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NOTE: This draft does not yet include the changes suggested by the Beyond Waste Implementation Working Group.

DRAFT FOR DISCUSSION PURPOSES ONLY

Model State Product Stewardship Framework Legislation

Agency Determines Products to be Covered Plans Are Required and Approved for Products Producers Develop Programs

Background:

This is draft model policy for overall producer responsibility framework legislation that provides the level of detail necessary to minimize additional rule making. The purpose of this model is to examine how framework legislation could be established or, alternately, how legislation could be developed using a similar template for a variety of products or group of products.

This sample framework legislation establishes full responsibility on producers for developing and implementing the program and submitting a plan for approval by the Department (government/agency). In this model, the Agency, with accountability to the Legislature, determines products to be covered by product stewardship programs through use of an advisory committee and rule making process.

This model was initially based on text and approaches of product legislation/regulations of Saskatchewan and British Columbia and lessons learned from existing product stewardship legislation in the U.S. and Europe. It was initially developed by the policy committee of the Northwest Product Stewardship Council with input from other product stewardship professionals from other organizations (such as the Product Policy Institute), other states, Canada and New Zealand.

This work is draft and not finalized.

AN ACT Relating to producer managed and funded product stewardship programs, including providing for the reuse, recycling and disposal of products.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF (STATE):

1. Intent

- (1) The legislature finds that convenient and environmentally sound product stewardship programs that include collection, transportation, and recycling of discarded products, help protect our environment and the health of (State) residents. The legislature further finds that producers are the best entity to manage and finance product stewardship programs. The legislature further finds that the product stewardship programs encourage the design

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of products that are less toxic, less energy and material intensive, and more reusable and recyclable.

2. The definitions in this section apply throughout the statute unless the context clearly requires otherwise.

(1)

- a. **“brand”** means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.
- b. **“covered entity”** means the type of entity, such as a resident or small business, that can utilize a product stewardship program to discard an unwanted product;
- c. **“department”** means the (agency);
- d. **“final disposition”** refers to the point in the recycling and disposal chain beyond which no further processing takes place and the materials are either in a form capable of direct use as a feedstock in manufacturing new products, as an alternative to primary raw materials, or are treated for final disposal and disposed (e.g., in a landfill or incinerator.)
- e. **“orphan product”** means a product covered by this statute that lacks a producer’s brand, or for which the producer is no longer in business and has no successor in interest, or is a brand for which the department cannot identify an owner.
- f. **“organization”** means a firm, sole proprietorship, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, cooperative, or other incorporated entity.
- g. **“producer”** means the person that:
 - (a) Has legal ownership of the brand, brand-name or cobrand of the product sold in or into (State);
 - (b) Imports a product branded by a producer that meets (a) of this subsection and that producer has no physical presence in the United States of America; or
 - (c) Sells at wholesale or retail a product and does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for that product.
- h. **“product”** means an item within a product category;
- i. **“product category”** means any group of similar products established for the purpose of assigning stewardship responsibilities and establishing product stewardship programs;
- j. **“product stewardship”** means that producers take responsibility to manage and reduce the entire life-cycle impacts of their products and packaging, from product design to end-of-life management. Impacts that shall be considered include, but are not limited to, energy and materials consumption, air and water emissions, the amount of hazardous substances in the product, worker and consumer exposure, reuse, recycling, and waste disposal;
- k. **“product stewardship program”** means a program that addresses the lifecycle impacts of a product and includes the collection, transportation, reuse, and either recycling or disposal, or both, of unwanted products, including historical products and the program’s fair share of orphan products. The product stewardship

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program is financed as well as managed or provided by the producers of those products;

- l. **“recycling”** means transforming or remanufacturing unwanted products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration. “Recycling” does not include energy recovery or energy generation by means of combusting unwanted products, components, and byproducts with or without other waste.
- m. **“residuals”** mean leftover materials from processing or recycling a product, or leftover materials from processing or recycling the components, parts or materials contained in a product.
- n. **“reuse”** means the change in ownership of a product or component in a product for use in the same manner and purpose for which it was originally purchased.
- o. **“stewardship organization”** means an organization appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program;
- p. **“unwanted product”** means a product that its owner no longer wants or that has been abandoned, discarded, or is intended to be discarded by its owner.

