June 1, 2022

Truth In Labeling

Final Report and Recommendations

Submitted to the Oregon Legislature

This document was prepared by the Oregon Truth In Labeling Task Force.

The Truth In Labeling Task Force was created by Senate Bill 582 in the 2021 Legislature to study and evaluate misleading or confusing claims regarding the recyclability of products made on a product or product packaging. The study must include consideration of issues affecting accessibility for diverse audiences.

Executive Summary

Oregon's Plastic Pollution and Recycling Modernization Act (SB 582, 2021), or RMA, makes the state a leader in innovative approaches to recycling system transformation, aiming to reduce impacts on system workers, create more robust recycling markets and improve effects on human health and the environment.

Public confusion about what and how to recycle has been one of several root drivers of instability in Oregon's recycling system. That confusion stems in part from misleading and confusing labels. The RMA established the Truth In Labeling Task Force and directed its members to study this topic and make recommendations for legislation to the Legislature. The Task Force met between January 2022 and May 2022 and makes recommendations below to the Oregon Legislature. This is not recommended legislative text. Outside the scope of the RMA requirements, the Task Force also makes two recommendations to producer responsibility organizations or PROs – the nonprofits that will be organized to serve their producer members and satisfy several new compliance obligations under the RMA.

Recommendations

The following recommendations only apply *if* a producer (as defined under the RMA) decides to place a recyclability claim on a product or its packaging. If no recyclability claim is made on a product or packaging, then there are no requirements made of the producer in these recommendations.

The Task Force derived the following new definition of a recyclability claim – A producer who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is "recyclable," or any other like term, or through the use of a symbol (e.g., chasing arrows symbol) or by otherwise directing a consumer to recycle the consumer good (e.g., text-based claims). Any claim includes but is not limited to the resin identification code surrounded by chasing arrows. It would not include a RIC that adheres to the ASTM standard for the RIC, which does not include chasing arrows surrounding the resin code, instead having the resin code being surrounded by a solid equilateral triangle.

1. **If** a recyclability claim is made on a product or a package (text and/or symbol):
    a. **For items on the Oregon local government collection list** (the uniform statewide collection list is a subset of this list) – allow recyclability claims (text and/or symbol) and require all claims to follow standards for language, including instructions where needed.
    b. **For beverage containers covered by the bottle bill as defined in ORS 459A.700** – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
    c. **For items exclusively on the Oregon depot list** – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
        i. Instructions must say "drop-off recycling only" or "recycle separately" or similar.
    d. **For all other items -** prohibit recyclability claims; exemption allows the use of recycling symbol ONLY if surrounded by a circle with a 45-degree slash (universal "do not"). This would not apply to the use of the RIC within an equilateral triangle, as the code is described in the ASTM standard.
2. Mandate embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology, if adhering to all the above language – allow five years for compliance from July 1, 2025, when the PRO begins implementation of their plan.
3. Provide time for producers to prepare for any changes to be adopted – covers all above items.

4. Oregon Department of Environmental Quality (DEQ) should coordinate with other west coast states on the development of recycling acceptance lists.
5. Require DEQ to review enforceable federal statutory or regulatory recyclability labeling against state criteria within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements, subject to oversight by the Oregon Legislature.
6. Support labeling improvements at the federal level that align with Oregon's goals for Truth in Labeling.

Accurate labeling regarding claims of recyclability are helpful in ensuring proper consumer participation in the recycling system and ultimately in achieving the environmental benefits that come with recycling materials. It is the hope of the Task Force that producers of recyclable materials in Oregon continue to label them as such following the recommendations laid out in this report.

Members of the Legislative Assembly may request a copy of the full report by emailing rethinkrecycling@deq.oregon.gov. The report is also available online at the Truth In Labeling website.

