



SURFRIDER FOUNDATION'S EXTENDED PRODUCER RESPONSIBILITY GUIDANCE DOCUMENT

(LAST UPDATED DECEMBER 2021)

EXTENDED PRODUCER RESPONSIBILITY FOR SINGLE-USE PLASTIC WASTE REDUCTION

Currently, producers of goods (manufacturers and brands) in the U.S. have no financial incentives to reduce the amount of packaging they use, switch to reusable or more easily recycled, or readily compostable materials for their products. Instead, taxpayers and local governments carry the financial burden of dealing with these products and packaging. If done correctly, Extended Producer Responsibility (EPR) is one potential tool to drive waste reduction. EPR aims to hold producers accountable for costs that are currently externalized. Strong EPR for packaging and products laws incentivize producers to reduce waste in the first place and make their packaging and products more sustainable, ensuring that manufacturers bear the cost of collection, recycling, disposal and cleanup of their product and packaging. The more wasteful their product and packaging, the more the producer must pay. In the U.S., various EPR laws currently exist for items such as medical sharps, carpet, and batteries. In addition, many countries already have EPR laws that address packaging, and there is growing interest in the U.S. to pass such laws. For more information, see the Surfrider [blog post](#) and [fact sheet](#).

SURFRIDER FOUNDATION'S EPR POLICY CHECKLIST

Below is the Surfrider Foundation's checklist for what to look for when evaluating EPR for products and packaging laws, followed by brief descriptions of key principles, helpful hints and additional resources.

MUST HAVES:

- ☐ Producers pay for collection, recycling, waste disposal and clean-up costs
- ☐ Emphasis on source reduction and reuse, not just recycling, with specific goals
 - ☐ No fake reusable/refill claims or loopholes (ex. producers claiming a product can be reused or refilled, but not proving it actually be done)
- ☐ Defines and addresses reducing/eliminating toxics, including: PFAS, heavy metals, and phthalates
- ☐ Definition of recycling should not allow for:
 - ☐ Incineration, including but not limited to chemical recycling, advanced recycling, or waste-to-fuel technologies such as pyrolysis and gasification
- ☐ Specific targets should be included in the bill or rulemaking for products and packaging:

- ☐ Reuse rates
- ☐ Waste diversion and reduction rates
- ☐ Recycled content requirements
- ☐ Recycling rates
- ☐ Assess whether the following policies have already been adopted in the state and whether the EPR bill would preempt/affect them:
 - ☐ Bottle deposit program
 - ☐ Single-use bags
 - ☐ Foam foodware
 - ☐ Straws, and other single-use food and retail items
- ☐ Addresses equity concerns:
 - ☐ Regarding worker health and safety
 - ☐ Access to recycling and composting, specifically in low-income communities and communities of color
 - ☐ Siting process for new recycling/composting facilities, if applicable
- ☐ Includes a seat at the table for environmental advocacy groups and environmental justice organizations with adequate power in the decision making body
- ☐ Funds generated through the EPR program are used for legitimate waste mitigation, heightened justice and equity transitions, and/or supporting infrastructure if needed
 - ☐ Funds cannot be used for lobbying or for paying fines or for litigation by industry groups
- ☐ Includes strong enforcement mechanisms (e.g. significant fines) and language explicitly stating that the state government has the authority to step in and take control if needed

SHOULD HAVES; ADDITIONAL CRITERIA (BUT NOT DEALBREAKERS):

- ☐ Covers all materials (not just plastic) to avoid a shift to regrettable alternatives
- ☐ Addresses foodware in jurisdictions without existing, good, standalone laws
- ☐ Definition of recycling should not allow for:
 - ☐ Export of plastic waste to developing countries

CURRENTLY NO STANCE (DEPENDS ON THE STATE):

- ☐ Program Structure (but if producer-run ensure that there are adequate checks and balances to hold them accountable)

POLICY GUIDANCE DETAILS RELATED TO SURFRIDER'S EPR POLICY CHECKLIST

MUST HAVES:

Producers Pay

It is critical that producers of goods are held accountable for their products and packaging. In order to drive waste reduction and move toward a circular economy, EPR laws must require producers to pay the full costs of their products and packaging, ideally including 100% of collection, recycling, waste disposal and clean-up costs.

Prioritize waste reduction over waste management

In furtherance of Surfrider's plastic pollution initiative to reduce single-use plastics, alongside Surfrider's climate change work, and commitment to environmental justice, EPR legislation must include strong and measurable requirements for producers to redesign, reduce and reuse products and packaging to minimize waste. Eco-modulated fees can be used to incentivize better design and the development of reuse and refill systems, and penalize wasteful packaging.¹

Beware of [front groups](#) promoting language/loopholes allowing for "fake" reuse/refill, with producers claiming a product can be reused or refilled but not requiring it actually be done. For example, California's reusable bag law allows for thicker plastic film bags (2.25mils) to be certified as "reusable". Also, beware of source reduction measures that depend solely on weight as this could counterproductively incentivize a preference for lighter weight plastics, rather than getting rid of them. While GHG impact should additionally be considered, be careful of industry's use of flawed life cycle analyses to shift the preference toward single-use plastics.

Address toxics

Toxic substances used in packaging, including PFAS, heavy metals, phthalates and other hazardous chemicals, pose a severe threat to public health and to the planet. EPR legislation must clearly define and prohibit these toxic materials from being used in production. For states that already have strong toxics laws, like Maine, the legislation can reference those. For states that do not, you can advocate for strong language defining and addressing toxic substances that must be avoided. You may want to reference the [Toxic Packaging Model Legislation](#), but also note that this legislation could be stronger as outlined in this sign-on [letter](#).

