



# **BREAK FREE FROM PLASTIC POLLUTION ACT**

*Introduced by Senator Merkley and Representative Lowenthal*

## **Section By Section Summary**

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### **SEC. 2. PRODUCER RESPONSIBILITY FOR PRODUCTS AND PACKAGING**

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#### **Subtitle K—Producer Responsibility for Products and Packaging**

#### **PART I—PRODUCTS IN THE MARKETPLACE**

- **SEC. 12101. EXTENDED PRODUCER RESPONSIBILITY.**

Extended producer responsibility (EPR) is a policy highlighting the producer's responsibility for the post-consumer management of its products and its packaging.

This includes (1) shifting financial and management responsibility, with government and key stakeholder oversight, away from the public and upstream to the producer; and (2) providing incentives to producers to incorporate environmental considerations into the design of their products and packaging.

Producers with annual revenues greater than \$1 million or who produce more than 1 ton of covered products will be required to design, manage, and finance programs to collect and process waste that would normally burden state and local governments and taxpayers. Producers will cover the costs of waste management, clean-up, and awareness-raising measures.

Covered products include packaging, containers, paper, and food-service products, regardless of the recyclability, compostability, and type of material (including plastic, paper, glass, metal, etc.).

- **SEC. 12102. PRODUCER RESPONSIBILITY ORGANIZATIONS.**

The legislation will encourage producers to cooperate with other producers of similar products to take responsibility for their waste and implement cleanup programs with Environmental Protection Agency (EPA) approval. This will be done through Producer Responsibility Organizations (PROs). PROs will provide efficiencies and economies of scale by coordinating producers of similar products to design and finance their programs together.

PROs will be non-profit entities that are financed by fees on the participating producers. Fees will be assessed depending on producer company size and how wasteful and difficult to clean up their products are. PROs will be the responsible entities for management and cleanup costs, as well as any administrative costs of oversight from the EPA. Multiple PROs will be coordinated by the EPA or a coordinating body so that state and local governments do not interact with several different entities.

Advisory committees made up from a wide variety of stakeholders will prepare the Product Stewardship Plans on behalf of the PRO and submit these plans to the EPA for approval.

- **SEC. 12103. COVERED PRODUCT MANAGEMENT.**

Producer Responsibility Organizations will replace local government responsibility for the collection and management of covered product waste, recycling, and composting. The PRO is responsible for ensuring convenient collection that meets or exceeds current levels of convenience for customers.

- **SEC. 12104. NATIONAL BEVERAGE CONTAINER PROGRAM.**

Producers of beverages sold in beverage containers of any material, including plastic, metal, and glass, will be required to include a minimum 10 cent refund price on each beverage container.

Retailers will be charged this refund value as a deposit by the producer and will pass the charge onto consumers. Each time a beverage container is returned, the refund value will be refunded to the consumer. Any unclaimed or unreturned deposits will be kept by the responsible beverage Producer Responsibility Organization to re-invest in recycling programs and infrastructure.

States that have existing beverage container programs already in effect before the date of enactment of this act will be able to continue their program or join the federal program.

- **SEC. 12105. PRODUCT STEWARDSHIP PLANS.**

Producer Responsibility Organizations (PROs) will be required to develop EPA-approved Product Stewardship Plans that will be good for five years before they have to be renewed.

The Product Stewardship Plan will detail how each PRO will meet the minimum required performance targets for covered products.

The targets are set out as follows:

<b>Product Type</b>	<b>By 2027</b>	<b>By 2032</b>
All covered products except for paper	65% recycled	80% recycled
Beverage Containers and Paper	75% recycled	90% recycled
Industrially composted covered products	50% composted	70% composted

The Administrator will determine minimum required targets for the amount of packaging eliminated or offered in reusable packaging by each deadline.

- **SEC. 12106. OUTREACH AND EDUCATION.**

Producer Responsibility Organizations will have to conduct outreach and education to inform consumers about proper end-of-life management of covered products and beverage containers, the location and availability of curbside and drop-off collection opportunities, how to prevent litter, and recycling and composting instructions.

- **SEC. 12107. REPORTING.**

Producer Responsibility Organizations (PROs) will be required to make publicly available reporting on the effectiveness of their programs, including: the amount of products being sold in the United States; the management of those products, including recycling rates; data on the final destination of products; collection service vendors and locations; and others.

The EPA will be required to audit collection and recycling to account for waste from free riders and other entities who are not a part of a PRO and audit litter to determine which covered products continue to create pollution.

EPA will also prepare reports describing the impacts of these programs on state and local governments, including costs incurred and reductions in state and local taxes that result from a reduction in costs due to PRO services.

## **PART II—REDUCTION OF SINGLE-USE PRODUCTS**

- **SEC. 12201. PROHIBITION ON SINGLE-USE PLASTIC CARRYOUT BAGS.**

Beginning on January 1, 2023, covered retail and service establishments will be prohibited from providing plastic carry-out bags.