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Tùy theo yêu cầu, cơ quan DEQ có thể cung cấp các tài liệu ở định dạng thay thế hoặc bằng ngôn ngữ khác ngoài tiếng Anh và tiếng Tây Ban Nha. Liên hệ với DEQ theo số 800-452-4011 hoặc gửi email đến deqinfo@deq.oregon.gov

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Task Force Members

Governor Appointed

Name	Organization	Represents
Dr. Anja Brandon (Vice Chair)	Ocean Conservancy	Environmental organization
Athena Petty	New Seasons Market	Producers
Dan Felton	AMERIPEN	Producers
Dave Larmouth	Recology	Recycling Industry
Dylan de Thomas (Chair)	The Recycling Partnership	Producers
Jenny Slepian	Eco-Products	Producers
Kristan Mitchell	Oregon Refuse and Recycling Association	Recycling Industry
Maya Buelow	Lane County	Local Government
Nicole Janssen	Denton Plastics	Recycling Industry
Shawn Miller	Miller Public Affairs	Producers
Commissioner Steve Kramer	Wasco County	Local Government
Thomas Egleston	Washington County	Local Government
William Posegate	Garten Services	Recycling Industry

Legislators

Name	Organization	Represents
Sen. Lee Beyer (non-voting)	Oregon Legislature	Oregon Senate
Rep. Paul Evans (non-voting)	Oregon Legislature	Oregon House

DEQ Task Force Staff

Abby Boudouris – Senior Legislative Analyst
Alex Bertolucci – Truth In Labeling Task Force Project Manager
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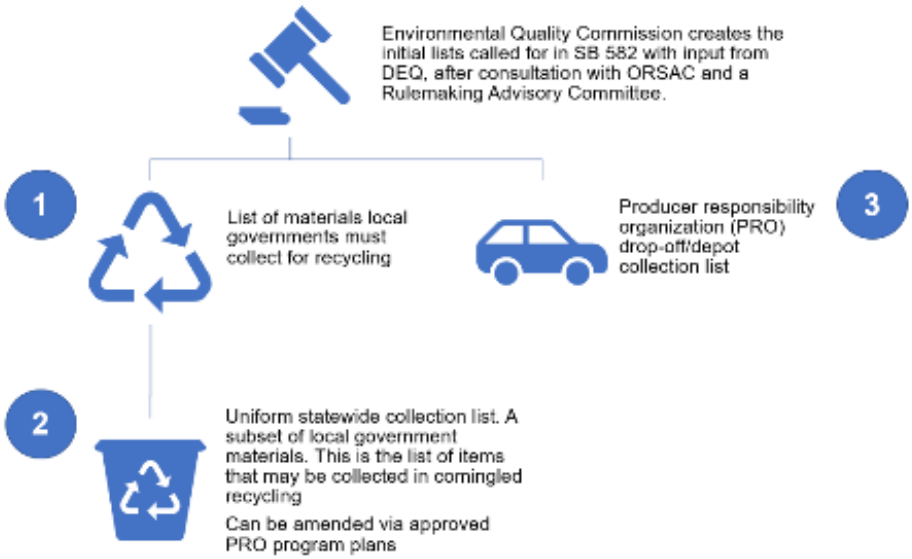
Background

The Oregon Legislature passed Senate Bill 582, the Plastic Pollution and Recycling Modernization Act, during the 2021 legislative session. Governor Brown signed the bill into law on August 6, 2021, and it took effect on January 1, 2022. The Truth In Labeling Task Force is one of the first outcomes of this new law. Many of the other features of the Act will go into effect in 2025.

The RMA is a systemwide update that will make recycling easier for the public to use, expand access to recycling services, upgrade the facilities that sort recyclables, and create environmental benefits while reducing social and environmental harms, such as plastic pollution. Producers and manufacturers of packaged products, printing and writing paper and foodservice ware will share responsibility with local governments, recyclers, and waste generators to pay for necessary improvements and help ensure recycling is successful in Oregon.

