

EXTENDED PRODUCER RESPONSIBILITY (EPR) BASICS

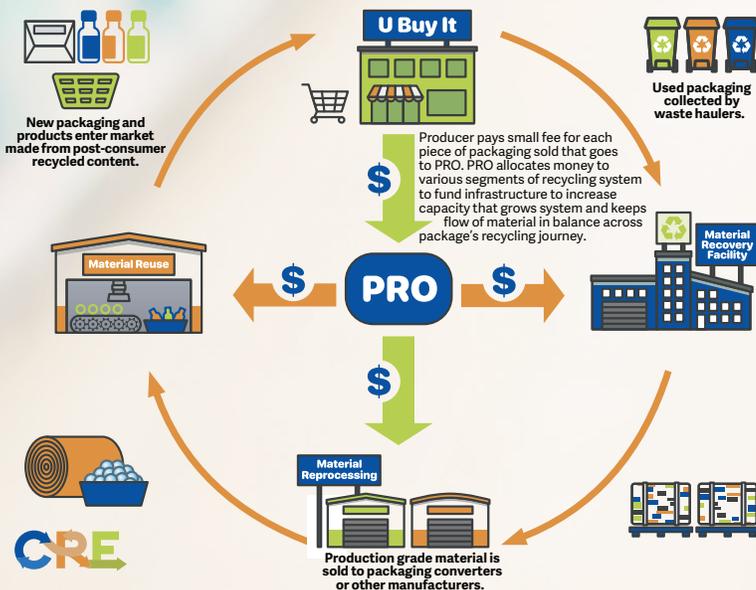
According to the U.S. Environmental Protection Agency (EPA), roughly 9% of plastic generated each year is recycled whereas roughly 75% goes to landfill. Between consumer knowledge, recycling infrastructure, and raw material capabilities, there are several gaps to overcome to improve these statistics.

To fill these gaps and find circular solutions for flexible packages, among other, Europe and Canada have enacted Product Stewardship legislation, specifically around Extended Producer Responsibility (EPR). In just the past few years, there has been a large push to bring this type of legislation to the United States.

EPR is a way to assign end-of-life responsibility to producers of the product that uses the packaging. This typically includes both financial and operational responsibility to assist in managing the packaging materials after use. This creates a shared responsibility for end-of-life management and allows the costs of circularity for packaging to be incorporated into the total cost of the product.

For packaging schemes, producers of the covered products using the packaging (brand owners) typically join a producer responsibility organization (PRO). The PRO develops a responsibility plan, approved by the state regulatory agency; collects money from the brand owners; and manages the circularity responsibility of the covered products for its members. The PRO also works with infrastructure to handle today's packaging and recycled materials. Through the PRO, producers can collectively manage the circularity for packaging, instead of managing multiple individual programs.

The Ideal PRO Scenario for the packaging industry



Flow Chart developed by the Campaign for Recycling and the Environment (CRE), a national association of consumer and commercial packaging manufacturers whose goal is to bring together our members, consumers, and lawmakers to find an effective, environmentally responsible, and consumer-focused solution to reduce the amount of waste that goes into our landfills and litters our environment.

States with EPR LEGISLATION



Maine Legislative Document 1541:

An Act to Support and Improve Municipal Recycling Programs and Save Tax-payer Money

Signed into law on 7/12/21

LD 1541 establishes a stewardship program in the state for packaging materials to be operated by a stewardship organization contracted by the Department of Environmental Protection. The state will determine the amount of fees paid by producers and will then dictate how the fees will be used to reimburse municipalities for current recycling and waste management costs of covered packaging materials. FPA does not view this bill as a model for real EPR for packaging.



Oregon Senate Bill 582:

Plastic Pollution and Recycling Modernization Act

Signed into law on 8/6/21

SB 582 creates a producer responsibility program for packaging, food service ware, and printing and writing paper. Producers are required to be part of a PRO and implement a producer responsibility plan approved by the Department of Environmental Quality (DEQ). Funds will be used for improvements to the recycling system. Fees will be based on several factors determined through rulemaking, including where the material is collected and processed; material type; recyclability; and achieving mandated recycling rates by certain dates. Failure to achieve set goals and rules implies increased fee payment to the PRO. While better than Maine's law, Oregon's law still gives too broad authority to the DEQ to dictate the terms of the program, which should be reserved for the PRO.

How will this affect PRODUCERS?

- Producers (brands) may be incentivized to switch to readily recyclable packaging with lower fees but may face a potential for unintended loss of product protection and negative environmental consequences.
- As producers most likely will be paying higher fees on flexible packaging, as it is not yet readily recyclable within the current infra-structure, producers should have the ability to control fees for infrastructure improvements, but Maine does not allow for such and in Oregon, it is currently unclear.
- Producers will need to allocate resources to develop new packaging that meets stated EPR criteria. This becomes more challenging as states are pushing EPR legislation that may not 100% align with each other.

How will this affect CONSUMERS?

- While EPR should help streamline labeling of products to help consumers better understand what is eligible, current bills do not address harmonization across multiple states and producers do not label products for individual states.
- It should be that the cost of the EPR program goes to greater access to recycling as well as modernizing recycling infrastructure for all packaging types; however, the Maine bill will simply reimburse for current recycling and in Oregon it is currently unclear.
- EPR fees may be passed on to the consumers through an increased cost-of-goods sold.

FPA POLICY ON EPR

The Flexible Packaging Association (FPA) is generally supportive of EPR legislation and considers it a better path forward than outright material bans. However, EPR programs must maintain or enhance the current environmental benefits and performance attributes of current flexible packaging and create an onramp for this common packaging type. This means that the fees should go to sustainable funding for R&D and investment in advanced recycling infrastructure and end markets. There is no single, viable solution that can be uniformly applied to all flexible packaging waste, and several options will be necessary for currently non-recyclable materials.

The FPA also believes a clear set of federal rules and guidelines is critical. The current state-by-state approach will create a difficult path ahead in maintaining uniformity across the industry, as states may adopt different rules from one another as evidenced by the two divergent EPR for packaging bills for Maine and Oregon out-lined here. In 2019, the FPA, along with the Product Stewardship Institute (PSI), created a set of principles to help guide EPR legislation for flexible packaging. This agreement helps define necessary components of effective EPR legislation, such as what materials should be covered, where the funding should be utilized, and how to create viable performance standards and targets.

EPR can be an effective policy to promote the necessary infrastructure shift to recycle flexible packaging materials in the United States. As more states continue to advance this type of legislation, the FPA will continue to ensure the industry is well-represented and provide resources.

To learn more about the FPA's efforts for end-of-packaging life, you can visit: <https://www.flexpack.org/end-of-packaging-life>

Terms you should know

Circularity - reducing virgin raw material inputs by reusing materials already in use, over and over, in a continuous loop.

End-of-Life - what happens to a package after it has fulfilled its primary purpose, e.g. reuse, disposal, and recycling.

Financial Responsibility - cost of collection, recycling, disposal, litter abatement, as well as educational and market development costs, in some cases. The current ME and OR laws give most of this responsibility to the producers.

Operational Responsibility - the management of the end of life of the package, including collection, recycling, reuse, disposal, etc.

Producers/Brand Owner - the legal owner using the packaging. This will be the brand owner if sold under the manufacturer's brand, licensed brand, private label, or store brand. It will also be the first importer if sourced from out of the country, and the shipper for e-commerce packaging.

Stewardship Organization (also PRO) - a privately held organization that handles compliance with the law on behalf of a group of producers, including the collection of the fees and distribution of the funds and oversight of the operations.

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¹ <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data>