Exclusions will be made for bags used within an establishment to package bulk items, such as fruit, vegetables, and other similar items. Other exclusions will be permitted for garbage and pet waste bags.

All other non-plastic carryout bags will be taxed in section 3.

- **SEC. 12202. REDUCTION OF OTHER SINGLE-USE PRODUCTS.**

Beginning on January 1, 2032, covered retail and service establishments will be prohibited from providing plastic utensils. Plastic straws and alternatives to plastic utensils, including compostable utensils, will be available only upon request.

Also beginning on January 1, 2023, the Administrator will prohibit the following items:

- Expanded polystyrene (commonly known as plastic foam) for use in food service products, disposable consumer coolers, and shipping packaging. (There will be an

exception made for medical coolers and any necessary medical use as determined by the Secretary of Health and Human Services.);

- Single-use mini-shampoo, soap, and lotion provided by hotels and motels; and
- Non-compostable produce stickers.

- SEC. 12203. STUDY AND ACTION ON PLASTIC TOBACCO FILTERS AND ELECTRONIC CIGARETTES.

Not later than 2 years after the date of enactment, the Administrator, in conjunction with the National Institutes of Health, shall conduct a study on the environmental impacts and effectiveness of plastic tobacco filters and electronic cigarettes. Upon completion, the Administrator shall report to Congress the findings and detail steps that the EPA will take to reduce litter and the environmental impacts of these products.

### **PART III—RECYCLING AND COMPOSTING**

- SEC. 12301. RECYCLING AND COMPOSTING COLLECTION.

The Administrator, in consultation with Producer Responsibility Organizations, State & local governments, and affected stakeholders, shall issue guidance to standardize recycling and composting collection across communities and States.

- SEC. 12302. REQUIREMENTS FOR THE PRODUCTION OF PRODUCTS CONTAINING RECYCLED CONTENT.

Post-consumer recycled content will be incorporated into new **plastic** beverage bottles on the following schedule:

<b>Date</b>	<b>Post-Consumer Recycled Content Requirement</b>
2025	25%
2030	50%
2035	70%
2040	80%

For other covered products and beverage containers from other materials, the Administrator will coordinate with the National Institutes of Standards and Technology and other relevant federal agencies to study technical and safe minimum post-consumer recycled content standards and publish a report. Following the report, the Administrator will take action to implement minimum standards for those products and beverage containers.

- SEC. 12303. DESIGNING FOR THE ENVIRONMENT.

Producers will be required to design their products to minimize the impacts of extraction, manufacture, use, and end-of-life management. This includes eliminating toxic substances, reducing mixed-polymer and mixed-materials, and optimizing designs to use the minimum quantity of packaging possible.

- **SEC. 12304. PRODUCT LABELING.**

Within two years, producers will be required to include labels on their products that are easy to read and indicate whether the product is recyclable, not recyclable, compostable, or reusable. Products that are not recyclable shall not include confusing symbols, such as the universal chasing arrow symbol. The Administrator is authorized to enforce violations of these labeling requirements.

- **SEC. 12305. COVERED WIPE PRODUCTS**

Within two years after enactment of this legislation, industry is required to meet labeling standards for wet wipes and other similar products to ensure that are disposed of properly and not flushed.

- **SEC. 12306. RECYCLING AND COMPOSTING RECEPTACLE LABELING.**

Within two years, the EPA will develop guidelines for a national standardized recycling and composting labeling system for Producer Responsibility Organizations to use in public places on recycling and composting receptacles.

- **SEC. 12307. PROHIBITION ON CERTAIN EXPORTS OF WASTE.**

Plastic waste, plastic pairings, and plastic scrap will be prohibited from being exported to any country not a member of the Organization for Economic Co-operation and Development (OECD) or to a country to then be re-exported to a non-OECD member country. Any plastic waste, plastic pairings and plastic scrap that is exported to an OECD country must have prior informed consent and may not include contamination levels that disrupt the ability to recycle those wastes or hazardous or toxic substances.

## **PART IV—LOCAL GOVERNMENT EFFORTS**

- **SEC. 12401. PROTECTION OF LOCAL GOVERNMENTS.**

Nothing in this Act will prevent a local government from imposing stronger requirements, including higher bag fees or higher reuse/recycling/composting/collection targets.

- **SEC. 12402. CLEAN COMMUNITIES PROGRAM.**

The EPA will create program known as the “Clean Communities Program,” under which the Administrator shall leverage smart technology and social media to provide technical assistance to units of local government in cost-effectively identifying concentrated areas of pollution in that unit of local government and implementing source reduction solutions.

## **PART V—REDUCTION OF OTHER SOURCES OF PLASTIC POLLUTION**

- **SEC. 12501. STUDY AND ACTION ON DERELICT FISHING GEAR.**

Two years after the date of the enactment of this Act, the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration shall submit to Congress a report that includes an analysis of the scale of fishing gear losses by domestic and foreign fisheries; an evaluation of the ecological, human health, and maritime safety impacts of derelict fishing gear; and how those impacts vary and recommendations on management measures. On submission of the report, the Under Secretary shall publish in the Federal Register for public comment the report and a description of the actions the Under Secretary intends to take during the 1-year period after the date of publication to reduce litter from, and the environmental impacts of, derelict fishing gear.