The Recycling Modernization Act establishes consistent statewide lists of materials accepted for recycling, as shown in the graphic to the right. These lists will give all people in Oregon the ability to recycle the same set of materials. Consistency in materials acceptance lists should help producers reduce misleading claims because there will no longer be a patchwork of accepted recyclable materials throughout the state.



Section 58 of the Act repeals historic statutory language requiring plastic packaging to be labeled with a resin identification code or RIC inside the chasing arrows symbol. This is the familiar chasing arrows symbol surrounding a number or resin identification code and a resin abbreviation, such as the one shown to the right. The Society of the Plastics Industry, now the Plastics Industry Association, created and championed these laws requiring this labeling in the 1980s, and 40 states, including Oregon, passed laws requiring its use. While RICs are needed for recycling processors to identify different types of plastics, because the RIC are surrounded by the chasing arrows symbol, they are now widely understood by the public as an indication that the material can be recycled. In reality, many items labeled with these codes have no practical or even technical recycling pathway. When consumers misunderstand those labels and place products in their recycling collection systems that are not recyclable, those items contaminate the materials that are recyclable, making it harder and more expensive to deliver clean recyclables to the market. This is what is meant by contamination in the context of the Truth in Labeling Task Force discussions (see the broader contamination definition from the RMA on page 15).

Resin identification code or RIC

Given that 36 other states still require the RIC placed within chasing arrows and the national nature of our packaging supply chains, Oregon's repeal of the law requiring the chasing arrows and RIC alone will do little to impact confusing labeling. However, at least Oregon law no longer requires producers to use labels that lead to contamination.

The Truth In Labeling Task Force is one step in the implementation of the RMA. The Task Force studied and evaluated misleading and confusing claims regarding the recyclability of products made on a product or packaging. The Task Force also considered labeling issues affecting accessibility for diverse audiences.

The Task Force met nine times between January and May of 2022. This report outlines the work of the Task Force and its final recommendations.

Current recycling labeling in Oregon

As noted above, the 2021 Oregon legislature repealed the statute requiring the RIC surrounded by the chasing arrows symbol on all rigid plastic containers. Currently, Oregon has no requirements for how materials are labeled; therefore, the decision falls to producers who can choose to label their recyclable items in many ways. One approach by brand owners is the voluntary use of the How2Recycle label, which uses nationwide data to determine if an item can claim recyclability based on the US Federal Trade Commission Green Guides, among other criteria. The FTC does not endorse the How2Recycle label. Still, other producers might have their own label for recyclability or use nothing at all.

However, the RIC surrounded by the chasing arrows symbol remains ubiquitous due to ongoing labeling law requirements in 36 states. Despite most of these states generally limiting this requirement to a subset of plastic packaging – typically, rigid plastic containers – the RIC in the chasing arrows symbol is also found on many different types and formats of plastic packaging and products.

Furthermore, some producers also use the chasing arrows symbol – understood by many consumers to mean an item is *recyclable* – to show an item is *made with recycled content* even if the item is not recyclable.

Finally, some products and packages are labeled in accordance with the American Society for Testing and Materials, or ASTM, which uses a RIC inside a triangle (see example). Adopted in 2013, the goal was to reduce consumer confusion about recyclability by eliminating the chasing arrows while preserving RIC information for recycling processors. However, the use of the triangle – quite similar to the chasing arrows symbol – has not reduced consumer confusion. The Task Force recognized this as a continuing concern, but not one that is corrected in their recommendations.

ASTM triangle

This patchwork of labels and lack of standards leads to confusing and misleading recycling labels that confuse consumers and lead to contamination in the recycling system. Before making the recommendations in this report, the Truth In Labeling Task Force evaluated numerous recycling labels, laws, and practices worldwide. The Task Force also reviewed how misleading labeling has led to legal action. Oregon's existing ability to bring legal action in response to potentially misleading or deceptive recyclability claims falls under consumer protection statutes located at ORS chapter 646.605 through .665. These are known as the Unfair Trade Practices Act or UTP. The UTP contains provisions that allow individuals who have suffered damages because of a violation of the act to bring a civil action. Violations can also be investigated by the state's Attorney General or a district attorney. Task Force members and DEQ, in consultation with the Oregon Department of Justice, have not identified any cases of how the UTP has been used to protect the public against misleading or deceptive claims of recyclability.

