

Implementation of the Colorado Producer Responsibility Program for Statewide Recycling Act

Governor Jared Polis signed the Producer Responsibility Program for Statewide Recycling Act (HB22-1355) into law on June 3, 2022. Colorado became the third state to pass extended producer responsibility (EPR) legislation, following Maine and Oregon that passed legislation in 2021.

Program Goals

With the passage of HB22-1355, Colorado intends to:

- Provide funding mechanisms for recycling services and infrastructure across the state.
- Increase recycling access in Colorado, including apartments and rural areas.
- Save local governments money by reimbursing their costs to run their recycling programs.
- Support Colorado businesses by creating a more resilient domestic supply of raw material to make new products.
- Encourage producers to design and manage covered materials to prevent/minimize their negative environmental, social, economic and health impacts.

Covered Materials

Covered materials include paper, plastic, glass, metal, cartons, flexible foam, rigid packaging, food service ware, or other materials or a combination of these materials. Paper products such as printing paper, newspapers, brochures, booklets, catalogs, flyers, and magazines will be subject to the Act.

There are some products that are exempt, and they include packaging for long-term storage, beverage containers subject to a deposit system, packaging used in industrial or manufacturing processes, packaging of a product regulated as a drug, medical device, or dietary supplement by the FDA, and packaging of products regulated as infant formula or fortified nutrition supplements.

Producer Responsibility Organization

HB 22-1355 establishes a producer responsibility program that requires companies that sell products in packaging, paper products, and food service ware to fund an entire statewide recycling system to recycle those materials. These companies, primarily product brand owners, will form an independent non-profit organization, called a Producer Responsibility Organization (PRO), to coordinate, fund, and manage a statewide recycling system. Companies will pay membership dues to the PRO based on the amount and type of packaging they sell in Colorado.

Although the PRO is under the leadership of industry, Colorado's Department of Public Health and the Environment (CDPHE) is tasked with overseeing the PRO. The bill requires the PRO to reimburse the CDPHE for reasonable costs incurred in administering and implementing the bill.

One of the first key dates is June 1, 2023, when the CDPHE executive director is required to designate a PRO. The PRO will facilitate a needs assessment, develop, and submit a plan proposal, and administer the program to provide covered entities with convenient and equitable access to recycling services. Recycling services must be provided for all readily recyclable materials at no charge to covered entities with a goal of meeting target rates for recycling, collection, and postconsumer-recycled-content (PRC). Covered entities include single-family and multi-family residences and nonresidential locations identified in the final plan, including public places, small businesses, schools, and government buildings.

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There are some organizations that will be exempt from having to join the PRO. A producer is exempt if the producer is:

- A person with less than \$5 million in gross annual revenue.
- A person that has used less than one ton of covered materials.
- The state or local government.
- A nonprofit organization.
- An agricultural employer with less than \$5 million in gross annual revenue.
- An individual business operating a retail food establishment located at a physical business location and licensed under the Denver Code of Ordinances.
- A builder, a construction company, or construction contractors.

A future assessment will be conducted to determine the impacts of producer and product exemptions to the program as a whole and whether any industry is disproportionately affected by the exemptions.

Advisory Board

The bill establishes an advisory board, composed of local governments, recycling companies, nonprofits, and other key stakeholders, to help the state oversee the program. The advisory board will consist of thirteen voting board members and two non-voting board members from the CDPHE and PRO. The board will advise the PRO on the needs assessment process, plan proposal development, establishment and updating of the minimum recyclable list, and annual reporting requirements. The advisory board will be appointed by December 31, 2022 and will meet no later than March 1, 2023.

Needs Assessment, Plan Proposal, Approval, and Reporting

On or before January 30, 2024, the PRO will submit the results of a needs assessment on the state of recycling in Colorado to the CDPHE executive director and advisory board. The CDPHE will post the results on the department's website and provide public notice and the opportunity for comment.