- **SEC. 12502. MANDATORY FILTRATION STANDARD FOR CLOTHES WASHERS.**

By January 1, 2025, all new clothes washing machines sold in the U.S. are required to have a built-in filtration unit to catch microfiber pollution. Requires government-contracted washing equipment to meet this requirement by January 1, 2023, and industrial and commercial machines by January 1, 2024, through the purchase of new machines or retrofitting of existing machines. The Administrator will coordinate funding with other federal agencies to provide low-interest or forgivable loans to small businesses and low-income individuals to replace existing washing machines with ones with the built-in filtration units.

- **SEC. 12503. STUDY AND ACTION ON MICROFIBER POLLUTION REDUCTION.**

Within one year of the date of the enactment of this Act, the Administrator will establish a competitive grant program to carry out research on upstream best practices to reduce the generation of microfiber pollution during the production, lifetime use, and washing and cleaning of textiles. Eligible entities include institutions of higher education; nonprofits; State, local, and Tribal governments; for-profit organizations; and State and Federal agencies. Three years after the grants are distributed, the Administrator will submit a report to Congress detailing the results of the projects.

- **SEC. 12504. MICROPLASTICS PILOT PROGRAM.**

Directs the Administrator to establish a pilot program to test the efficacy and cost effectiveness of tools, technologies, and techniques to prevent the release of microplastics to the environment and remove microplastics from the environment. Tests will include natural and green infrastructure projects as well as mechanical removal and filtration systems. Eligible locations include stormwater, wastewater, and drinking water systems; ports, inland water ways, and other marine environments; and roadways and highways. Three years after the grants are distributed, the Administrator will submit a report to Congress detailing the results of the projects.

- **SEC. 12505. REDUCTION AND REUSE PILOT PROGRAM.**

Within 180 days of the enactment of this Act, the Administrator shall establish a pilot program to evaluate the efficacy and cost-effectiveness of tolls, technologies, and techniques to expand reuse and refill programs. Eligible programs can include expanding reuse and refill for cleaning materials, bulk food products, and beverages, as well as programs designed to eliminate the use of plastic produce bags and expand consumer knowledge about reuse and refill.

- SEC. 12506. REPORT ON INDUSTRY BEST MANAGEMENT PRACTICES FOR REUSE AND REUSABILITY.

Within three years of the enactment of this Act, and every five years thereafter, the Administrator will make publically available a report on industry best management practices related to reuse and reusability within the following sectors: food service (including take out, meal delivery, and meal kits), consumer food and beverages, and cleaning products, personal care products, and transportation or shipping of wholesale and retail goods.

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### **SEC. 3. IMPOSITION OF TAX ON CARRYOUT BAGS**

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#### **Subchapter D—Carryout Bags**

- SEC. 4056. IMPOSITION OF TAX.

All retailers, including those who sell food and consumer goods, will be required to charge a 10 cent tax on any carry-out bag. States or local governments that implement or have implemented a similar charge may seek a waiver. Retailers may keep 4 cents of the tax to offset the cost of more expensive carryout bags. Retailers who offer a carryout bag credit program under Sec. 6431 will be allowed to retain the entire 10 cent tax. Funds collected from the tax will be deposited in the Recycling and Litter Cleanup Trust Fund under Sec. 9512.

- SEC. 6431. CARRYOUT BAG CREDIT PROGRAM.

Retailers who offer a 5 cent credit program to customers for each reusable bag they bring to the store will be allowed to retain the entire 10 cent tax. Retailers must prominently advertise their program at the check-out and at all entrances.

- SEC. 9512. REDUCTION, RECYCLING, AND LITTER CLEANUP TRUST FUND.

The fund will be created and funded from the carryout bag tax. Funds will be distributed to make grants for distributing reusable carryout bags and for recycling, reuse, and composting infrastructure investment grants.

The Comptroller General of the United States will conduct a study on the effectiveness of the carryout bag programs and report back to Congress.

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#### SEC. 4. CLEAN AIR, CLEAN WATER, AND ENVIRONMENTAL JUSTICE

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- **A temporary pause of up to three years** will be put on the permitting of new and expanded industrial facilities that create new plastic, convert plastic into chemical feedstocks for new products or fuel, or burn or incinerate plastics for fuel or energy.
- The EPA will use the pause period to update needed regulations on these facilities to ensure minimal air and water discharges to protect frontline communities from direct and cumulative health, environmental, and economic impacts. Some of these regulations need updating while others are not in existence, such as prohibiting the discharge of plastic pellets from facilities directly into bodies of water.
- EPA action should be informed by a required study by the National Academy of Sciences and the National Institutes of Health on the direct and cumulative environmental and health impacts of the facilities, as well as best available technologies and practices to remediate or eliminate impacts. Requires the EPA to close any covered facilities that cannot be retrofitted to eliminate the identified impacts.