The US Federal Trade Commission has rules that establish safe harbor practices relating to recyclability claims under federal law. These rules are known as the FTC Green Guides. The FTC Green Guides could be used to show what the federal government sees as misleading, or not, regarding recyclability claims. Therefore, it might be challenging to establish that a claim complying with the FTC Green Guides violates the Oregon UTP. A possibly important consideration in bringing a UTP action related to misleading recycling claims may be that a

claim of a violation of the UTP involving misrepresentation must also prove that the misrepresentation was "material to consumer purchasing decisions." The Oregon case, *State ex rel. Rosenblum v. Living Essentials, LLC*, 313 Or App 176 (2021) is relevant to this topic and is currently on appeal to the Oregon Supreme Court.

Labeling impacts on the recycling system

A 2018 survey in the Portland Metro region found that most community members believed they could recycle materials that the collection program actually does not accept. Eighty-nine percent of people surveyed were somewhat or very confident that a frozen food box could be recycled, and 62% were confident that a paper coffee cup could be recycled. Both items, however, are not accepted for recycling anywhere in Oregon, but are in some areas in Washington State. Both are frequently labeled with the chasing arrows symbol.

Likewise, the majority of people surveyed were confident that square plastic tubs, plastic berry containers, lids, and plastic to-go containers could be recycled. Again, these items are considered a contaminant to the recycling system across the entire state; these items are also typically labeled with the RIC with the chasing arrows symbol.

There is survey evidence and an abundance of anecdotal evidence that labels are a significant source of confusion, leading to contamination. However, labels could also contribute to contamination reduction. A national survey conducted in 2020 found that 67% of consumers polled looked at the recycling label before discarding an item. This report highlights the opportunity for accurate labeling to reduce contamination of Oregon's recycling stream.

Below are four primary impacts of contamination on the recycling system:

- The first is the **safety impact on the workers in commingled recycling facilities**, who may have to remove contaminants by hand.
- The second impact is **on the economics of processing facilities**. Removing contamination makes the processing of mixed recyclables more expensive, sometimes so expensive that communities choose to drop materials from their recycling collection service.
- While processing facilities employ several techniques to remove contamination, no outbound bale is completely free of some contamination. This leads to the third impact, which can be **a complete loss of end markets to consume recycled materials.** This is what occurred in January 2018 via China's National Sword policy, whereby China closed its doors to its market - the largest recycling market in the world - due to excess contamination. At a minimum, when end markets receive contamination, it increases their costs.
    - For example, a paper mill in Longview, Washington, a major end market for mixed paper collected from Oregon, recently stated during the Recycling Steering Committee, that it is spending millions of dollars annually paying for overly contaminated feedstocks and then spending millions more removing and disposing of those contaminants. This added expense has made the use of recycled feedstock increasingly unfavorable from an economic perspective and led the mill to call for much stronger action to reduce contamination.
- A fourth significant consequence of contamination is the **negative impact of mismanaged materials on the environment and people downstream** of our recycling processing system. The potential for mismanagement of materials when exported is noteworthy. While domestic end markets such as a local

mill will screen out contamination and manage it safely and appropriately, the same is not necessarily true in other countries.

- A 2020 study published in *Science Advances* found that the US ranks as high as third among countries contributing to the coastal plastic pollution crisis when its scrap plastic exports are included in the analysis. Based on 2016 data, 88% of US plastics recycling exports went to countries struggling to effectively manage, recycle or dispose of plastics, meaning much of these exports are not contained and end up flowing into the ocean as part of the 11 million metric tons of plastics that enter the ocean each year.

