisory Committee. The consultation process must:</i></p> <p><i>(a) Address all elements of the system including collection, sorting, processing, reuse, use of recycled materials, and education;</i></p> <p><i>(b) Allow opportunities for all stakeholders and members of the public to provide comment on the plan prior to its submission to the Agency;</i></p> <p><i>(c) Offer various formats and languages as necessary for presenting the plan and receiving</i></p>	<p>The stewardship plan covers five years of program operation.</p> <p>The plan must include:</p> <ul style="list-style-type: none"> • Contact info for the PRO • List of participating producers • Proposed performance targets by material type (paper, metal, plastic, glass, etc.) – to show how the producers intend to meet or exceed the overall performance targets set in statute. <ul style="list-style-type: none"> ○ Targets must be for: PCR content, source reduction, reuse, recovery, and recycling rates (see Element 9 for details) • Proposed fee schedule (incl. eco-modulated fees) to collect funding from producers and how these fees will incorporate design for reuse, recycling and composting, and reduced toxicity as factors (see Element 6 for details) • Proposed reimbursement formula to distribute funding to local govts/tribes for provide recycling services; and description of how the PRO will work with existing haulers, MRFs, etc. where no govt program (see Element 7 for details) • Description of how the PRO plans to invest in reuse, recycling, and composting programs and market development – using findings from the statewide needs assessment

	<p>For Full EPR systems in which the PRO will be managing day-to-day operations, the plan must also include a customer service process (e.g., a process for answering citizen or customer questions and resolving issues).</p> <p>The Advisory Council should review and provide input into all parts of the stewardship plan prior to the PRO submitting the plan to the state for approval. The Advisory Council may also provide comments or recommendations for approval/disapproval of the stewardship plan directly to the state.</p>	<p><i>comments including workshops, surveys, webinars, and one-on-one meetings; and</i> <i>(d) Document all comments received and responsive answers provided by the producer or producer responsibility organization for purposes of a stakeholder consultation report to be included with the submission of a plan to the Agency. The stakeholder consultation report must also describe each forum in which comment or input was received by the plan proponent."</i></p>	<ul style="list-style-type: none"> Proposed outreach & education plan – how the PRO will provide funding and customizable resources to local govts, <i>and</i> how the PRO will spend additional funding on direct outreach & education statewide Description of any comments/input provided by the Advisory Council and how/whether those were taken into account; including justification for any suggestions <i>not</i> taken How the PRO will provide info and technical assistance to producers on the Toxics in Packaging law and other state toxics/env't design-related laws
<p>14. ANNUAL REPORT CONTENTS</p> <p>Minimum components of an annual report that Responsible Parties will submit to the state</p>	<p>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; PRO board and/or advisory council 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.</p> <p>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.</p> <p>Annual reports should include an independent financial audit.</p>		<p>PRO/s report annually to MPCA on the program. The Advisory Council reviews all annual reports and provides recommendations to the PRO/s and MPCA on whether/how the program should be amended. Annual reports are public documents.</p> <p>MRFs, haulers, munis, and any other service providers must provide necessary data to the PRO/s for the completion of the annual reports; proprietary information must be protected by PRO/s and MPCA.</p> <p>The annual report must include:</p> <ul style="list-style-type: none"> Contact info for the PRO List of participating producers Quantity of covered materials supplied into the state in the prior year, broken down by material type Progress toward all performance targets Description of how all funds were spent/distributed and revenues earned by the PRO, with independent financial audit Description of outreach & education efforts, including samples Proposed updated fee schedule & reimbursement formulas for next year
<p>15. IMPLEMENTATION TIMELINE</p> <p>Schedule for the submission, review, and approval of stewardship plans</p>	<p>Producers must register with the state as either individuals or part of a PRO within one year of enactment of the legislation. Part of their registration form should include a proposed needs assessment, which the state will then review and approve (or reject). They may pay an initial registration fee to cover the state's costs to review registrations. Within the following 18 months (1.5 years), PRO/s must conduct the needs assessment and submit the results, along with a stewardship plan that is informed by the results. The state has 180 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 six months of plan approval. The state has 60 days, plus a 30-day public comment period, to review subsequent 5-year plans.</p>		<p>Assumes law enacted ~June 2023</p> <ul style="list-style-type: none"> Jan 1, 2024 (~6 months after law enacted): MPCA appoints advisory council July 1, 2024 (~1.5 yrs after law enacted): Producers register with MPCA (either individually or as part of a PRO); registration includes description of needs assessment that will be undertaken and upfront registration fee to MPCA to start covering some state admin costs. [MPCA has 30 days to approve or reject proposed needs assessment] Annually by July 1: all producers/PROs register with MPCA & pay fees to cover state costs Oct 1, 2025 (~2.75 yrs after law enacted): needs assessment completed; stewardship plan based on results of needs assessment submitted to Agency for approval, including comments from advisory council. [MPCA has 90 days to approve or reject stewardship plan] Jan 1, 2026 (~3 yrs after law enacted, immediately after plan approved): plan implementation begins. Sales prohibition for non-compliant covered materials kicks

