

Preferred Design Recognition Review Program

Film Labels and Direct Print on Color HDPE AND PP Containers Program Agreement and Manufacturing Change and Records Agreement

Preferred Design Recognition Agreement

This subject agreement is specific to the APR's Preferred Design Recognition Review Program for Film Labels and Printing on Mixed Color HDPE AND PP Containers. The subject agreement should be signed and uploaded in the PDR submission portal of the APR website with all other required information at the time of application.

This Agreement ("Agreement") is made by and between the Association of Plastic Recyclers ("APR"), a District of Columbia corporation having its principal place of business at 2050 M Street NW, Washington, DC 20036, and _____ ("Supplier") having its principal place of business at _____ as of _____ ("Effective Date").

WHEREAS, the APR Design® Recognition Program for Preferred Design Recognition ("PDR Program") allows materials, components, and complete packages used in HDPE AND PP packaging to be recognized as meeting APR Preferred Guidance for plastic recycling; and

WHEREAS, the parties desire to enter into an agreement governing Supplier's participation in the recognition program,

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. APR's PDR Program can involve an engineering assessment of the technical compatibility of either a package design feature, or a complete package, with today's industrial plastics recycling processes. PDR Recognition of a design feature by itself does not qualify a finished package that employs the design feature to be described or marketed as recyclable. APR's complete Definition of Recyclability can be found here: (<https://plasticsrecycling.org/recycling-definitions>). Additional critical aspects of the complete package, beyond technical compatibility of a single design feature, must be considered when making recyclability claims to the public and marketing a product. These additional aspects may include consumer access to recycling, specific container design features that impact sortation steps, and the consideration whether the container is commonly accepted by the recycling industry to be sorted correctly into a marketable bale.
2. **Voluntary Participation** – Supplier acknowledges that participation in the Program is voluntary.

3. **Non-Exclusive** – Supplier acknowledges that this Agreement is non-exclusive, and APR may enter into this agreement with other parties.
4. **Future Obligation** - Supplier is under no obligation to submit future applications.
5. **Effective Date and Duration** – This agreement shall take effect on the Effective Date upon execution of the agreement with both designated signatures and shall terminate three (3) years from the Effective Date unless otherwise terminated or amended pursuant to this Agreement.

This agreement can be renewed for additional three-year time increments by mutual agreement of the parties. A renewal fee is required for each three-year renewal.

6. **Fees** – Supplier agrees to promptly pay to APR an application fee within thirty (30) days after execution of this Agreement. Supplier acknowledges that review of Supplier’s application will not commence until the application fee is received.

If an initial PDR Review is not successful, the applicant will have a 120-day grace period to take corrective action and re-apply without paying a new application fee. After the 120-day grace period, ½ of the application fee can be applied as credit against a new application for Guidance Recognition at the APR.

7. **Indemnification** – APR and Supplier (each, as applicable, the “Indemnifying Party”) agree to indemnify, defend and hold the other party (each, as applicable, the “Indemnified Party”) harmless against any liability relating to property damage, personal injury or death of the Indemnified Party, its officers, directors, employees, agents or invitees, to the extent resulting from the negligence or intentional misconduct of the Indemnifying Party, or that of such party’s officers, directors, employees, agents or invitees, in connection with this Agreement; provided, however, that neither APR nor Supplier shall have any liability under this Agreement for special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages, and regardless of whether the Indemnified Party’s claim is based upon breach of contract, breach of warranty, negligence, strict liability, or any other legal theory. This provision shall survive the expiration or earlier termination of this Agreement.
8. **Participation and Testing**
 - a. All testing conducted under the Program will be performed in accordance with the most current versions of the Program Operating Procedures, and published test protocols.
 - b. Eligible products must be compatible with the APR Design® Guide for Plastics Recyclability Guidelines.

- c. Products marketed as Meeting Preferred Guidance require that the Supplier conduct certain tests and maintain records of those tests that can be made available for inspection by APR representatives upon request. Testing and recording requirements are detailed in the PDR Program Application Instructions and documents submitted by the supplier as part of the application for PDR Review.
- d. Annex One to this Agreement contains additional testing and record keeping requirements. Annex One is incorporated in this Agreement.
- e. Supplier is obligated to conduct testing as indicated in the Program Operating Procedures at their own expense.

9. **Confidentiality of Information** – The information requested in the APR Design® Recognition Program for Preferred Design Recognition is the type of information that is not considered confidential. Therefore, such information is not entitled to confidential protection. With respect to any other information voluntarily supplied, the Supplier waives confidentiality protection for all such submissions.

10. **Names and Trademarks** —

- a. After a successful PDR Review, the APR will issue a letter confirming PDR Recognition. APR will also provide the applicant with a separate license agreement required to use APR's Preferred Design Recognition Badge in the sales and marketing materials.
- b. Except as provided in this agreement, neither party shall use the name, badge, or other trademarks or service marks ("Marks") of the other party without written permission.
- c. Supplier grants APR permission to publicly release the decision to grant recognition, and APR agrees not to publicize decisions to not grant recognition; however, APR reserves the right to respond to public inquiries on the results of a recognition review. An application that is withdrawn prior to the conclusion of a review will be indicated to be "withdrawn" in response to public inquiries.
- d. For purposes of publicly releasing the decision to grant recognition, Supplier authorizes APR to use the Supplier's name and trademark in a listing of Suppliers whose product or products have been recognized under the Program. This listing will be maintained on the APR's website.

11. **Termination** –

- a. Either party may terminate this Agreement at any time and for any reason provided that written notice is sent at least thirty (30) days prior to the effective date of termination.
- b. This Agreement may be terminated immediately by APR upon the default or a breach of the Agreement by Supplier.

