

Comparison of EPR Policies in the United States

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Introduction

Extended Producer Responsibility (EPR) is an environmental policy model designed to shift the costs and responsibility of waste processing from consumers to producers. This policy framework can be applied to different types of materials, and one major material stream is packaging. EPR policies follow a general structure that requires the formation of a Producer Responsibility Organization (PRO) that collects fees from producers of a certain material and uses those fees toward the collection, sorting, and recycling of that material. By making producers financially responsible for the materials they produce throughout its lifecycle, this “polluter pays” policy framework aims to fund recycling programs as well as incentivize producers to design more easily recyclable products.¹ Analyses of EPR policies in Europe—where EPR schemes are most widespread and established—show that EPR can indeed expand recycling access, improve recycling participation, and increase the recycling rate for both easy and difficult to recycle materials.²

The United States currently falls short in all these areas, which makes the potential impact of new EPR policies in the States even more significant. Recognizing the promising effects of EPR abroad, there is a growing trend to design and implement EPR legislation in the United States. Today, four states—Colorado, California, Oregon, and Maine—have passed EPR policies for packaging. These four states’ policies provide a glimpse into how individual EPR policies can quickly diverge. Although they follow the basic EPR structure, the details of the policies differ in terms of material exclusions, the structure of the PRO, the level of industry input, and more. Such fragmentation is evident across European EPR policies. In fact, European states currently aim to harmonize their different policy configurations, since having common reporting standards and criteria can help reduce administrative costs, improve the comparability of recycling data, and influence sustainable design decisions for producers over a wider geographic area.³ At this early stage in the United States, there is an opportunity to learn and develop what “American” EPR looks like. In doing so, we can ideally design a more harmonious national EPR system.

Taking all this into account, the goal of this report is to consider the key differences between the existing U.S. EPR policies with the hope that understanding these variations between state-level policies can lend insight into EPR design choices for other states and for an eventual national policy. The basic structure of each state’s EPR policy is generally the same, requiring producers of packaging materials to pay fees toward a PRO to fund the management of the material they produce. Outside the basic structure, each EPR program also varies in which producers and what materials it includes and excludes. These variations, however, serve the same purpose across states, with producer exclusions intending to protect small producers and material exclusions accounting for existing state programs (such as established beverage and container deposit systems). There are key distinctions that have to do with the essential features of the EPR program. Specifically, this report highlights differences in the PRO structure and the targets defined by each EPR bill. These properties directly influence who will implement each policy and the goals of policy implementation. Thus, focusing on these particular

differences provides a preliminary sense of the main players, the priorities, and the intensity of each EPR program, which are all key to the program's success.

Differences in the PRO Structure

In the EPR policy framework, producers of a material must join a Producer Responsibility Organization (PRO). The essential role of a PRO is to collect payments from producers in order to fund the recycling of their product. This shifts, wholly or partially, the financial burden of managing a material at the end of its life cycle from municipal governments to producers. The PRO(s) for each U.S. state will be in charge of implementing each program and are thus consequential to the success of each policy. The requirements for each PRO vary in the number of PROs allowed, the number of members in advisory councils to the PRO, and in the level of stakeholder involvement.

Maine's policy stands out as the bill with the most government involvement and the least stakeholder input. The state's Department of Environmental Protection (DEP) will select a single Stewardship Organization (SO) through a bidding process; this SO, as a contractor to Maine's DEP, must get state approval for program expenditures. While the bill includes mechanisms for stakeholder involvement, it does not call for an advisory council—a group for the organization to consult as it creates plans and implements them—as all the other bills do.⁴ Oregon's EPR policy allows for multiple PROs to form immediately. Any PRO that forms must develop a producer responsibility plan, which Oregon's Department of Environmental Quality (DEQ) can accept or reject.⁵ An advisory council of seventeen voting members appointed by the Governor and two non-voting legislators will advise PROs. Oregon's council, which first met in the spring of 2022, includes members that represent "local governments, community-based organizations representing the interests of historically underserved groups, small business, environmental nonprofit organizations, the recycling industry, service providers, processors or material end users and producers of covered products."⁶ Colorado's EPR bill only allows its Department of Public Health and Environment (CDPHE) to approve a single, non-profit PRO initially, with the option for the CDPHE to approve an additional PRO in 2029.⁴ As required by the bill, the CDPHE has created an advisory board of thirteen members plus two non-voting members from CDPHE and the PRO. Colorado's advisory council, which had its first meeting in the beginning of 2023, is smaller than Oregon's but represents a similar breadth of interest groups and recycling experts.⁷ Similar to Colorado, California's bill starts with a single PRO and allows its department of Resources Recycling and Recovery (CalRecycle) to approve additional PROs in 2031.⁴ CalRecycle will appoint thirteen members to its advisory board, along with three non-voting members (applications for positions on the advisory council closed as of April 24, 2023, and CalRecycle will notify selected candidates by July 1, 2023).⁸

Differences in Targets

One of the primary roles of a Producer Responsibility Organization is to create and monitor plans to achieve specific targets. Just as there are differences in the PRO structure for the four states, there is also significant variation in the targets set in each bill. These targets vary in a number of ways: California and Oregon have established quantitative targets, while Maine and Colorado have not; California's goals are more ambitious than Oregon's; and

Oregon's bill focuses primarily on recycling rates while the remaining bills have additional goals related to other metrics.

