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## ISRI Guidance on Packaging EPR Elements

**Topic:** Extended Producer Responsibility (EPR) legislation affecting packaging is an issue that will significantly impact the way commodities commonly found in the curbside bin are collected, processed, bought and sold. It is imperative that ISRI take a lead in explaining to policymakers how this public policy can impact the recycled materials industry.

Most EPR proposals create an organization called a Producer Responsibility Organization (PRO) that is invested with statutory authority to administer activities and programs aimed at meeting the product lifecycle goals. The PRO is responsible for developing a plan that determines how the EPR program is financed and what products will be covered.

**Packaging EPR Elements:** The following list describes the elements ISRI looks for when advocating on behalf of the recycling industry with respect to EPR legislation for packaging. These elements must be considered in conjunction with ISRI's existing [Position on Flow Control](#) and [Position on Product Stewardship](#).

1. Needs Assessment - The regulatory authority charged with overseeing the EPR program with the oversight of the Advisory Council should be required to hire an independent third party to conduct a needs assessment that will clearly demonstrate the capacity of existing infrastructure and the appropriate cost reimbursements for recycling services.
2. "Off Ramp" - An "Off Ramp" is a concept that helps ensure a commodity can be exempted from an EPR program. It is meant as a safeguard to ensure commodities that already have robust markets are not drawn into the program or materials that are in the program can work towards a recycling goal at which time they can opt-out of the program. The following should be included in EPR Legislation to help determine if a commodity can be exempted:
  - a. "Covered Material" should be defined to include consumer items typically found in a household.
  - b. Materials that have remained inside the manufacturing process and not released to consumers should not be defined as a covered material.
    - i. Examples of such materials are off-spec items or those sold through business-to-business contracts.
  - c. Covered Materials should be required to meet specific recycling rates by a specific date to encourage an increasing recycling rate for the material.
  - d. Recycling rates that, upon being achieved, would trigger an exemption from the law should be defined either in statute or during the administrative rule making process.

3. Fees and Program Financing - EPR programs should not be designed to encourage brands and manufacturers to switch packaging materials due to the way program fees are structured. Program costs as reflected through fees levied on covered materials should reflect the true cost of recycling the material, including the market value of recovered materials. Combined with setting of specific recycling rates and dates, the accurate setting of fees can encourage producers to design their products to be easily recycled.
4. Advisory Board - An Advisory Board would be established. Said Board would be given statutory authority to recommend approval or disapproval of a PRO's plan as part of the administrative rule making process.
  - a. The advisory board must have at least one recycler representative, one MRF representative, one representative from a trade association representing material manufacturers and one hauler representative. If one of these representatives cannot be found, a representative from a trade organization representing the recycling industry should serve as a replacement.
5. Collection and Access - The EPR program should be developed to encourage convenient access to recycling and should prioritize wherever possible the existing recycling and hauling infrastructure. The program should encourage the collection of hard to handle materials through a variety of systems including, for example, retail takeback, drop-off, and mail back programs.
6. Statewide Uniformity Lists - In cases where legislation may include a list of materials to be collected, such lists should be the "floor", not the "ceiling" and allow municipalities to include materials not on the statewide list.
7. Excluded items - EPR programs for packaging should clearly exempt certain non-household items such as electronics, ferrous and non-ferrous metals (as used in non-packaging household applications) and tires. Specifically calling out and exempting such items will be a safeguard to ensure EPR programs are not expanded to include such items.
  - a. Recyclers who do not choose to participate in and be reimbursed by an EPR program should not be prevented from receiving covered materials or automatically included in the program if they do so, such as a metals recycler purchasing aluminum cans.
8. Reporting - EPR programs often have reporting requirements for compliance purposes. With regard to these provisions, it is important that the following items be addressed:
  - a. Oftentimes compliance provisions apply to brands and producers to ensure they are complying with various provisions of the PRO plan. In cases where this reporting compliance apply to recyclers, it is imperative the confidentiality of proprietary information collected by recyclers be preserved.
  - b. When developing auditing procedures, methodologies should be developed to preserve the integrity of data and ensure situations such as "double counting" be avoided.