3. Authority to write rules.

- a. The department shall adopt rules to fully implement the intent, purpose and spirit of the statute. At a minimum, the department shall adopt administrative procedures describing:
 - (1) Program operating rules to implement this statute;
 - (2) A process describing how new products and product categories will be added to rules over time;
 - (3) A review process for determining if the reduced reporting requirements in subsection 2 of section 12 apply; and
 - (4) An enforcement and penalty process.
- b. The department shall adopt new covered products by rule using the procedures for adopting administrative rules under the administrative procedures act.

4. Product selection process

- a. At least every two years, the department will propose additional product categories or products to designate as covered under this statute. The department will also determine the covered entities, the implementation date, management requirements and any labeling requirements for each additional product category.
- b. In determining what products to include, the department will consider the following:
 - (1) public and environmental health and safety;
 - (2) resource recovery and material conservation potential;
 - (3) energy conservation potential;
 - (4) climate change impacts and benefits;
 - (5) toxicity;
 - (6) opportunity to achieve greater waste reduction, toxicity reduction, design for recycling, recycled content, and recycling;
 - (7) the costs of management to local governments, ratepayers, and taxpayers in the absence of product stewardship programs;

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- (8) the opportunity to use existing businesses and infrastructure and to develop new businesses and infrastructure to manage those products and industries to utilize the recovered materials;
- (9) public demand;
- (10) success in collecting and processing similar products in other programs in the U.S. and other countries;
- (11) the advice of the Advisory Committee, established in d of this section.
- c. Through the product selection process the department shall:
 - (1) Identify covered entities for each product or product category;
 - (2) Determine whether a product's packaging should be designated as a product;
 - (3) Establish the implementation dates; and
 - (4) Identify any unique management requirements and labeling requirements, if any, for each product and product category.
 - 1) Management requirements shall include, but are not limited to, any special handling requirements for products containing hazardous substances, including any processing, recycling, and disposal requirements;
 - 2) Labeling requirements may include, but are not limited to, requirements for a producer to label a product regarding its brand, toxicity, or carbon footprint.
- d. Advisory committee to the department
 - (1) The department will appoint an advisory committee of up to 15 persons. At a minimum, the committee will have members from local government, consumer advocacy groups, environmental groups, business and two members from each house of the legislature representing one each of the major political parties.
 - (2) The department will consult the advisory committee regarding new products or product categories, covered entities, implementation dates, management requirements, performance goals, labeling requirements, and other inputs requested by the department.
 - (3) The advisory committee shall vet the department's recommendations on new products or product categories.
- e. Before adoption of new products or product categories into regulations, the department must present the list of products or product categories to the appropriate standing committees of the legislature. The standing committees may exclude a product or product category by gaining approval for the exclusion from both houses of the legislature.

5. Product stewardship program required

- (1) Every producer of products and product categories identified under the rules adopted by the department under section 4 of this statute sold in or into (State) must participate in a product stewardship program for those products and product categories. Every producer must:
 - a. operate, either individually or collectively with other producers, a product stewardship program approved by the department; or

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- b. enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the department.
- (2) Product stewardship programs shall be provided to covered entities without charging any fee at the time the unwanted products are delivered or collected for recycling or disposal.
- (3) Producers shall pay all the administrative costs and operational costs associated with their product stewardship program, including the costs of collection, transportation, and recycling or disposal, or both, of the products covered by the program.
- (4) A producer required to establish a product stewardship program or a stewardship organization who has entered into an agreement to operate a product stewardship program on a producer's behalf, shall operate the product stewardship program in accordance with:
 - a. the product stewardship plan as approved by the department;
 - b. this statute and all applicable statutes and related rules; and
 - c. any rules that may be adopted to implement this statute.
- (5) Product stewardship programs shall conduct effective education and outreach to promote the use of their program so that collection options are widely understood by covered entities. This information will be provided to covered entities, collectors, retailers, and other interested parties. Outreach must include a toll free number and website where collection options are listed.