12. **Arbitration** – The parties agree that disputes arising under this Agreement shall be settled through the appointment of an arbitrator selected by the parties. Should the parties not be able to agree on an arbitrator, each may select one arbitrator, and the two arbitrators will

choose a third. Arbitration will be conducted under the Commercial Rules of Arbitration of the American Arbitration Association in the District of Columbia, and any appropriate statutes of limitations will also apply to claims for arbitration. The parties agree that arbitration will be the sole and exclusive remedy.

13. **Entire Agreement and Amendments** – This Agreement constitutes the entire agreement between the parties, relating to this subject. Amendments to this Agreement must be in writing and signed by both parties.
14. **Severability** – If any provision(s) of this Agreement or the application of them to either party is held illegal, unenforceable, or otherwise invalid by government promulgation or court decree, such holding shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision, provided that the parties shall promptly negotiate in good faith to make adjustments in this Agreement as may be necessary to make it fair and equitable to both parties.
15. **Controlling Law** – This Agreement shall be governed by and construed in accordance with the internal laws of the District of Columbia, without application of the principles of conflicts of law.
16. **Headings** – The headings of the paragraphs and subparagraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.
17. **Notice** – Any notice or communication required to be given or permitted under this Agreement shall be sent by certified or registered mail, return receipt requested, to the signatories below. Either party, by written notice to the other conforming with this paragraph, may change the person or persons designated to receive notices on behalf of that party and/or the address or addresses to which any notice is to be sent.

The following individuals are authorized to sign this program agreement and are designated as primary contacts for this application:

For APR:

Signature: _____

Printed name: _____

Title: APR Program Administrator

Phone: _____

Email: _____

For Supplier:

Signature: _____

Printed name: _____

Title: _____

Phone: _____

Email: _____

Annex 1: Manufacturing Change and Records Agreement

Introduction

It is possible that after receiving initial PDR Recognition for a label technology, the supplier might want to expand the applicability of Recognition. In the case of labels for mixed color HDPE AND PP containers, it is anticipated that changes in scope are most likely to impact label performance and impact on:

- Metals decoration and sortation.
- Impact of inks and label surface area coverage on NIR sortation performance of the package.

This Manufacturing Change and Records Agreement presents how these changes will be managed.

In the event that an initial PDR Recognition did not involve metal decoration, but it is desired in a future label.

The supplier may conduct testing on label constructions with metal decoration employing SORT-B-03, ensure that the new metal decoration complies with current guidance and request that APR revise the PDR Recognition based on the results of the testing completed.

Managing labels with surface area coverage greater than that given in APR Guidance

By signing the Subject Agreement, the applicant certifies understanding of the APR Guidance on label coverage which states, at the date of this agreement, that testing is required when label coverage is greater than 55% on containers less than 550 ml brim full or greater than 75% on containers larger than 550ml brim full.

Should a supplier wish to market labels with surface area greater than limits given in APR Guidance that do not require testing, the supplier will employ SORT-B-01 to demonstrate that the specified label Preferred Design Recognition for criteria presented in the sort test. The supplier will submit this data to APR for review the first time a high surface area coverage label is evaluated.

Once the supplier has demonstrated successful sort tests with an initial high label coverage that were reviewed for APR Recognition, the supplier can then “self-confirm” additional labels made with the same technology meet preferred guidance on their own, providing that testing is completed, and records of those tests are retained on file for inspection.

One single NIR sort test is not likely to satisfy all high surface area label designs! These situations, at least, will require focused NIR sort testing:

- Carbon black pigment strongly absorbs NIR energy, so labels that are largely dark or black in color should be confirmed for good sort performance.
- Metal decoration is reflective to NIR energy, so labels with high surface area use of metal decoration should be confirmed for good sort performance.
- White pigment can scatter NIR energy, so labels with white ink layers should be confirmed for good sort performance.
- White pigmented films, or cavitated films, may give different NIR results than clear films.

The supplier may ask APR to revise an PDR letter to include new NIR sorting capability.

Documentation requirements

Suppliers will maintain laboratory notebook records and reports that can be reviewed by APR staff. APR staff will generally not ask to review or audit these test results and records. We are relying that those who have received Recognition will follow these agreed procedures on their own as part of good manufacturing practice.

But should there be reason for concern that a label being marketed as Meeting Preferred Guidance may not in fact meet Guidance Criteria, APR will bring that concern to the attention of the supplier. APR may become aware of recycling performance weaknesses in a label through:

- Occasional audits of products performed by the APR.
- Reports from others in the supply chain who might evaluate product recycling performance.
- Reports from materials recovery facilities or reclaimers who might observe results for a given package that are not satisfactory.

Should APR contact a company with PDR Recognition, and the supplier is not able to provide records supporting sorting claims, the APR and the supplier will co-operate to find a mutually agreeable remedy. However, it is understood that there may be cases where the remedy is that APR removes a given product from the PDR Recognition Program and terminates this agreement.

Notification to the APR

After a supplier has successfully submitted initial data to the APR concerning metals and/or NIR sortation, there is no need to notify APR of additional test data when it is developed.

PDR Recognition for a given product is maintained for a three-year period. The three-year term can be renewed for a new three-year term by mutual agreement of the supplier and the APR. This three-year term renewal is an opportunity for suppliers to refresh documentation description details of the PDR Review for their product.

In the event APR Guidance changes

Should APR Guidance change after a supplier receives PDR Recognition, these changes will not impact PDR Recognition during the three-year period of the Recognition.

Should there be Guidance changes that are favorable to the supplier, the supplier can request that APR amend the Recognition letter and web site posting to reflect that favorable change.