

# Extended Producer Responsibility (EPR) Final Advisory Council Report

Environment Article Section 9-2503(i)

Maryland Department of the Environment  
Packaging EPR Advisory Council

March 5, 2025



**Packaging Extended Producer Responsibility  
Advisory Council**



March 3, 2025

The Honorable Wes Moore, Governor  
State House  
100 State Circle  
Annapolis, MD 21401

The Honorable Bill Ferguson, President  
Maryland Senate  
State House, H-107  
Annapolis, MD 21401-1991

The Honorable Brian J. Feldman, Chair  
Education, Energy, and the Environment Committee  
Miller Senate Office Building, Suite 2W  
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones, Speaker  
Maryland House of Delegates  
State House, H-107  
Annapolis, MD 21401-1991

The Honorable Marc Korman, Chair  
Environment and Transportation Committee  
House Office Building, Room 251  
Annapolis, MD 21401

Re: Report Required by SB 222 Statewide Recycling Needs Assessment and Producer Responsibility for Packaging Materials

Dear Governor Moore, President Ferguson, Speaker Jones, Chair Feldman, and Chair Korman:

On February 14, 2025, we provided you with preliminary Packaging Extended Producer Responsibility (EPR) recommendations from the Advisory Council established by SB 222 of 2023. In that letter, we explained that the Advisory Council intended to meet again to finalize a complete list of recommendations. The Packaging EPR Advisory Council presents the following recommendations to the Governor, the Senate Committee on Education, Energy, and the Environment, and the House Environment and Transportation Committee (Attached). As required, MDE staff will mail five (5) hard color copies of the report to the DLS library in accordance with § 2-1257 of the State Government Article.

If you or your staff should have any questions, please contact Maryland Department of the Environment Chief of Staff Scott Goldman at (410) 537-3537 or via email at [scott.goldman@maryland.gov](mailto:scott.goldman@maryland.gov).<sup>1</sup>

Sincerely,

Michael Okoroafor, Co-Chair  
Chief Sustainability Officer,  
McCormick & Company

Angie Webb, Co-Chair  
Chief, Recycled Products & Marketing  
Maryland Environmental Service

Enclosure

cc: Sarah Albert, Department of Legislative Services (5 copies)  
Senator Malcom Augustine, Maryland General Assembly.

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<sup>1</sup>9-2503(E) of the Environment Article requires MDE to provide staffing resources. MDE is not a member of the Advisory Council.

### **Recommendation on the Producer Responsibility Organization's role**

- The role of the Producer Responsibility Organization (CAA) should be:
  - Identify and register producers (early in process),
  - Develop a plan in consultation with producers,
  - Set fees in such a way as to incentivize meeting program goals and requirements.
  - Establish fees, PRO raises funds and holds the account. Fees should not be held by the government or be transferred to any state fund. Government oversight needs to be built in on fee setting.
  - The PRO has a role in ensuring transparency in fees and performance.
  - Set goals/performance standards with MDE approval and comment from the advisory council.
  - Bring forward recommendations for review by the advisory council
  - Performance measures of service providers/producers assessed by pro
  - Invest in improving local recycling infrastructure.
  - Invest in current and new infrastructure to increase recycling capabilities and capacity and support responsible end markets
  - Consider recommendations brought forward by the Advisory Council

### **Recommendation on MDE's role**

- The role of MDE should be:
  - Compliance arm (producers are meeting their obligations, PRO is meeting their objectives,)
  - Oversee and Coordinate Advisory council
    - Recommend continued support and feedback with chairs to maximize objectives of meetings and timely engagement by
    - Members Respond to Advisory Council comments on program plan (this is what is in Minnesota's bill)
    - Establish clear timelines for advisory board meetings (CO has been very consistent with its meeting cadence).
  - Approval of the plan and goals
    - Potentially setting/expanding targets and possibly lowering targets of unexpected market issues, etc have an unexpected impact on the ability to meet targets.
  - Write regulations, can amend targets
  - Evaluating the effectiveness of the program and PRO
    - Periodically review plan (every 5 years?) to continually improve recycle system in MD
    - Should include the evaluation of other PROs
    - Review and approve yearly reports.
    - Have the ability to commission third parties to review program effectiveness.
  - Staff's the advisory council
  - Vetting recommendations for council members