	<p>PRO/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.</p>		<p>in. <i>Note: This doesn't mean money has to start flowing out of the PRO right away. But gov'ts should be eligible for all expenses incurred from Jan 1, 2026, onward.</i></p> <ul style="list-style-type: none"> • May 1, 2027 – and every May 1 thereafter: PRO/s submit annual report/s, including comments & recommendations from the advisory council. • Jan 1, 2028 (2 years into plan implementation): min. 55% of all covered products are reused or recycled, with min. 5% reused • Jan 1, 2029 (~5.5 years after law enacted): MPCA completes recycling equity study & publishes results – informs next 5-yr stewardship plan • Oct 1, 2030 (5 years after first stewardship plan submitted): new stewardship plan/s submitted to MPCA for next 5-yr cycle. [Plans approved or rejected within 90 days, implementation of new 5-yr plan begins by Jan 1, 2031, and every 5 yrs thereafter.] • Oct 1, 2030 (4 years into plan implementation): all covered materials to be reduced, to the maximum extent practicable, and by not less than 25% per capita, statewide, as measured by the amount of discarded covered materials delivered to waste and recycling facilities • Jan 1, 2031 (end of first 5-year plan cycle): all covered materials must be reusable, recyclable, or compostable • Jan 1, 2031 (end of first 5-yr plan cycle): all performance targets in stewardship plan met and implementation of new stewardship plan begins. • Jan 1, 2031 (end of first 5-year plan cycle): min. 75% of all covered products are reused or recycled, with min. 10% reused
<p>16. ADDITIONAL COMPONENTS & DEFINITIONS</p> <p>Legislative provisions to ensure the EPR law is compatible with existing laws, and essential terms to define in the EPR law</p>	<p>Anti-Trust & Competition: A producer or PRO 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, <i>only</i> to the extent the producer or PRO is exercising authority to carry out the provisions of the law.</p> <p>Preemption & 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.</p> <p>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.</p> <p>Authority to promulgate regulations: The Agency is authorized to promulgate any regulations necessary to implement the program.</p> <p>Financial data & proprietary information protection: The PRO and the State must protect confidential proprietary information provided by customers, service providers, responsible parties, and any other commercial entities participating in the program.</p>	<p>Include procurement provisions for state and/or local governments such that any products purchased or procured must meet (or come in packaging that meets) standards for recyclability, recycled content, or other measures set forth in the law. Procurement provisions can also require that state or local governments minimize the consumption of covered materials altogether. For example language, see OR SB 582 (2021) SEC. 44: <i>State procurement assessment.</i></p>	<p>Anti-Trust & Competition: <i>“A producer or producer responsibility organization, including officers, members, employees and agents thereof, shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce only to the extent necessary to plan and implement compliance with this section.”</i> (Adapted from NY S 7718, 2020)</p> <p>Preemption & related laws: <i>“Nothing in this law preempts any State or local law in effect on or after the date of enactment of this subtitle that:</i></p> <ol style="list-style-type: none"> <i>(1) requires the collection and recycling of recyclables in a greater quantity than required under section XX;</i> <i>(2) prohibits the sale or distribution of products that are not prohibited;</i> <i>(3) requires products to be made of a greater percentage of post-consumer recycled content than required under section XX;</i> <i>(4) imposes a fee or other charge for products not subject to taxation under section XX; or</i> <i>(5) in any way exceeds the requirements of this law.”</i> (U.S. HR 5845, 2020) <p>Authority to promulgate regulations: <i>“The Agency is authorized to adopt rules as necessary to implement this program.”</i> (Adapted from OR SB 582-1, 2021)</p> <p>Financial data & proprietary information protection: Protection by the Agency (MPCA): <i>“The Agency shall not require public reporting of any confidential information that the Agency finds to be protected proprietary information. For purposes of this title, protected proprietary information shall mean information that, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such producer or producer responsibility organization or information</i></p>

Key Definitions:

- **Recycling** should be defined in such a way that excludes the creation of fuel as a final product. Recycling should also exclude waste-to-energy, incineration, and any other processes that do not result in the final creation of new products from post-consumer materials.
- **Reasonable Rate:** If the law establishes that payments to service providers (including municipalities) shall be provided via a “reasonable rate,” define this term in statute to provide clarity.

that would reasonably hinder the producer or producer responsibility organization's competitive advantage in the marketplace.” ([NY S 7718, 2020](#))

Key Definitions:

- “Brand”, a name, symbol, word or mark that identifies a product and attributes the product to the owner of the brand as the producer.
- “Covered Materials” - see Element #1
- “Agency” means the Minnesota Pollution Control Agency (MPCA)
- “Material recovery facility”, a facility that receives, processes, and sells or otherwise distributes post-consumer materials for recycling.
- **“Mechanical recycling” means a form of recycling that does not change the basic molecular structure of the material being recycled.**
- “Packaging Material” – see Element #1
- “Plan”, a detailed plan that describes the manner in which producers shall arrange for the collection and recycling of all post-consumer packaging.
- “Post-consumer” means material that would normally be discarded as municipal solid waste having completed its life cycle as a consumer item.
- “Paper Products” – see Element #1
- “Producer” – see Element #3
- “Producer responsibility organization” – see Element #5
- “Product”, any physical product sold to consumers in the state through retail establishments, wholesale distributor, internet sales or mail order. Any materials on which a mandatory fee or deposit applies, including beverage containers, shall be excluded.
- “Recycling” means the series of activities by which a covered material is collected, sorted, and processed; and converted into a raw material with minimal loss of material quality; used in the production of a new product, including the original product; or in the case of composting or organic recycling, productively used for soil improvement.
 - **“Recycling” does not include landfill disposal; alternative daily cover; incineration; energy recovery or energy generation by means of combustion; or final conversion to a fuel** of a covered material or covered material’s components and by-products.
- “Small producer” – see Element #3
- “Toxic substance” – see Element #8

(Definitions are adapted from [MA H 745, 2019-20](#) except those defined in other elements, and “Recycling,” which is adapted from [HR 2238, 2021](#) and [CT SB 115, 2022](#))