

Colorado HB22-1355 “Producer Responsibility Program for Statewide Recycling”

Sponsors: Rep. Cutter, Sen. Priola, Sen. Gonzales
Status: Signed by the Governor on June 3, 2022

Legislative Snapshot

Colorado’s HB22 – 1355 is an extended producer responsibility (EPR) measure that establishes a state-wide producer responsibility program with a focus on packaging and printed paper materials. The program is to be administered by a nonprofit Producer Responsibility Organization (PRO) in consultation with a newly created Advisory Board. The Executive Director (Director) of the Colorado Department of Public Health and Environment (CDPHE) will designate the PRO, which will facilitate a needs assessment, develop a PRO plan, and administer the program after approval. The Advisory Board will consist of 15 members, appointed by the director, and will advise the PRO on several aspects of the plan/program. “Producers” will pay annual dues to the PRO and will be responsible for the reimbursement of 100% of the program costs. The measure also includes several technical, legal, and administrative provisions addressing exemptions, penalties, remedies, expansion of recycling services, statewide education on recycling and reuse, reporting requirements, convenience standards, definitions...etc.

Definition of “Producer”

- “Producer” means: (a) (I) If the product is sold or distributed in the state using packaging materials under the manufacturer’s own brand or is sold or distributed in the state using packaging materials that lack identification of a brand, the person that manufactures the product;
- (II) If the product is manufactured by a person other than the brand owner, the person that is the licensee of a brand or trademark under which a packaged item is sold or distributed in the state, whether or not the trademark is registered in the state; or
- (III) If there is no person described in subsection (30)(a)(i) or (30)(a)(ii) of this section within the united states, the person that imports the product using covered materials into the united states for use in a commercial enterprise that sells or distributes the item in the state;
- (b) For the purposes of products that are sold or distributed in the state through an internet transaction:
- (I) The producer of the packaging material used to directly protect or contain the product; and
- (II) For the purposes of packaging material used to ship a product to a consumer, the person that packages or ships the product to the consumer.

Elements at Issue

Advisory Board

The “Producer Responsibility Program for Statewide Recycling Advisory Board” will be appointed by the Director and consist of 13 voting and 2 non-voting members. The composition of the Advisory board consists of three representatives of local government and one member to represent each of the following interests: materials recovery facility (MRF); hauler of materials; environmental or community-based nonprofit; packaging material supplier that is not a producer; manufacturer of recycled paper products that is not a producer; trade association/business advocacy organization (headquartered in the state); retailer that is not a producer; composting facility; environmental justice/underserved communities representative; solid waste landfill or transfer station; a representative of the CDPHE (non-voting); and a representative of the PRO (non-voting).

Program Costs

The program must provide recycling services to covered entities in the state, which are defined as residences, businesses, schools, hospitality locations, government buildings, and public places. The program is funded by annual dues (producer responsibility dues) paid by producers of products that use covered materials (producers). Covered materials are defined as packaging materials and paper products. The plan proposal submitted by the PRO must “establish a funding mechanism through the collection of producer responsibility dues that covers the organization’s costs in implementing the program and the costs of the department in overseeing the program,” and “[e]stablish an objective formula to reimburse 100% of the net recycling services costs of public and private recycling service providers (providers) performing services under the program.”

Extended Producer Responsibility (EPR)

Packaging Extended Producer Responsibility (EPR) is a policy that proposes making manufacturers/producers 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 Stewardship Organization (SO). Ideally, the SO is entrusted to maintain and develop the modern recycling infrastructure we need for today’s packaging.

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 to develop a workable program; incentivizes increased recycling and composting and discourages landfilling; and can adapt annually based on recycling market conditions and new infrastructure investment without the need for new rulemakings. A true EPR program ensures that producers 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

Colorado is now the third state to pass legislation creating an EPR program for packaging, following Maine and Oregon. Much of the EPR schemes and future responsibilities on producers are not yet known as they will be established later via the rulemaking process. Colorado’s lack of cost-sharing between the PRO and existing service providers and certain burdensome administrative aspects of the law raises significant concerns but unlike Maine and Oregon, the Colorado model grants considered administrative and decision making authority to the producer-run PRO, which FPA believes that it is a considerable improvement over the underdeveloped proposals of other states.

Timeline and Phases of Implementation

2022	<p>December 31</p> <ul style="list-style-type: none"> Advisory board appointed by CDPHE director
2023	<p>March 1</p> <ul style="list-style-type: none"> First meeting of the advisory board <p>June 1</p> <ul style="list-style-type: none"> CDPHE Director designates PRO <p>September 1</p> <ul style="list-style-type: none"> The PRO must hire an independent third party to conduct a needs assessment of the state's current recycling services and recycling needs
2024	<p>April 1</p> <ul style="list-style-type: none"> The PRO must submit the needs assessment to the CDPHE and advisory board; and CDPHE must provide for public notice and comment
2025	<p>January 1</p> <ul style="list-style-type: none"> Producers begin paying producer responsibility dues <p>February 1</p> <ul style="list-style-type: none"> The PRO submits a plan proposal for approval for the residential program to the advisory board covering a period of 5 years; and the advisory board and CDPHE review the plan and, if necessary, require amendments <p>TBD</p> <ul style="list-style-type: none"> Within 6 months of plan approval, the PRO begins implementing the final plan <p>July 1</p> <ul style="list-style-type: none"> Producers may not sell, offer for sale, or distribute any products that use covered materials in Colorado unless the producer is participating in the PRO or, after January 1, 2029, participating in any additional PROs
2027	<p>March 31</p> <ul style="list-style-type: none"> First PRO annual report to the advisory board and the CDPHE; report to be posted on the CDPHE website
2028	<ul style="list-style-type: none"> Process to expand recycling services to applicable non-residential covered entities must be implemented (process and timeline to be established in the plan proposal)
2029	<p>January 1</p> <ul style="list-style-type: none"> A nonprofit organization may request the Director designate the nonprofit organization as an additional PRO