

Legislative Snapshot

Oregon’s SB 582 is an Extended Producer Responsibility (EPR) measure that establishes a statewide producer responsibility program with a focus on packaging and paper materials. The law allows for the creation of multiple PROs and establishes a 17-member Advisory Council. Oregon’s Department of Environmental Quality (DEQ) will conduct a needs assessment of the state’s recycling, litter, and environmental cleanup systems. Through the rulemaking process, DEQ will make determinations as to which materials will be considered recyclable and establish the fees to be paid by the PRO(s). SB 582 also establishes several plastic recycling goals, culminating with a 70% recycling rate in the year 2050.

Definition of “Producer”

“Producer” of a covered product shall be determined as follows:

(1)(a) For items sold in packaging at a physical retail location in this state:

(A) If the item is sold in packaging under the manufacturer’s own brand or is sold in packaging that lacks identification of a brand, the producer of the packaging is the person that manufactures the packaged item;

(B) If the item is manufactured by a person other than the brand owner, the producer of the packaging is the person that is the licensee of a brand or trademark under which a packaged item 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; or

(C) If there is no person described in subparagraphs (A) and (B) of this paragraph within the United States, the producer of the packaging is the person who imports the packaged item into the United States for use in a commercial enterprise that sells, offers for sale or distributes the item in this state.

(b) For items sold or distributed in packaging in or into this state via remote sale or distribution:

(A) The producer of packaging used to directly protect or contain the item is the same as the producer for purposes of paragraph (a) of this subsection.

(B) The producer of packaging used to ship the item to a consumer is the person that packages and ships the item to the consumer.

(c) For all other packaging that is a covered product, the producer of the packaging is the person that first distributes the packaged item in or into this state.

Elements at Issue

Advanced Recycling

Advanced recycling technologies can process plastics that do not have strong end markets, thus enabling a more circular economy for plastics. In addition to benefiting the environment, advanced recycling provides important economic benefits. FPA believes that a suite of options is needed to address the plastics pollution issue and that advanced recycling is a critical piece of that puzzle. Thus, any meaningful stewardship program should be explicitly inclusive of advanced recycling and innovations in recycling technology. Oregon left the door open for alternative recycling technologies, however, the broad authority granted to DEQ in determining what is considered “recycling” leaves the future of advanced recycling uncertain.

Rates and Dates

SB 582 sets out three goals for plastic packaging recycling rates; 25% by 2028; 50% by 2040; and 70% by 2050. These rates and dates cannot be adjusted by DEQ until January 1, 2038, and cannot be adjusted lower than 35% or higher than 70%. This reveals exactly how arbitrary these goals and timelines are. Ambitious recycling goals are key to ensuring the recycling system is fully funded but those goals should be determined using a science-based approach and the needs assessment, not haphazard guesses.

Overly Prescriptive

A true EPR program would allow for the PRO to assess the current infrastructure in the state and then dictate its own terms and path forward to not only stabilize the current infrastructure but to build a better system to handle more packaging, establish more end-markets, and address the future of packaging. SB 582 appears to give only lip service to this notion and instead provides for funding to stabilize the current system in Oregon, which does nothing to advance more or new recycling. PRO(s) are given all of the responsibility while DEQ retains nearly all of the authority.

Program Costs

Under SB 582, PRO(s) can set their own membership fees dependent on material and rates of reimbursement set by DEQ. PRO(s) will also be required to pay several additional fees, including a contamination management fee, and a processor commodity risk fee to recycling facilities to mitigate their costs of removing and disposing of. PRO(s) will also be required to pay an annual administration fee which will cover the costs of DEQ for the implementation and administration of the overall program. All of these fees will be set by DEQ via the rulemaking process. As these fees are yet unknown, we are unable to make a determination regarding their accuracy and fairness.

Timeline and Phases of Implementation

2022	<p>June 1</p> <ul style="list-style-type: none"> • Truth in Labeling Task Force Report due to Legislature
2023	<p>July 1</p> <ul style="list-style-type: none"> • DEQ completes first statewide needs assessment
2024	<p>March 31</p> <ul style="list-style-type: none"> • PRO program plan due to DEQ
2025	<p>January 1</p> <ul style="list-style-type: none"> • PRO program plan must be implemented
2026	<p>September 15</p> <ul style="list-style-type: none"> • Litter and marine debris cleanup and prevention needs assessment due to Legislature <p>December 15</p> <ul style="list-style-type: none"> • Compostability study and final DEQ report and recommendations for Legislation due to Legislature
2028	<ul style="list-style-type: none"> • Achieve a recycling rate of 25% for plastic packaging
2038	<p>January 1</p> <ul style="list-style-type: none"> • DEQ may adjust statewide plastic recycling goal
2040	<ul style="list-style-type: none"> • Achieve a recycling rate of 50% for plastic packaging
2050	<ul style="list-style-type: none"> • Achieve a recycling rate of 70% for plastic packaging

Extended Producer Responsibility (EPR)

Extended Producer Responsibility (EPR) for packaging is a policy approach that proposes making manufacturers, producers, and consumer brands financially and managerially responsible for what happens to packaging material after it is sold and used. To fund it, consumer brands and users of packaging pay fees that go to a designated nonprofit Producer Responsibility or Stewardship Organization. Ideally, the organization can then allocate those funds to maintain, develop, and modernize our recycling infrastructure.

Good EPR legislation provides for a comprehensive EPR program that is based on a collaborative approach where everyone in the recycling system has a seat at the table. The goal is to develop a workable program that incentivizes increased recycling and innovation and discourages landfilling while providing the necessary flexibility to adapt to evolving conditions without the need for new rulemakings. A true EPR Program ensures that producers actually have more than just financial responsibility: that they can control how funding is used and invested to ensure the goals of the program fosters a modernized approach to recycling and promotes a more circular economy.

Conclusion

While SB 582 gets some aspects of EPR right, it fails to provide for packaging circularity by providing for the improvement of collection and infrastructure investment and the development of advanced recycling systems to allow for the collection and recycling of a broader array of today's packaging materials, including flexible packaging; as well as quality sorting and markets for currently difficult-to-recycle materials. The bill is overly complex and too specific to the current infrastructure in Oregon to be used as a model for the rest of the country. SB 582 has the potential to establish a meaningful EPR program but that will ultimately depend on the numerous rulemakings by the DEQ.