U.S. Regulations Update

Regional Stakeholder Meeting

International Sustainability & Carbon Certification (ISCC)

Adam S. Peer, Senior Director, Plastics Division

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American Chemistry Council

Objectives

- Role and position on key U.S. domestic plastic policy
- Public policy developments
- Role for certification

Principals: Extended Producer Responsibility

Infrastructure buildout: EPR legislation should aim to invest in the necessary infrastructure to increase the recycling rate through improved access, collection, sortation, and education.

Technological neutrality: All forms of recycling (i.e., mechanical and advanced recycling) should be included. Advanced recycling must count toward the recycling rate and recycled content.

Certification: Plastic that is independently certified should qualify as recycled plastic in the EPR system.

Mass balance recognition: Recycled plastic may be attributed through a mass balance accounting system.

(Plastic Division, 2024)

Expertise: Advanced Recycling

Technical
Data

Environmental performance, technical data, and policymaker education

Practical:
Reports

How advanced recycling increases what can be recycled and recycled content

Legal:
Analysis

Analysis of state and federal proposals

Policy: Framing Question

Will advanced recycling count as recycling?

Does the output of advanced recycling count as recycled content?

- Mass Balance
- Certification

Policy: Federal

U.S. Congress & White House

- Accelerating a Circular Economy for Plastics and Recycling Innovation Act of 2024
- Mobilizing Federal Action on Plastic Pollution: Progress, Principles, and Priorities

U.S. Environmental Protection Agency

- Significant New Use Rules (SNURs)
- Draft National Strategy to Prevent Plastic Pollution

U.S. Department of Agriculture

- BioPreferred Rules

U.S. Department of Energy

- Circularity for Secure and Sustainable Products and Materials: A Draft Strategic Framework

(Accelerating a Circular Economy for Plastics and Recycling Innovation Act of 2024, 2024; Eisenberg, 2024; Interagency Policy Committee on Plastic Pollution and a Circular Economy, 2024; Office of Resource Conservation and Recovery, 2023; Peretti et al., 2024; Salamone, 2023)

EPR: Recycling Goals

(An Act To Establish a Stewardship Program for Packaging, 2021; California Plastic Pollution Prevention and Packaging Producer Responsibility Act, 2022; Colorado Producer Responsibility Program For Recycling, 2022; Modernizing Oregon's Recycling System, 2021; The Packaging Waste and Cost Reduction Act, 2024)

Maine: Goal set by rule; recycling broadly defined.

Oregon: 25% by 2028 and up to 70% by 2050; recycling yield.

Colorado: Producer responsibility organization proposes target; recycling pathway.

California: Labeling, PS specific, 30% by 2028; definition-based.

Minnesota: Goals set by study; broad definition.

Recycled Content

State of New Jersey

"NJDEP does not consider the outputs from pyrolysis and gasification processes to be 'postconsumer recycled content.'"

(Department of Environmental Projection, 2023)

State of Washington

PCRC from nonmechanical processing of post-consumer materials calculated using an existing and recognized international or multinational third-party certification system which incorporates chain of custody, and certified mass balance attribution as identified in ISO 22095:2020

(PCRC Product Requirement, 2023)

California EPR: Recycling

Is advanced recycling, recycling?

EPR Act, S. 54: "(5) The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste."

Proposed Rule Highlights:

- Inaccurate mechanical to advanced recycling comparison
- Unconventional "peer-review" and ethics requirements, would likely exclude the most qualified experts in this field
- Hazardous waste definition is overbroad and lacks context

(California Chamber of Commerce et al., 2024; Department of Resource and Recycling, 2024)

California EPR: Recycled Content

Is advanced recycling output, recycled content?

EPR Act, S. 54: "A producer shall only receive this alternative source reduction credit if the postconsumer recycled content is able to be validated and is validated by a third party, such as the Association of Plastic Recyclers, through its APR Postconsumer Resin Certification Program, or a similar third party approved by the department, and the content does not contain intentionally added perfluoroalkyl and polyfluoroalkyl substances."

Proposed Rule Highlights:

- New certifier would be required to compare to APR
- Requires that a new certifier address fluorocarbon chemistries
- Inaccurate technical requirements

(California Chamber of Commerce et al., 2024; Department of Resource and Recycling, 2024)

State: Expected Legislation

New York State

Prior EPR proposals would have likely excluded advanced recycling technologies

(Packaging Reduction and Recycling Infrastructure Act, 2023)

Washington State

Unachievable “non-mechanical recycling” requirements

(Improving Washington’s Solid Waste Management Outcomes., 2023)

New Jersey

Current position of the environmental agency; source reduction, et al

(Packaging Product Stewardship Act, 2024)

Certification: Key Benefits

Technical Experience: Certifiers provide extensive technical experience with recycled content.

- Recycled content attribution
- Trace content through a system

Transparency: Inspections, audits, and monitoring are part of the certification process.

- Review the process for creating recycled content.
- Recycled content will likely be generated outside a jurisdiction

Appendix

American Chemistry Council

Adam S. Peer,
Sr. Director, Plastics Sustainability

Adam Peer leads the American Chemistry Council's Plastics Sustainability Team that promotes and advocates for policies that increase the sustainability and circularity of plastic. At Harvard University, he is a candidate for a master's degree in sustainability and a teaching fellow at the Extension School. His thesis focuses on increasing plastic packaging sustainability and circularity. He earned his undergraduate degree in accounting from the University of Wisconsin - Madison. He lives in Washington, D.C. and enjoys traveling and biking.

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Principals: Extended Producer Responsibility

Special assessment: A producer responsibility organization (PRO) overseeing the EPR system may utilize a special assessment to support the infrastructure to increase the recycling rate for specific items.

Open material markets: Programs should establish fair, open, and competitive markets for post-use materials within EPR systems.

Material switching or production caps: An EPR system must not include policies that encourage material switching or production caps.

Non-EPR provisions: An EPR system must not include policies, including bans or restrictions on resins, plastic products or chemistries, that have little nexus to recycling or are more appropriately addressed in other regulations.

(Plastic Division, 2024)

Principles: EPR

Cost allocation: Cost should be allocated by material/packaging type, weight, and characteristics pursuant to a needs assessment.

Fees support plan: Fees should fund access, collection, education, and infrastructure to achieve the plan's goals.

PRO governance: A PRO should be producer-led and empowered to execute activities needed for successful outcomes and to oversee a needs assessment.

Secondary sortation: Secondary sortation (meaning subsequent sortation of materials following the initial sortation) should be specifically authorized.

Eco-modulated fees: Fees should be based on the weight of the packaging and other factors focused on the material's environmental impact.

(Plastic Division, 2024)

Sunset: Once assessment-identified goals are achieved, the PRO plan should terminate, leaving the modern/expanded system in place.

New product or material pathway: To encourage market innovation, transitional requirements for newly developed products and materials should be acceptable.

Exemptions: Exemptions should be allowed when required to support public health and supply chain needs that are critical for U.S. interests.

Government oversight: Appropriate federal and state agencies should provide oversight of the EPR system to ensure smart governance.

Dedicated funding: Funds collected under the EPR system must be spent solely on infrastructure buildout and supporting functions and remain separate from general government revenues.