Oregon's 2050 Vision

Oregon's 2050 Vision and Framework for Action, adopted by the Environmental Quality Commission in 2012, envisions an Oregon in 2050 where people produce and use materials responsibly—conserving resources, protecting the environment, and living well. Reducing public confusion and contamination in the recycling system is an important part of achieving the 2050 Vision. The plan includes a Framework for Action that identifies pathways, principles, and actions to achieve the 2050 Vision. This Framework is a flexible platform to guide progress toward the 2050 Vision.

California, federal, and other states' actions on labeling

California: In 2021, the California legislature passed Senate Bill 343 to address the labeling of products and packaging, and it was signed into law. California's SB 343 declares the use of the chasing arrows symbol, the chasing arrows symbol surrounding a resin identification code, or any other mark or statement indicating recyclability to be deceptive or misleading unless the product or packaging is recyclable according to statewide recyclability criteria. The law aims to ensure that claims related to an item's recyclability are truthful and that consumers receive accurate and helpful information about recycling products and packaging.

As SB 343 takes effect, which on review of the law will begin in 2026 and into the future, and given California's economic and geographic size, Oregon should see some of the new law's impacts because many distribution networks servicing California also service Oregon. Oregon expects to see fewer items labeled with the chasing arrows or recyclability claims on non-recyclable products or packaging. There may be instances where California allows a label indicating the item is recyclable, but the item isn't accepted for recycling in Oregon. However, in many cases, the effective implementation of SB 343 by California should reduce misleading or confusing claims on items sold into Oregon.

Federal: As stated earlier, the federal government regulates confusing or misleading claims through the Federal Trade Commission. The FTC maintains the Green Guides for making environmental claims. Because the guides allow positive recycling claims to be made, in part, when 60% of communities nationally have access to recycling an item, some items that are not recyclable in Oregon will likely be labeled with recyclability claims. Due to the patchwork of access to recycling across the United States, the Green Guides have not proven effective in reducing confusing or misleading claims in Oregon.

Other states: In 2021, Maine passed and signed an extended producer responsibility or EPR bill that will incentivize labeling of packaging material to reduce consumer confusion and creates other incentives consistent with generally accepted industry standards.

Task Force process and work products

The Task Force held nine public meetings via Zoom from January 2022 through May 2022. Task Force meetings included presentations from state and regional solid waste and recycling staff and industry experts. The Task Force emphasized the importance of transparency and public participation in the process. Meetings were open to the public and well-attended, with up to 90 people attending, representing elected officials, producers, state and local governments, environmental organizations, recycling companies, and interested members of the public. The list of attendees for each meeting is included in the meeting summaries. Opportunities for public input were provided at all but the May 20 work session meeting. In addition, public review of the draft proposal was specifically requested, and written input was accepted, along with an additional special meeting time added for the sole purpose of taking spoken comments. All Task Force meeting materials, including meeting summaries, presentations and meeting recordings, as well as the written public input submitted on the draft proposal, are available on the Task Force website, with many included in the appendices below.

The focus of meetings in January, February, and part of March was to develop a shared background and understanding of existing laws and labels and review what types of misleading and confusing recycling claims exist. In addition to information sharing and discussion, the Task Force adopted rules governing their meetings. Questions about labeling were solicited in pre-meeting surveys and during the first two meetings. These questions, along with their answers, were compiled by DEQ and are included in the appendix.

The second half of the March meeting and the full April and May meetings focused on presenting proposals solicited by the Chair and Vice Chair from all Task Force members, editing, discussing, and working towards a single recommendation. In total, six proposals from five Task Force members were submitted; all are noted in the report below and are included in the appendix. In addition, a table outlining elements of all submitted proposals and their outcome is also located in the appendix. The raw survey data related to ranking and voting for the proposals is also available upon request from DEQ.

Evaluation of misleading or confusing recycling claims

The Task Force reviewed several labels on products and packaging. The labels ranged from multi-component raw chicken packaging and batteries to dog toys and boxed wine. Below is a selection of pictures and explanations of why each label is confusing or misleading for Oregon consumers.