### **Recommendation on Advisory Council Role**

- The role of the Advisory Council should be:
  - Advisory in nature;
  - Review and comment program plan, annual reports,
  - Advise MDE and PRO.
  - Need room for minority views to be a part of the record.
  - Vote and give recommendations on how to adjust the program. Make it clear that the PRO is a non voting council member.
  - Consider term limits, create a process to replace members who do not participate. “do not participate” means – i.e. no more than two absences in a calendar year
  - Required to meet on a certain frequency
  - Submits recommendations to MDE when necessary
    - Report to be posted publicly and presented to the House and Senate Committees of Jurisdiction and the Governor

### **Recommendation on Producer Definition**

The General Assembly should consider the Minnesota definition or aspects of the Minnesota definition of “Producer” in this legislation

#### Minnesota Definition

(a) ”Producer”; means the following person responsible for

compliance with requirements under this act for a covered material introduced:

- (1) for items sold in or with packaging at a physical retail location in this state:
  - (i) if the item is sold in or with packaging under the brand of the item manufacturer or is sold in packaging that lacks identification of a brand, the producer is the person that manufactures the item;
  - (ii) if there is no person to which item (i) applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an item with packaging under the brand or trademark of another manufacturer or person;
  - (iii) if there is no person to which item (i) or (ii) applies, the producer is the brand owner of the item;
  - (iv) if there is no person described in item (i), (ii), or (iii) within the United States, the producer is the person who is the importer of record for the item into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state; Or
  - (v) if there is no person described in items (i) to (iv), the producer is the person that first distributes the item in or into this state;
- (2) for items sold or distributed in packaging in or into this state via e-commerce, Remote sale, or distribution:
  - (i) for packaging used to directly protect or contain the item, the producer of the Packaging is the same as the producer identified under clause (1); and
  - (ii) for packaging used to ship the item to a consumer, the producer of the packaging is the person that packages the item to be shipped to the consumer;

- (3) for packaging that is a covered material and is not included in clauses (1) and (2), the producer of the packaging is the person that first distributes the item in or into this state;
- (4) for paper products that are magazines, catalogs, telephone directories, or similar publications, the producer is the publisher;
- (5) for paper products not described in clause (4):
- (i) if the paper product is sold under the manufacturer's own brand, the producer is the person that manufactures the paper product;
  - (ii) if there is no person to which item (i) applies, the producer 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;
  - (iii) if there is no person to which item (i) or (ii) applies, the producer is the brand Owner of the paper product;
  - (iv) if there is no person described in item (i), (ii), or (iii) within the United States, the producer 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 paper product in this state; Or
  - (v) if there is no person described in items (i) to (iv), the producer is the person that first distributes the paper product in or into this state; and
- (6) a person is the producer of a covered material sold, offered for sale, or distributed in or into this state, as defined in clauses (1) to (5), except:
- (i) where another person has mutually signed an agreement with a producer as defined in clauses (1) to (5) that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material under this act. In the event that another person is assigned responsibility as the producer under this subdivision, the producer under clauses (1) to (5) must provide written certification of that contractual agreement to the producer responsibility organization; and
  - (ii) if the producer described in clauses (1) to (5) is a business operated wholly or in part as a franchise, the producer is the franchisor if that franchisor has franchisees that have a commercial presence within the state.
- (b) "Producer" does not include:
- (1) a state, a federal or state agency, a political subdivision, or other governmental unit;
  - (2) a registered 501(c)(3) charitable organization or 501(c)(4) social welfare Organization;
  - (3) a de minimis producer;
  - (4) a mill that uses any virgin wood fiber in the products it produces; or
  - (5) a paper mill that produces container board derived from 100 percent postconsumer recycled content and nonpostconsumer recycled content.

### **Recommendation on Data Collection and Reporting**

- Data collection and reporting should take into account the following items:
  - Data collection and reporting would be defined in consultation with MDE and the Advisory Council. Identify any data gaps needed to initiate development of a program plan.
  - Annual performance/report from the PRO to MDE
  - Include collection and access to recycling services
  - How much materials are being collected
  - How these materials are managed
  - How much materials are being supplied into the State
  - Which producers are registered in the program
  - Financial and performance related audit and verification. These would be set on a periodic basis and as determined by the council.