6. Required reuse or recycling

- (1) Except as described in subsections 2, 3 and 4 of this section, all products that are collected by a product stewardship program must be reused or recycled.
- (2) The department shall determine if products and product categories are recyclable on a case by case basis through the product selection process identified in section 4 of this statute. Products or product categories determined by the department to be not recyclable will be exempt from the recycling requirement in subsection 1 of this section, and producers will include a waste reduction strategy as part of their product stewardship plan. If recycling options for a product change in the future, the department will adopt new rules requiring recycling for those products or product categories.
- (3) Products that cannot be reused or recycled must be disposed or managed in properly permitted facilities appropriate for the product, including disposal or management of all hazardous products, components or materials in properly permitted hazardous waste facilities appropriate for the product, component or material.
- (4) Residuals that cannot be reused or recycled must be disposed or managed in properly permitted facilities appropriate for the residual, including disposal or management of all hazardous residuals in properly permitted hazardous waste facilities appropriate for the residual.

7. Sale of products

- (1) As of the implementation date established by the department for each product, no producer, retailer or other person may sell or offer for sale that product to any person in this state unless the producer of the product is participating in an approved product stewardship plan. A person that sells or offers for sale in the state a covered product shall consult the department's web site for the list of producers participating in approved plans prior to selling that product in the state. A person is considered to have complied with

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this section if on the date the product was ordered from the producer or its agent, the producer was listed as having an approved plan on the department's web site.

8. Product stewardship plan requirements

- (1) A producer or group of producers who operates or wishes to operate a product stewardship program, or a stewardship organization that operates or wishes to operate a product stewardship program on behalf of a producer or group of producers, must submit a plan to the department that includes the following:
- a. Contact information and participating producers, including:
 - i. the individual and the entity submitting the plan;
 - ii. a list of all producers participating in the product stewardship program and their contact information; and
 - iii. if a stewardship organization intends to operate a stewardship program on behalf of producers, a description of the stewardship organization including management, administration and the tasks to be performed by the organization.
 - b. Performance and recovery goals, including:
 - i. recovery goals for the first, second and third years of the product stewardship program, expressed as pounds per capita, and an explanation of how the recovery goals have been set to recover a significant percentage of unwanted product relative to the quantity of product that may be available for recycling;
 - ii. how the proposed product stewardship program will maximize the recycling of any packaging that is delivered into the program along with unwanted products;
 - c. Collection system, including:
 - i. the location of collection sites or other collection services used by the product stewardship program;
 - ii. how unwanted products from all types of covered entities will be collected in all counties in the state and for all cities with populations of greater than 10,000;
 - iii. how the collection program is convenient and adequate to serve the needs of all the covered entities in both urban and rural areas;
 - d. Handling system and processing or disposal system
 - i. the location, permit status, and record of any penalties, violations, or regulatory orders received in the previous five years by the processing or disposal facilities used by the product stewardship program;
 - ii. a third-party audit of each processing and disposal facility used by the product stewardship program for any product containing hazardous substances, or any of a product's components, parts or materials containing hazardous substances. The audit must include documented compliance with all relevant local, state, national and international laws and with the management requirements adopted for the product by the department;
 - iii. the policies and procedures to be followed by persons transporting, processing, or disposing unwanted products collected pursuant to the

