



EPR STAKEHOLDER WORKING GROUP, 12.9.21

Note: This language was shared with the drafters' office to be incorporated into the producer responsibility policy. It will likely undergo some formatting changes as it is transferred into the bill language needed for Colorado, but the key principles will remain the same.

§ 101. Definitions

As used in this act:

1. "Covered entities" are those eligible to receive covered services under this Act. Covered entities include all single and multi-family residential units in Colorado, non-residential locations serviced under a municipal contract for covered services, designated public space recycling programs and small businesses identified in the needs assessment who are not serviced by commercial contracts.

2. "Covered materials and products" shall include, but are not limited to, the following classes of materials:

(a) Containers and packaging: any part of a package or container, regardless of recyclability, that includes material used for the containment, protection, handling, delivery, or presentation of goods that are sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction. This class includes all flexible, foam, or rigid material, including but not limited to paper, carton, plastic, glass, or metal, and any combination of such materials that:

(i) is intended at point of sale to contain, protect, wrap, present, or deliver products from the responsible party to the ultimate user or consumer, including tertiary packaging used for transportation or distribution directly to a consumer;

(ii) is intended for single or short-term use and designed to contain, protect or wrap products, including secondary packaging intended for the consumer market; or

(iii) does not include packaging intended to be used for the long-term protection or storage of a product or with an intended life of not less than five years.

(b) Paper products: this class includes:

(i) paper and other cellulosic fibers;

(ii) containers or packaging used to deliver printed matter directly to the ultimate consumer or recipient;

(iii) paper of any description, including but not limited to:

(1) flyers;

(2) brochures;

- (3) booklets;
- (4) catalogs;
- (5) telephone directories;
- (6) newspapers;
- (7) magazines;
- (8) paper fiber; and
- (9) paper used for writing or any other purpose.

(c) Food serviceware: this includes products intended for a single use and specified by the department through regulations, that frequent the residential waste stream or are plastic products that have the effect of severely disrupting recycling processes, including, but not limited to: single use plastic items such as straws, utensils, cups, plates, and plastic bags; and single-use paper products such as cups, plates, and The producer responsibility organization or advisory board may also make recommendations to the department regarding food serviceware that should be covered under this act.

(d) For the purpose of this act, the products covered designation does not include the following:

- (i) covered materials or products that could become unsafe or unsanitary to recycle by virtue of their anticipated use;
- (ii) bound books;
- (iii) beverage containers subject to a returnable container deposit, if applicable;
- (iv) compostable products subject to similar producer responsibility legislation, if enacted and implemented in Colorado;
- (v) other products covered by statewide producer responsibility programs affecting municipal solid waste;
- (vi) medical devices and covered materials and products regulated as a drug, medical device or dietary supplement by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21 U.S. Code of Federal Regulations or the Dietary Supplement Health and Education Act;
- (vii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other covered materials regulated by the United States Department of Agriculture under the Virus, Serum, Toxin Act, 21 U.S.C. 151-159;
- (viii) covered materials used to contain toxic or hazardous materials, or regulated by the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. SEC.136 ET SEQ. or other applicable federal law, rule or regulation.

3. "Covered services" means a recycling program that serves covered entities to provide collection of recyclables from those entities through various means including curbside collection or other pickup service and dropoff or similar service. Covered services includes transportation and processing of collected materials and products to prepare the materials for end markets.

4. "Department" means the state agency charged with responsibility for solid waste management.

5. "Post-consumer material" means only those covered products or materials generated by a business or consumer which have served their intended end use as consumer items and which have been separated or diverted from the waste stream for the purposes of collection and

recycling as a secondary material feedstock, but shall not include waste material generated during or after the completion of a manufacturing or converting process.

6. "Post-consumer recycled content" means the content of a product made from post-consumer recycled materials or feedstock.

7. "Producer" means an entity that shall be determined to be the producer, for the purposes of this act, based on the following hierarchy:

(a) the person or company who uses the covered material or product under such person's own name or brand and who sells or offers for sale the product that uses covered material in the state;

(b) the person or company who imports the product that uses covered material as the owner or licensee of a trademark or brand under which the product is sold or distributed in the state; or

(c) the person or company that offers for sale, sells, or distributes the product that uses the covered material or product in the state. A producer shall not include a municipality or a local government planning unit, or a registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization.

8. "Producer responsibility organization" means a not-for-profit organization designated by a group of producers to act as an agent on behalf of each producer to develop and implement a producer responsibility plan, or a registered 501(c)(3) charitable organization. To the extent applicable, a producer responsibility organization shall have a governing board that represents the diversity of producers and the covered materials and product types and such board may include non-voting members representing a diversity of material trade associations.