PET insulation foam is often used in meal delivery boxes and is not currently collected for recycling curbside anywhere in Oregon. This item's claim that it is "curbside recyclable" and the use of the chasing arrows symbol across its face is misleading and confusing to consumers.

This toothpaste tube claims it is a #2 high destiny polyethylene recyclable item. Currently, this would be removed from most or all Oregon material recovery facilities or MRFs, the facilities that sort mixed recyclables, as contamination. However, this item could, in the future, possibly be included on Oregon's statewide list – for example, if most toothpaste tubes transitioned to this format, so that MRFs knew not to reject them, and if the producer responsibility organizations requested, and DEQ, in consultation with the Oregon Recycling System Advisory Council, agreed to add the material to the uniform statewide collection list. Until such time, this label is misleading and leads to contamination within the recycling system.

Some items like this battery have confusing or misleading claims because of federal law. Batteries are not widely accepted curbside in Oregon. However, because the federal Mercury-Containing and Rechargeable Battery Management Act requires a chasing arrow symbol on batteries, the state does not have authority to regulate this type of labeling.

Multi-material packaging, such as this doorbell kit, can be confusing for consumers when the directions are not clear. The package says "100% recyclable" however, the plastic portion of this packing is not widely accepted for recycling in Oregon.

The second part of the label with the "separate paper from plastic before recycling" provides consumers with clear directions, something the Task Force supports.

The label on this box uses the chasing arrows symbol, widely understood by consumers as the recycling symbol, to convey it is an environmentally friendly product. The use of the chasing arrows in this form is confusing and misleading because the inner mylar-type pouch cannot be recycled. Consumers could be confused about what the chasing arrows are conveying here.

Issues affecting accessibility for diverse audiences

In reviewing the second half of their legislative charge, the Task Force looked at what type of issues face diverse audiences regarding recycling labeling. Many members expressed personal struggles when using recycling labeling. In addition to anecdotal evidence, the Task Force reviewed other governmental and relevant research on accessibility guidance. Below is a list of accessibility issues the Task Force identified and hopes to address with their recommendations.

- Use of symbols that people of different backgrounds universally understand.
- The size of images and font.
- Access to technology for smart labeling.
- Colors that people with color vision deficiency (color blind) can differentiate.
- Common, easy-to-understand words, symbols, abbreviations, and acronyms.
- Easy to read items for people with limited literacy.
- Location and prominence of labeling and symbols on the packaging.

Recommendations to the Legislature

The Task Force concludes that legislation is necessary to address confusing and misleading recycling claims for Oregon consumers for packaging. Below are the recommendations of the Task Force.

The following recommendations only apply *if* a producer (as defined under the RMA) decides to place a recyclability claim on a product or its packaging. If no recyclability claim is made on a product or packaging, then there are no requirements made of the producer in these recommendations.

The Task Force derived the following new definition of a recyclability claim – A producer who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is "recyclable," or any other like term, or through the use of a symbol (e.g., chasing arrows symbol) or by otherwise directing a consumer to recycle the consumer good (e.g., text-based claims). Any claim includes but is not limited to the resin identification code surrounded by chasing arrows. It would not include a RIC that adheres to the ASTM standard for the RIC, which does not include chasing arrows surrounding the resin code, instead having the resin code being surrounded by a solid equilateral triangle.