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- product stewardship program, including how compliance with relevant local, state, national, and international laws, and with the management requirements adopted for the product or product category by the department, will be ensured;
- iv. how the collected products will be reused and recycled, including a description of the processing methods that will be used at each processing facility;
 - v. If the department determines through rulemaking that a product is not recyclable, how the product will be disposed or managed in properly permitted facilities appropriate to the product, including disposal or management of hazardous products, components and materials in properly permitted hazardous waste facilities appropriate for the product, component and material.
 - vi. how all residuals that cannot be reused or recycled will be disposed or managed in properly permitted facilities appropriate for the residual, including disposal or management of all hazardous residuals in properly permitted hazardous waste facilities appropriate for the residual.
 - vii. how hazardous substances will be tracked through to final disposition, will be handled in accordance with the management requirements under this statute or rules adopted to implement this statute through final disposition, and how safety and security will be maintained.
 - viii. Best management practices that will be used by first processors and their downstream vendors to assure that hazardous substances and wastes are not released into the environment or impact human health.
- e. Financing, including
- i. how the system will be financed, the mechanism for securing and dispersing funds and implementing the programs.
 - ii. a financing scheme that rewards product design whereby producers of the products that are more recyclable and less toxic would pay a lesser amount than those whose products contain hazardous substances and non-recyclable materials.
 - iii. a financing scheme that withholds a percentage of the funds to improve the “effectiveness and efficiencies” of the system (also known as “market development” funds) that is managed by the stewardship organization to increase the markets for the recyclable materials.
- f. Strategies to manage and reduce life-cycle impacts of the products and packaging, from product design to end-of-life management, including how the formulation, packaging and distribution of products will be improved to reduce waste, reduce toxicity, reduce carbon footprint, reduce other environmental impacts, increase recycled content, increase product longevity, and make products more easily recyclable.
- g. Education and outreach, including how the product stewardship program will comply with the education and outreach requirement in section 5(6) of this statute.
- h. Consultation process, including
- i. a description of the process used to consult with affected stakeholders about the contents of the plan, and

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- ii. a summary of the comments and concerns, and how those concerns were addressed
- (2) The product stewardship plan shall be approved by the department when all requirements have been met in accordance with this statute and rules adopted under this statute.
- (3) All plans submitted to the department must be made available by the department to the general public through the Internet.

9. Plan submittals

- a. All plans must be submitted to the department at least one year prior to the implementation date.
- b. Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this statute and any rules adopted to implement this statute.
 - (1) If the plan is approved, the department shall send a letter of approval.
 - (2) If a plan is rejected, the department shall provide the applicant with the reasons for rejecting the plan.
 - (3) If the applicant wishes to submit a revised plan, the revised plan must be submitted within sixty days after receipt of the letter of disapproval.
- c. Plans must be updated and submitted to the department for review at least every four years. The department must make a determination about plan status within six months of submittal. If the undated plan is not approved, the producers submitting the updated plan will be out of compliance with this statute.
- d. After one year prior to the implementation date, each new producer and each producer new to (State) shall submit a plan to the department or join an approved plan prior to initiating sales in or into this state.

10. Changes to product stewardship program

- (1) A person operating a product stewardship program must amend its plan and obtain the department's written approval prior to implementing a change to the plan. The only changes that do not need prior approval are described in subsections (2) and (3) of this section:
- (2) Additions and changes to collection locations for unwanted products may be made without the department's prior written approval. The product stewardship program must inform the department of such an addition or change within 15 days of it occurring.
- (3) Additional producers may participate in an approved product stewardship program without the department's prior written approval. The product stewardship program must inform the department of such an addition within 15 days of it occurring.

11. Suspension or cancellation of approvals

- (1) If the department determines that a product stewardship program is not being operated in accordance with the requirements of this statute and rules adopted to implement this statute, or if the department determines that there is an imminent danger to the public, the department may:
 - a. amend the approval of the plan by clarifying terms or conditions to ensure full implementation of the plan; or
 - b. suspend or cancel the approval of the plan.