The bills from Oregon and California have defined quantitative targets. For plastic packaging and food serviceware, Oregon's bill specifies statewide recycling rate goals of at least 25% by 2028, 50% by 2040, and 70% by 2050. It also includes a provision for adjusting these targets based on environmental, technical, and economic conditions on or after January 1, 2038, where adjusted goals may not be lower than 35% or higher than 70%.⁹ California's bill similarly defines several recycling rate targets for all plastic covered materials. The goals are to reach at least 30% by 2028, 40% by 2030, and 65% by 2032. California's bill is more ambitious in that it aims to reach comparable recycling rates as Oregon on a much accelerated timeline. In addition to its recycling rate targets, California's policy also calls for its PRO to create and implement a plan to achieve source-reduction requirements and incentivize producers to use more post-consumer recycled content.¹⁰

In contrast to specifying quantitative targets, the bills from Maine and Colorado outline qualitative goals that their EPR programs must incorporate. Each state's PRO must then evaluate recycling needs in its state and define appropriate targets to meet those goals. Maine's bill requires its SO to set targets in the following areas: recycling access and collection rates for municipalities, recycling rates for the program overall, material-specific recycling rates, and litter reduction rates for packaging material. Maine's bill also calls on its SO to establish goals to encourage producers to reuse packaging material and increase the amount of post-consumer recycled content in their packaging.¹¹ In a similar manner, Colorado's bill does not specify numerical targets, but it calls on its PRO to "hire an independent third party to...identify which recycling needs aren't being met" to help determine minimum targets for collection rates, recycling rates, and post-consumer recycled content rates for the state to meet by 2030 and 2035.^{12,13}

Conclusion

EPR is one piece in the much broader scope of work to transition to a sustainable, circular economy. At the surface, EPR policies are simply a mechanism for funding recycling programs. However, funding recycling programs alone will not solve the underlying issue of unsustainable production practices. There remain low participation rates for those with access to recycling, many materials are very difficult to recycle, and there are limited markets for recycled materials. Looking closer at EPR through an economic lens shows that EPR is an especially powerful policy framework because it incentivizes change in the production of materials themselves. EPR programs can go beyond covering the cost of recycling programs and recycling education for communities. Through intentional fees on producers, they also incentivize producers to design more easily recyclable materials and increase use of post-consumer recycled material in their products. EPR ultimately targets the root of the problem—the mass production of non-recyclable materials that will never make their way out of a landfill.

With the potential to elicit change from the ground up, it is exciting to see EPR bills begin to take shape in the United States. On May 1, 2023, Colorado became the first state to select a Producer Responsibility Organization—Circular Action Alliance, made up of 11 major companies—which is now responsible for creating an EPR program plan, hiring an independent party to review Colorado's recycling needs, and setting recycling targets for the state.^{14,15} Other

states will follow suit as their deadlines to select a PRO, appoint members of advisory boards, create recycling targets, and meet those targets approach. It will be interesting to see how the differences in the EPR policies—the number of PROs allowed, the advisory boards for the PROs, and the quantitative and qualitative targets defined in the legislation—manifest as each state implements their EPR program.

	Maine	Oregon	Colorado	California
PRO/Governance Structure	<p>State selects a single packaging SO via a competitive bidding process</p> <p>No advisory council</p>	<p>One or more PRO may form, each submitting a stewardship plan to the state</p> <p>Advisory council of seventeen voting members appointed by the Governor and two non-voting legislators</p>	<p>One PRO allowed until 2029, when the CDPHE may approve another PRO</p> <p>Advisory council created by Colorado’s CDPHE, made up of 13 voting members and two non-voting members</p>	<p>One PRO allowed until 2031, when CalRecycle may approve another PRO</p> <p>Advisory council created by CalRecycle with 13 voting and three non-voting members</p>
Targets	<p>Specific targets have not been set.</p> <p>The program must develop goals for the following:</p> <ul style="list-style-type: none"> - Recycling access rates, collection rates, material specific recycling rates, and packaging material litter reduction - Producer reuse of packaging material and amount of PCR content in packaging 	<p>Statewide recycling rate goals for plastic packaging and food serviceware:</p> <p>≥ 25% by 2028</p> <p>≥ 50% by 2040</p> <p>≥ 70% by 2050</p> <p>Goals may be adjusted on or after January 1, 2038</p>	<p>Specific targets have not been set.</p> <p>The program must develop goals for the following:</p> <ul style="list-style-type: none"> - Collection rates, recycling rates, and minimum PCR content rates 	<p>Statewide recycling rate goals for all plastic covered material:</p> <p>≥ 30% by 2028</p> <p>≥ 40% by 2030</p> <p>≥ 65% by 2032</p> <p>The PRO must determine targets and develop a plan for achieving source reduction requirements by 2032</p>

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