9. "Readily-recyclable" means covered materials or products included in the minimum recyclables list pursuant to subdivision 4 of section 113 of this act. Except in the case of any materials or substances authorized pursuant to the Federal Food Drug and Cosmetic Act or under any other FDA authority for food contact use, readily-recyclable does not include materials that contain toxic substances, as defined in this act.

10. "Recovery" means the diversion of covered materials or products that might be disposed of or become waste. Recovery is measured at the point where covered materials have been processed and are ready for sale or delivery to material reclaimers or end markets, *i.e.*, after processing at a materials recovery facility (MRF) or similar establishment.

11. "Recovery rate" means the amount of covered materials or products recovered over a program year divided by the amount of those products sold in the state, expressed as a percentage.

12. "Recycling" means reprocessing, by means of a manufacturing process, of a used material into a product, a component incorporated into a product, or a secondary (recycled) raw material. "Recycling", for purposes of this act, does not include energy recovery or energy generation by means of combustion, use as a fuel, or landfill disposal of discarded covered materials or products or discarded product component materials or chemical conversion processes, as determined by the department to not qualify in the state as recycling.

13. "Recycling rate" means the amount of covered materials or products that is managed through recycling or reuse, as defined by this act, divided by the amount of those products sold in the state expressed as a percentage

14. "Refillable/Reusable" means a product or package returned to the market for its original intended use, when the discarded product retains its original performance characteristics and can be used for its original purpose at least five times or products or packages that are intended to be refilled for the same or similar purpose by the producer.

15. "Retailer" means a person who sells or offers for sale a product to a consumer, including sales made through an internet transaction to be delivered to a consumer in the state.

16. "Toxic substance" means any substance which is identified or listed as a hazardous waste in regulations promulgated pursuant to state law. This includes but is not limited to any of the following chemicals or chemical classes: ortho-phthalates, per and polyfluoralkyl substances (PFAS), bisphenols, formaldehyde, lead and lead compounds, mercury, cadmium, hexavalent chromium and compounds, benzophenone and its derivatives, toluene, halogenated or organophosphate flame retardants, or perchlorate. Toxic substance shall not include any substance authorized pursuant to the Federal Food Drug and Cosmetic Act or under any other FDA authority for food contact use.

§ 103. Producer responsibility advisory board

1. There is hereby established within the department a producer responsibility advisory board, hereinafter the advisory board. The advisory board provides advice and recommendations to the department and to producers or the producer responsibility organization on the needs assessment, plan development, plan approval, annual reports, and ongoing stakeholder engagement

2. (a) The advisory board shall be composed of an odd number of members all of whom have relevant knowledge and experience with material recovery programs and/or the impacts of covered materials and products on the environment . The department's commissioner shall appoint at least one member from each of the following, and shall give consideration to representing all geographic regions of the State and all sizes of communities:

- i. Municipalities, including representatives from both a small and large municipality from both the Front Range and Greater Colorado
- ii. Counties, including a representative from the Front Range and one from Greater Colorado:
- iii. a statewide environmental organization;
- iv. a representative of environmental justice communities or organizations or organization representing traditionally underserved communities;
- v. a materials recovery facility;
- vi. a municipal recycling collection provider;
- vii. a private sector recycling collection provider;
- viii. a manufacturer of packaging materials utilizing post-consumer recycled content;
- ix. a manufacturer of paper materials utilizing post-consumer recycled content;
- x. a manufacturer of refillable beverage containers or operators of reusable bottle systems operating within the U.S;

- xi. a manufacturer of compostable products considered covered materials;
- xii. a consumer advocate;
- xiii. a retailer or retailers association;
- xiv. a public health specialist; and
- xv. a producer or producer responsibility organization established under this act as a non-voting member(s).

(b) Appointments to the advisory board shall be made no later than one year after the effective date of this act. The Department shall appoint new members as needed to serve additional functions if approved by the advisory board.

3. The advisory board shall meet at least once a year by the call of the chair or by request of more than half the voting members.

4. If requested, each member of the board is entitled to and may elect to receive compensation for each day spent attending official board meetings at a per diem rate determined by the Department.

5. (a) Each producer responsibility plan prepared by a producer or producer responsibility organization pursuant to this act shall be submitted to the advisory board, which shall make recommendations to the department to approve or disapprove of the plan, based on whether or not the plan meets the criteria and objectives of this act. The department has sole authority over the ultimate approval or disapproval of the plan.

(b) The advisory board shall, within ninety days of the submission of the producer responsibility plan, either: (i) forward the plan to the commissioner with its recommendation for approval; or (ii) forward the plan to the commissioner with its recommendation for disapproval and stated reasons therefor, including any recommended changes to the plan.

(c) A producer responsibility organization may resubmit a producer responsibility plan for approval at any time. Upon such resubmission, the advisory board shall, within ninety days, forward the plan to the commissioner with its recommendation for approval or disapproval.

6. The decisions of the advisory board shall be by vote of the majority of its membership.