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- (2) At least 30 days prior to amending, suspending or canceling an approval of a plan, the department shall inform the person operating the product stewardship program of the action and provide them an opportunity respond. The department may extend this time frame on a case-by-case basis.
- (3) Notwithstanding subsection (2) of this section, if the department determines that it is necessary in order to protect the public from imminent danger, the department may immediately amend, suspend or cancel an approval without giving the person operating the product stewardship program an opportunity to be heard, but the department shall give that person an opportunity to be heard through proceedings consistent with the administrative procedure act, (Chapter) , within fifteen days after the date on which the department takes any of those actions.

12. Annual reporting

For the purposes of this section, “**reporting period**” means the period commencing January 1st and ending December 31st of the same calendar year.

- (1) On or before June 30 of each year, every person operating a product stewardship program must prepare and submit to the department an annual report describing the activities of the product stewardship program during the previous reporting period, including:
 - a. Contact information and participating producers, including
 - i. the individual and the entity submitting the plan; and
 - ii. a list of all producers participating in the product stewardship program;
 - b. Performance goals and recovery rates, including
 - i. the amount, by weight, of unwanted products from covered entities collected through collection services in each county, including documentation verifying collection and verifying reuse, recycling or disposal of that material;
 - ii. how the product stewardship program attained the performance goals and recovery rates established in the program plan or set by the department, and if the program did not attain those performance goals and recovery rates, what actions it will take during the next reporting period to do so;
 - c. The collection system, including the collection services provided in each county and for all cities with populations of greater than 10,000, including the location of each collection service;
 - d. The handling system and processing or disposal system, including
 - (i) a list of processors or disposal facilities used and facility locations, the weight of unwanted products processed by each processor or disposed at each disposal facility, and a description of the processes and methods used to recycle the unwanted products by each processor.
 - (ii) a list of subcontractors through final disposition who further processed or recycled unwanted products, components, materials or byproducts that contain hazardous substances, and subcontractor facility locations;
 - (iii) documentation and summary results of the annual third-party audits conducted on each processing or disposal facility as described in subsection (1)(d)ii of section 8;

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- (iv) if a product is exempt from the recycling requirement in subsection 1 of section 6, how the product has been disposed or managed in properly permitted facilities appropriate to the product, including disposal or management of hazardous products in properly permitted hazardous waste facilities appropriate for the product.
 - (v) fate of process residuals not recycled or reused;
 - (vi) Penalties, violations, or regulatory orders received during the reporting period, if any, by each processing or disposal facility that is used;
 - (vii) Whether policies and procedures for transporting and disposing unwanted products, as established in the plan, were followed during the reporting period, and a description of noncompliance with those policies and procedures, if any;
- e. Financing, including a description of how the financing scheme met the requirements described in subsection (1)e of section 8.
- f. Education and outreach, including the education and outreach effort implemented during the reporting period;
- g. Steps taken to manage and reduce the lifecycle impacts of the products and packaging, from product design to end-of-life management, including how the formulation, packaging, and distribution of products have been improved to reduce waste, reduce toxicity, reduce carbon footprint, reduce other environmental impacts, increase recycled content, increase product longevity, and make products more easily recyclable.
- h. how the product stewardship program complied with any other elements detailed in the plan approved by the department;
- i. any other information that the department may reasonably require.
- (2) Each person operating a product stewardship plan that meets the following conditions are only required to report to the department the information listed in parts a, b, c, and i. of subsection (1) of this section:
- a. All products collected by the product stewardship plan use no hazardous substances in the production process and contain no hazardous substances in the products;
 - b. The product stewardship program attained a 90% recovery rate of all unwanted products that were manufactured by the producers participating in that stewardship plan and a recycling rate of 80% of the materials contained in those recovered products; and
 - c. All products collected by the product stewardship plan are carbon neutral in production and use.
- (3) All reports submitted to the department must be made available by the department to the general public through the Internet.