Plan Proposal

By February 1, 2025, the PRO must submit its detailed program proposal to the CDPHE executive director and advisory board for approval. The PRO will be providing recycling services under the program through contracts with public or private service providers to provide covered entities with convenient and equitable access to recycling services for all readily recyclable materials at no cost to the covered entity. To be eligible for reimbursement, service providers must provide recycling services for all readily recyclable materials, unless exempted from these requirements by the CDPHE. Service providers are eligible for reimbursement of costs associated with other covered materials not included in the minimum recyclable list if the service provider can demonstrate that the covered material can be collected at reasonable costs and have a responsible end market. The plan proposal must include the following elements:

- Describe how the organization will meet certain convenience standards and statewide recycling, collection, and postconsumer-recycled-content rates (rates).
- 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.
- Establish 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.
- Provide a list of covered materials (minimum recyclable list) that providers performing services under the program must collect to be eligible for reimbursement under the program.

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- Set minimum rate targets that the state will strive to meet by January 1, 2030, and January 1, 2035, and describe how the state can meet increased rates after 2035; and
- Describe a process and timeline, beginning no later than 2028, to expand recycling services to applicable nonresidential covered entities.

Plan Approval

An important component in the law is the requirement of the CDPHE executive director to submit the needs assessment, projected scenarios and recommendation by March 15, 2024, to the state's Joint Budget Committee. If the committee rejects the recommendation, they may propose legislation to direct the PRO to implement a different projected scenario identified in the plan. The PRO cannot implement a scenario or plan without approval of the Colorado General Assembly, with prior approval of the Joint Budget Committee. The PRO will begin implementing the final plan within six months after its approval.

Beginning in the second year of implementation, the PRO and any additional programs approved by the CDPHE will submit annual reports to the advisory board describing the progress of the program. The CDPHE will post annual reports on its website and submit and present a compiled report to relevant legislative committees.

Producer Deadlines

On July 1, 2025, producers selling covered materials are required to participate in the program. They need to either join the PRO or submit an individual plan for consideration by the advisory board. The advisory board will review and make recommendations on, and the CDPHE executive director will approve or reject, the individual plan proposal.

By January 1, 2026, producers of covered materials will begin paying annual dues to the PRO. The PRO will provide recycling services under the program through contracts with public or private service providers to provide covered entities with convenient and equitable access to recycling services for all readily recyclable materials at no cost to the covered entity. To be eligible for reimbursement, service providers must provide recycling services for all readily recyclable materials, unless exempted from these requirements by the CDPHE. Service providers are eligible for reimbursement of costs associated with other covered materials not included in the minimum recyclable list if the service provider can demonstrate that the covered material can be collected at reasonable costs and have a responsible end market.

The law also permits producers to request a nonprofit to be designated as an additional PRO, but not until January 1, 2029. The CDPHE executive director, in coordination with the advisory board may designate an additional PRO to increase recycling rates, expand recycling services or provide recycling services for a specific type of covered material.

Production Incentives

The law creates an incentive for producers to consider the design and use of materials in their packaging. By January 1, 2026, the CDPHE executive director and the advisory board will announce an eco-modulation bonus schedule designed to reduce the responsibility dues of producers that meet certain benchmarks established by the PRO.

Outreach and Education

The PRO will develop and implement a statewide education and outreach program to increase recycling and reuse of covered materials. The program must provide clear recycling instructions, coordinate with existing education efforts, and be designed to achieve recycling targets outlined in the final plan. The advisory board will consult on the education program. The PRO may contract with service providers, local governments, and nonprofit organizations to conduct recycling education.

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Penalties

Producers that violate the relevant statutes and rules of the Act will face administrative penalties issued by the CDPHE. A first violation penalty of \$5,000, second violation penalty of \$10,000, and third violation penalty of \$20,000 dollars for the first day of each violation. For each day the violation continues penalties per day will amount to \$1,500 (first violation), \$3,000 (second violation), and \$6,000 (third violation). The collected penalties will be deposited by the CDPHE executive director to the state treasurer, who will credit the monies to the Recycling Resources Economic Opportunity Fund.

Resources

More information is available at the following resources:

- [Colorado Producer Responsibility Program](#) The webpage is dedicated to the EPR program.
- [Implementation Timeline](#) The implementation timeline, subject to change.
- [House Bill 22-1355](#) State legislation that authorizes the EPR program.

Disclaimer

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PRINTING United Alliance seeks to keep the printing industry updated on workplace requirements related to environmental compliance. For more information, or if you have questions on this or any other state regulatory issue, please contact Marci Kinter at mkinter@printing.org or Gary Jones at gjones@printing.org.

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