1. **If** a recyclability claim is made on a product or a package (text and/or symbol):
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        i. Instructions must say "drop-off recycling only" or "recycle separately" or similar.
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2. Mandate embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology, if adhering to all the above language – allow five years for compliance from July 1, 2025 when the PRO begins implementation of their plan.
3. Provide time for producers to prepare for any changes to be adopted – covers all above items.
4. Oregon Department of Environmental Quality should coordinate with other west coast states on the development of recycling acceptance lists.
5. Require DEQ to review enforceable federal statutory or regulatory recyclability labeling against state criteria within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements, subject to oversight by the Oregon Legislature.
6. Support labeling improvements at the federal level that align with Oregon's goals for Truth in Labeling

Accurate labeling regarding claims of recyclability are helpful in ensuring proper consumer participation in the recycling system and ultimately in achieving the environmental benefits that come with recycling materials. It is the hope of the Task Force that producers of recyclable materials in Oregon continue to label them as such following the recommendations laid out in this report.

Definitions

- **Recyclability claim** – A producer who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is "recyclable," or any other like term, or through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the consumer good. Any claim includes but is not limited to the resin identification code surrounded by chasing arrows. It would not include a RIC that adheres to the ASTM standard for the RIC, which does *not* include chasing arrows surrounding the resin code, instead having the resin code being surrounded by a solid equilateral triangle.
- **Contamination** – The presence of one or more contaminants in a recycling collection or commodity stream in an amount or concentration that negatively impacts the value of the material or negatively impacts a processor's ability to sort that material. See RMA Section 2(5).
- **Commonly used smart labeling technology** – Any type of technology that provides information beyond the use of a physical label. Common technologies include those that most consumers can use without special readers. Examples include Radio Frequency Identification, Quick Response or QR codes, digital watermarking, and Near Field Communication tags, many of which can be read by consumers using widely-available smartphones.
- **Eco-modulation** – The adjustment of fees in an EPR system to incentivize, or disincentivize, environmental impact from packaging design decisions of producers. Packaging design elements that could be eco-modulated include:
    - Recycled content
    - Renewably sourced content
    - Reusability or durability
    - Recyclability
    - Recyclability labeling
    - Lifecycle greenhouse gas emissions

Labeling guidance for accessibility:

If a recyclability claim is made, to ensure legibility and accessibility, the labeled claim must meet the following criteria:

- Text appearing with the recyclability claim is set off in a box by use of hairlines and must be all black or one-color type, printed on a white or other neutral contrasting backgrounds whenever practical.
- Typography should be at least 8 point with 1 point of leading. Footnotes may be no smaller than 6 point with 1 point leading. In order to fit some formats, the typographic may be kerned as much as -4 (tighter kerning reduces legibility). Any legible type style may be used.
- If the chasing arrows symbol is used, with or without a 45-degree angle slash, it must be at least 0.6 cm wide.
- If the consumer must take action before recycling the product (e.g., removing a label or lid), clear instructions for what steps are needed must be provided.

The criteria above are designed to complement the incorporation of commonly-used smart labeling technologies on labels. These smart labels should not be used in place of accurate recyclability claims on products or packaging. Rather, they should be used to provide consumers with additional information.

In developing these recommendations, the Task Force reviewed other standardized labeling practices for recyclability claims and other on-packaging required labeling. One area identified by the Task Force as having robust and standardized labeling guidance was nutrition labeling (guidance developed by the US Food and Drug Administration). The Task Force recommendations for text-based recyclability claims are based on meeting the same legibility and accessibility criteria as these nutrition guidelines (the first two bullets above). For symbol-based recyclability claims, the Task Force recommendations are based on international standards for recycling symbols or logos, relying heavily on the rigorous guidance for the French Triman recycling logo.

French Triman recycling logo

The Task Force recognizes that packaging and products are subject to other regulations on labeling depending on their contents (e.g., The Fair Packaging and Labeling Act, the Federal Hazardous Substances Act, and The Federal Food, Drug, and Cosmetic Act, linked in the appendix). It is the goal of the Task Force that these recommendations are supplemental to existing policies and provide the same level of standardization and accessibility in recyclability claims that are mandated for other aspects of product labeling and ideally do not conflict with those existing policies.