Sec. 13. Enforcement

- (1) Producers who are participating in an approved product stewardship program shall be listed on the department's website. Producers who have been identified as non-compliant shall be listed on the department's website as noncompliant.

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- (2) Retailers shall check the department's website to determine if producers of products they are selling in or into the state are in compliance with this statute. If the retailer is unsure of the status of the producer or believes the producer is not in compliance with this statute, the retailer shall contact the department to determine the producer's status.
- (2) The department shall send a written warning and a copy of the requirements of this statute to a producer who is not a part of an approved product stewardship program and whose product is being sold in or into the state after the implementation date. The department shall also send written notification to a wholesaler, retailer or other person known to be selling such product in or into the state.
- (3) Producers who are not participating in an approved product stewardship program and whose products continue to be sold in or into the state 60 days after receipt of the written warning, and retailers who sell products from producers who are not participating in an approved product stewardship program 60 days after receipt of the written warning, shall pay a fine of \$10,000 per day of noncompliance, beginning 60 days after receipt of the written warning. The department is authorized to waive or reduce the fine if the producer becomes compliant, to protect public health, or for any other reasons the department determines to be justified.
- (4) The department shall send a written warning under this statute to a producer who operates a product stewardship program, or a person who operates a product stewardship program on a producer's behalf, who fails to submit a plan, plan revision, or annual report as required in this statute. The written warning must include compliance requirements and notification that the compliance requirements must be met within 60 days. If the compliance requirements are not met within 60 days, the producer or other person who operates a product stewardship program on the producer's behalf will be assessed a ten thousand dollar penalty.
- (5) Each calendar day of operation is deemed a separate offense.

14. Performance goals and evaluation

- (1) By June of the third program year for each product or product category, the department shall establish mandated performance goals and recovery rates for the fourth and subsequent program years, and must establish a fine system for those producers and product stewardship programs that do not attain the mandated goals and rates.
- (2) By December 31, 2014, the department shall report to the appropriate committees of the legislature concerning the status of the program and recommend legislative action or modification to the law or rules, if necessary.
- (3) The department, or its designee, is authorized to inspect, audit, or review the audits of processors and disposal facilities that are utilized to fulfill the requirements of a product stewardship program.
- (4) No product stewardship program required under this law may include the use of federal or state prison labor for processing.
- (5) The department shall invite comments once a year from local governments, local communities, and citizens to report their satisfaction with the services provided by product stewardship programs. This information must be used by the department in reviewing plan updates and revisions.

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Sec. 15 Agency administrative costs and fees

The department may establish fees for administering this statute. Fees may be charged to the producers and must be paid annually, no later than January 1 of each year. Fees may be established in amounts to fully recover and not to exceed expenses incurred by the department to administer this statute.

Sec. 16 Product stewardship programs account

The product stewardship programs account is created in the custody of the state treasurer. All receipts from fees collected under section 15 of this statute and fines and penalties collected under section 13 of this statute must be deposited into the account. Expenditures from the account will only be used for the administration of this statute. Only the department may authorize expenditures from the account. The account is subject to allotment procedures under (Chapter), but an appropriation is not required for expenditures.

Sec. 17 Product wholesalers, retailers, waste companies, local and state agencies, charity organizations and others are encouraged to promote the proper management of products and use of the product stewardship programs.

Sec. 18 Nothing in this statute changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this statute change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020.

Sec. 19 Anticompetitive conduct.

A producer or stewardship organization and its officers, members, employees, and agents that organize product stewardship programs required under this statute is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized product stewardship program and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for this purpose.

Sec. 20 Effective date

This statute takes effect July 1, XXXX

Sec. 21. Severability

If any provision of this statute or its application to any person or circumstance is held invalid, the remainder of the statute or the application of the provision to other persons or circumstances is not affected.

Sec. 22. This statute must be liberally construed to carry out its purposes and objectives.