AHRI Policy Position
Product Stewardship and Extended Producer Responsibility

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) is the trade association representing manufacturers of heating, ventilation, air-conditioning, refrigeration (HVACR) and water heating equipment within the global industry. AHRI’s more than 320 member companies account for over 90 percent of HVACR and water heating residential and commercial equipment manufactured and sold in North America.

Background

Extended Producer Responsibility (EPR) is an approach to managing waste that relies on shifting responsibility for end-of-life product management from the general public to producers, as well as other entities throughout the distribution chain. EPR, which is also known as Product Stewardship, is a model that is becoming increasingly popular at the local and state levels of government. To date, nearly 120 EPR-focused bills have passed across 33 states, addressing 14 different product types. However, none of these existing EPR programs address product packaging. Increasingly, states are developing proposals that would apply the EPR model to product packaging, which may include everything from plastics to paper, metal, and glass.

Interest in implementing EPR for product packaging is not limited to states and local governments. In fact, EPR was a primary component of the “Break Free From Plastic Pollution Act”, a significant piece of federal recycling-focused legislation that was introduced by former Senator Tom Udall (D-NM) and Representative Alan Lowenthal (D-CA) in 2020 during the 116th Congress. The focus on plastic pollution and waste management is likely to increase in the 117th Congress, with stakeholders expecting state-level EPR proposals to ultimately drive federal action.

The HVACR and water heating industry supports efforts to reduce waste from plastics and single-use packaging materials. AHRI member companies strive to be strong environmental stewards; manufacturers work diligently to design products that minimize waste and maximize recyclability. The industry also supports efforts to increase recycling of consumer-facing products and establish the infrastructure required to reduce and reuse single-use packaging and waste.

It is important to note, however, that AHRI members manufacture highly complex and technologically sophisticated equipment that must be safely transported throughout the distribution chain. A wide variety of packaging and plastic materials are used during transport, distribution, and storage of HVACR and water heating equipment; in many cases, those materials never reach the consumer. The ability to utilize these packaging materials is critical to ensuring HVACR and water heating equipment reaches its destination without damage. Further, the HVACR and water heating industry believes for EPR to be successful it must be implementable.

The HVACR and water heating industry believes policymakers must make critical considerations when assessing various EPR models and proposed policies.
Critical Policy Considerations

Clarity of Scope and Definitions

Clarity of scope and producer responsibility is critical to ensuring the success of any EPR proposal. The HVAC and water heating industry believes that the financial and management responsibilities of an EPR program should be shared across the distribution chain and not be born solely by manufacturers. As plastic and packaging material producers have the most direct control over the volume of materials being produced and the ultimate shift towards refillable and reusable alternatives, an effective EPR program should include the participation of the producers of materials being regulated by the program.

Although a manufacturer’s logo or brand may be on the product itself, HVACR and water heating equipment shifts hands multiple times throughout the distribution chain. Packaging products can be added or removed by distributors, contractors, or third-party retailers, which the manufacturer has no knowledge of or control over. Thus, EPR proposals must clearly define who bears responsibility for recovery of materials at each point along the distribution chain.

Further, at all levels of government, addressing plastic packaging is the primary goal and objective. AHRI supports limiting the scope of EPR proposals, at this time, to solely rigid and flexible plastic materials. Glass, metal, and paper products are already highly recyclable and reused at much higher levels than plastics materials. These alternatives to plastics should be allowable and encouraged in lieu of difficult to recycle and non-compostable plastic packaging.

Funding Mechanisms – Implementation of Packaging and Disposal Fees

The HVACR and water heating distribution chain is complex. As previously mentioned, products are often sold multiple times before ultimately reaching the customer. Since packaging is often removed or added at various points throughout the distribution chain, EPR proposals that require manufacturers to bear the entire responsibility of collecting, recycling, and reusing packaging materials would be challenging to implement.

Given these complexities, the simplest, most straightforward and effective way to ensure the cost of collecting, recycling and reusing packaging materials is fully accounted for would be through implementation of a retail product/packaging and disposal fee (i.e., a non-refundable recycling fee) at the final point of sale. Packaging and disposal fees should be calculated based on the projected cost of collecting and recycling a packaging product, in such a way that the fee covers the full cost of existing state or local waste management programs that already recover and process the packaging materials. Packaging and disposal fees would create a new permanent source of funding to support existing recycling operations.

In lieu of a final point of sale fee, AHRI supports a nominal fee per unit of packaging funding structure. Setting a clear and per unit fee structure will give industry much more regulatory certainty and ease compliance by allowing companies to more easily forecast the financial impact of packaging products. Setting variable fees based on recycled content, material type, and weight of packaging makes for more complex compliance needs for AHRI members, especially with variations in Extended Producer Responsibility fee structures across many states.