### **Recommendation on the Producers Fee Structure and what fees should pay for**

- The EPR program's producer fee structure should be:
  - Need PRO/producers consultation on fee structure
  - Could be adjusted based on eco-modulation
  - Advisory council can comment on fee structure
  - Producers can pay lower fees by reducing the packaging and types of packaging they are putting in the market
    - Post recycled content
    - Reuse
    - Reduced tonnage
    - Compostability
    - Recyclability
    - Leave room for innovation, creativity, and improvements.
- And should pay for the following items:
  - PRO Costs, including administrative costs, of implementing the plan, (Audited by a third party)
  - Reimbursing entities (includes local governments and private sector that are involved in reimbursable activities) for recycling costs associated with collection, sorting, processing, and education. Education costs could include expenses associated with communicating to consumers, haulers, processors, and information about recycling and reuse.
  - Reimbursing MDE for administration, review, oversight, and enforcement of the plan.
  - Reimbursing for the costs of the current and future needs assessments.

### **Recommendation on the Implementation Schedule for EPR**

The high level schedule in legislation for EPR implementation should be:

- High level schedule:
  - Registration of producers within 1 year of passage.
  - PRO submits an EPR plan 2 years after registration.
  - Full EPR within 5 years after passage

### **Recommendation on the Program's Targets/Measurements**

- Program targets/measurements to measure success should include:
  - The quantity of packaging sold in the state, by material type, recyclability, composability
  - The quantity of packaging waste in the state, by material type
  - Post-consumer recycled content of packaging, by material type
  - The recycling rate for packaging sold in the state, by material type
  - The percentage of packaging sold in the state that is reusable
  - Effectiveness of infrastructure could be measured in material yield, contamination rates, etc.

### **Recommendation on Operational Considerations**

The plan submitted to MDE should include recommended strategies on the following operational considerations:

- How the PRO will improve access on service and collection
- Describe how the PRO is going to work with the state on producer compliance
- Recommended strategies on how to improve processing infrastructure
- Consider a phased approach to include segments of commercial collection of recyclables. Need to further define commercial collection of recyclables.
- Recommend strategies to increase the level of education and awareness initiatives to decrease contamination and raise participation
- Recommend strategies on Material Collection Method to optimize capture and quality of materials. Local governments retain the authority and execution for developing, managing, implementation and operations of recycling infrastructure.
- Recommend strategies on the investment in MRF/Composting Technology and infrastructure to increase recycling and reduce contamination. PRO plan should recommend options to use new technology as they can improve recycling rates, efficiencies, reporting, and compliance.

### **Recommendation on adding Environmental Impact Definition**

"Environmental impact" means the impact of a covered material on human health and the environment, within the scope of the program.

### **Recommendation on adding Responsible End Markets Definition**

"Responsible end market" means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that: (a) benefits the environment; and (b) minimizes risks to public health and worker health and safety. The Department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety. A process for validating responsible end markets shall be included in either regulation or the plan submitted by the PRO.

### **Recommendation on adding Recycle and Recycling Definition.**

For the purposes of Packaging Extended Producer Responsibility, "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of, and returning them to, or maintaining them with, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, that meet the quality standards necessary to be used in the marketplace.

(1) "Recycle " or recycling" does not include:

- (I) Landfilling
- (II) Combustion
- (III) Incineration
- (IV) Energy generation
- (V) Fuel production; or
- (VI) Alternative daily cover; or
- (VII) Other forms of use or disposal within the footprint of a landfill.

(2) To be considered recycled, covered material shall be sent to a responsible end market.

### **Recommendation on Potential Deposit Return System or other EPR Program Harmonization**

IF A BEVERAGE CONTAINER DEPOSIT-RETURN SYSTEM OR OTHER EPR PROGRAM THAT IS CAPTURING PACKAGING IS ENACTED, THE TWO PROGRAMS MUST BE HARMONIZED IN A MANNER THAT ENSURES THAT:

(1) MATERIALS COVERED IN THE DEPOSIT-RETURN SYSTEM OR OTHER EPR PROGRAM ARE EXEMPT FROM THIS PROGRAM OR RELATED FINANCIAL OBLIGATIONS ARE REDUCED;