No Incineration, So-Called Chemical Recycling or Export of Plastics

The petrochemical industry is pushing for "chemical/advanced recycling" and waste-to-energy incineration as downstream techno-fixes to the world's plastic problem. But this is merely a

¹ Eco-modulation is a tool when producers have more wasteful packaging, the more they must pay. Eco-modulated fees consisting of incentives and penalties for product and packaging design, such as reduced or low fees for reusables, can be an effective policy tool.

rebranding of old incineration technologies that have less to do with recycling than with incentivizing the creation of more plastic waste. As this [GAIA factsheet](#) explains, these false solutions endanger human health, exact disproportionate negative impacts on black and brown communities, and have a massive carbon footprint. EPR legislation must clearly define recycling or point to strong definitions existing in state statute, and not allow for incineration or chemical conversion (also known as pyrolysis and or gasification).

Specific Targets

Proposed legislation should state specific dates and meaningful targets (at least an initial date and target) for reuse rates, recycled content, and recycling rates. This should be stated in the legislation itself or rulemaking, as there is no guarantee these requirements will be included in the plan that is developed subsequently. Surfrider does not have specific thresholds that we are currently advocating for, as this may vary among jurisdictions depending on current rates/capacity. However, the rates should be substantial. Without a specific target in the legislation or rulemaking, the government agency's ability to enforce the law will be compromised, and the resulting mitigation of wasteful plastic and packaging marginalized.

Preemption + Political Concerns

Assess how the proposed EPR legislation would impact any existing waste reduction legislation, such as bottle bills and single-use bans. Ensure that the proposed legislation will not weaken or displace functioning waste reduction laws. Consider the political landscape and your ability to pass strong EPR legislation, weighted against the possibility of a bad, competing industry bill or bad amendments passing into law, setting dangerous precedent that could maintain single-use plastic packaging rather than diminish it.

Accountability

Proposed legislation should provide for oversight by an independent body and ensure a seat at the table and meaningful engagement for environmental organizations and environmental justice groups working to reduce waste, as well as representatives of communities disproportionately impacted by litter, incinerators, and/or other waste facilities, who typically lack of access to robust reuse, recycling and compost programs.

EPR programs can be run by public, private or a hybrid model, but must ensure accountability and public oversight to ensure targets are met and funds are used appropriately. A 501(c)(3) nonprofit organization model is preferable. Ensure that funds generated through the EPR program are used for legitimate waste mitigation, heightened justice and equity transitions, and/or supporting infrastructure if needed, and that they cannot be used for lobbying or for paying fines or for litigation by industry groups. Ensure that there are enforcement mechanisms in place with teeth (e.g. significant fines) and language explicitly stating that the state government has the authority to step in and take control if things aren't working.

Equity Concerns

- Ensure living wage and worker health and safety standards in the waste management collection and processing programs.
- Ensure that your advocacy for the bill directly includes engagement of representatives from highly impacted communities, and addresses accessibility to recycling and composting in low-income, rural and urban communities and communities of color, which data proves are the most impacted by siting of toxic facilities.
- Ensure fees from eco-modulation and reimbursement systems have built-in equity (i.e. ensuring that the system for determination of disbursements does not favor wealthy municipalities and neighborhoods that may have better infrastructure, equipment, more staff, or other advantages that would enable them to more quickly accommodate reporting)

SHOULD HAVES:

Broad Application

Proposed legislation should broadly cover all product and packaging materials, not just plastic, to avoid shifts to other problem materials and progress toward reuse. In states without strong standalone single-use plastic foodware legislation, EPR legislation should include foodware, which constitutes a large proportion of solid waste and litter. How foodware is defined is critical, especially if you plan to regulate it separately. Please reference Surfrider's [Comprehensive Foodware Policy Toolkit](#) for best practices relating to foodware policy.

The bill should also clearly state that export of plastic waste or recyclables to developing countries is prohibited. If any plastic waste is exported to developing countries, it must not be considered recycled unless it is a readily recyclable plastic type or mixture and not be prohibited by an applicable law in the country of destination.

NO STANCE:

Program Structure

Surfrider is currently neutral on the issue of how the organization overseeing the program is structured, so long as there is a balance of power. EPR programs can be run by a private, public or hybrid model, but must ensure accountability, inclusivity, equity, and transparency. Some jurisdictions use a producer responsibility organization (PRO), run primarily by the producers and overseen by an advisory board. Others use a stewardship responsibility organization (SRO), run by a newly-formed non-profit with equal representation of state and local government, recycling collectors, processors, producers and non-profit organizations. Ensure that there are enforcement mechanisms in place with teeth (e.g. significant fines) and language explicitly stating that the state government has the authority to step in and take control if things aren't working.

HELPFUL HINTS:

- These are complex waste management issues and often long and confusing pieces of proposed legislation. Therefore, it is helpful to pull from the expertise of waste management experts and also build and work in coalitions with other groups dedicated to specific issues relevant to the legislation, such as environmental justice, zero waste, toxics experts, recyclers, public health groups and others.
- There are various key players in each state (municipalities, material recovery facility operators, haulers, etc) that should be identified and included proactively in the process to help build consensus for key components of the legislation.

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