Technological Feasibility of Recycled Content and Post-Consumer Recycled Content Targets

The technological feasibility of achieving specific targets ranges greatly across material types and packaging needs. As many jurisdictions consider adoption of material-specific recycled content requirements, AHRI urges policymakers to consider pursuing targets that offer flexibility to manufacturers in terms of packaging material and design.
AHRI supports inclusion of language that allows for regulatory flexibility based on factors such as: (1) availability of recycled content, (2) suitability of recycled content for necessary uses, and (3) the environmental impacts that may be caused by substituting packaging materials or incorporating additional recycled content. For example, as detailed below, certain packaging materials are essential to current storage practices (i.e., stacking of products in warehouses). If regulations require the elimination or reduction of certain materials, larger distribution centers may be needed. EPR policies that ultimately require manufacturers to increase facility footprints, could potentially have unintended land use and energy usage implications.

**Exemption Pathway for Materials Critical to Manufacturer Storage and Transport**

As previously mentioned, in many cases, HVACR and water heating equipment is stacked to maximize storage space. It is critical that this equipment be stored safely, so any health and safety risks to the employees who are retrieving, moving, or handling the equipment are mitigated. In addition to recommending that flexibility be built into recycled content requirements, AHRI urges policymakers to consider including exemptions for packaging materials that are critical to the safe handling and storage of products. Worker safety must be a primary consideration when assessing EPR proposals that would limit, or alter, existing packaging materials used during transport and storage of products.

Thus, AHRI supports inclusion of language that creates a process for requesting an exemption for specific materials that are critical to the safe and efficient storage and transport of products, in order to avoid unintended consequences such as increased storage requirements and risks to worker and product safety.

AHRI also supports an exemption for packaging for durable goods and long-term storage, similar to the provision contained in Maine LD 1541 passed during the 2021 legislative session there. This exemption should apply to goods such as many AHRI member products, that are being stored for extended periods, are not fast-moving like single-use or short-lived consumer products, and have a lower impact on the waste stream. This exemption for packaging for durable products should apply to transport, storage, and protection of a product.

AHRI also urges policymakers to include exemptions for de minimis and integral packaging components, similar to California Senate Bill 54, which exempts components or elements with a de minimis weight or volume, as well as components or elements that are an integral part of the product and are intended to be consumed or disposed of together.

Finally, AHRI believes EPR proposals should take into consideration and recognize producers that are already recovering or recycling products effectively. New EPR regulations should include an alternate compliance pathway for producers that can demonstrate they have programs or practices in place that achieve the same policy objectives. AHRI recommends new EPR programs include either a credit system or an exemption for these producers rather than requiring changes to programs and processes that are already effective and achieve substantially similar outcomes.

**The HVACR Distribution Chain and Tertiary Packaging Exclusions**

As previously mentioned, manufacturers rely on a broad range of packaging materials to ensure valuable HVACR and water heating equipment can be safety transported throughout the distribution chain. Damage and breakage due to improper packaging and storage can lead to unnecessary, additional waste and cost. Further, it is important to note that throughout the HVACR and water heating distribution chain there are multiple points when products must be stored and, in some cases, outdoor storage is utilized. Waterproof and weatherproof materials must be available to ensure that equipment can withstand adverse weather conditions.
To that end, non-consumer-facing packaging and point-of-purchase packaging needs are unique and require different recycling and waste management processes. In fact, many companies already recover large portions of their non-consumer facing packaging to lower costs and achieve company sustainability goals. AHRI encourages policymakers to recognize these efforts and the need to allow companies the flexibility to package highly specialized HVACR and water heating equipment in a way that prevents damage. Broad efforts to create stewardship programs and regulatory frameworks that do not properly account for non-consumer-oriented packaging and existing waste management practices can create an unsustainable and unfulfillable mandate on manufacturers.

For these reasons, AHRI encourages policymakers to distinguish between non-consumer-oriented packaging (also known as transport or tertiary packaging) and point-of-purchase packaging (also known as primary, sales, grouped, or secondary packaging). Due to the need for packaging that is non-consumer facing for storage and transport of products, AHRI opposes efforts to ban single-use packaging that is used to store or transport manufacturers’ products (i.e., non-consumer oriented, transport, or tertiary packaging). AHRI supports proposals that include exemptions for this type of packaging.

**The Design Process and Critical Timing Considerations**
HVACR and water heating manufacturers operate within an up to five-year design cycle. Thus, decisions about product and packaging design are made well in advance of bringing a product to market. Many EPR proposals would require a significant shift to the existing packaging practices or materials used in the HVACR and water heating distribution chain. For this reason, AHRI urges policymakers to ensure that material bans and/or recycled/post-consumer recycled content requirements be imposed no sooner than five years from the effective date of the legislation or regulation.

**The Importance of Harmonization Across State Proposals and the Need for Federal/State Preemption**
For EPR programs to be workable, producers must have a clear regulatory roadmap for compliance. Recycled content requirements, material fees and funding structures, reporting and disclosure requirements need to be harmonized across municipalities, and ideally, states. It would be extremely burdensome, and in many cases impossible, for manufacturers to design products and packaging materials that must comply with a patchwork of differing local and state requirements.

The HVACR and water heating supply chain operates across state lines. Often, distributors, and even contractors, are transporting, storing, and installing equipment in multiple states. It is particularly important that states within a specific region of the United States harmonize EPR requirements to the maximum extent possible.

AHRI supports the inclusion of language that preempts local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of a state EPR law. Should federal EPR legislation become law in the future, AHRI supports the inclusion of language that would preempt state EPR laws.