Liability recommendation

Liability for package recycling labeling requirements should follow the producer that is responsible or has accepted responsibility for joining the Producer Responsibility Organization set forth in the RMA (SB 582, 2021 legislative session). Section 3 of Enrolled SB 582 determines the producer of covered products. Furthermore, Section 4 (3) and (4) allow a producer to contractually, or otherwise, designate another producer responsible for that covered product if they have registered with the producer responsibility organization responsible for that covered product. Section 4 (3) and (4) contain broad language to allow retailers to contract with a manufacturer to be the responsible producer for private label (brand) products, just like in Enrolled House Bill 2344 (enacted in the 2021 legislative session) – the wipes "do not flush" bill. Enrolled HB 2344 defined the "covered entity" as a manufacturer of a covered product and a wholesaler, supplier, or retailer that has

contractually undertaken responsibility to the manufacturer for the "do not flush" labeling of a covered product.

In conclusion, liability for package recycling labeling requirements should align with both Section 3 and Section 4 (3) and (4) of the RMA, to be consistent with existing policy.

Civil penalty enforcement

The Task Force recommends that violations in truth in labeling provisions follow similar product stewardship enforcement where DEQ has been granted civil penalty authority and that the legislature shall enact the amount of civil penalty violation as follows:

- Add a new provision under ORS 459.995 (1) (h) for civil penalty authority.
- Any producer who violates this act (Truth in Labeling), or any rule adopted under this act, incurs a civil penalty up to $X per day for each day of the violation.
- The Task Force left the amount of civil penalty blank for determination by the Oregon Legislature.

Recommendations to the Producer Responsibility Organizations

Although the RMA only requires the Task Force to produce a final report and recommendations for legislation, members felt it important to make two recommendations to producer responsibility organizations– the nonprofit membership organizations that will be organized to serve their producer members and satisfy several new compliance obligations under the RMA. These are only recommendations.

1. PROs are encouraged to run statewide advertising campaigns to teach Oregonians about label changes. This does not preclude, supersede, or conflict with existing RMA obligations to provide for statewide advertising and communications regarding recycling more broadly.
2. Use eco-modulation of membership fees to support recycling labeling best practices
    a. Preferred or standardized labeling practice equals a lower fee. Poor labeling practices equals a higher fee.
    b. Provide incentives via eco-modulation for producers using embedded consumer-facing recyclability labeling via easily accessible smart-labeling technology (e.g., QR codes).

Proposals Considered But Not Included in Recommendations

The Task Force considered and voted on numerous elements included in six submitted proposals before reaching the recommendations offered in this report. The process of voting on proposal elements was done mostly between meetings via surveys that generally allowed for Task Force members to vote to: 1. Support as is 2. Support with changes; 3. Neutral; 4. Oppose; 5. Oppose with changes. Task Force members could also comment with questions and suggestions. At meetings, there was spirited discussion about some of the proposals and elements offered.
A table summarizing the elements considered – some included and some rejected – is found in the appendix, titled, *Compilation of all proposal elements and their outcome in the final proposal.* All proposals offered and considered may be found in the appendix.

Implementation

Implementing the Truth In Labeling Task Force recommendations will not be successful without enabling legislation and subsequent implementation and enforcement. Meaningful and successful implementation will require identifying and dedicating ongoing and sustainable state funding to the Attorney General's office or DEQ. In addition, implementing the Task Force recommendations will not be successful without appropriate partnerships.

Conclusion

The Truth In Labeling Task Force was established to study and evaluate misleading or confusing claims regarding the recyclability of products made on a product or product packaging and considerations of issues affecting accessibility for diverse audiences. Over the past five months, Task Force members reviewed background documents and heard presentations on the Recycling Modernization Act, labeling legislation in California, smart labeling technology, current recycling laws and much more. They put forward proposals, debated and narrowed them down to a set of recommendations found above. The Task Force offers these recommendations to provide accurate, accessible labeling for Oregon consumers and should allow producers who sell products and packaging into Oregon to also be compliant with other states' laws.

The Task Force was disappointed by the paucity of research and recommendations surrounding accessibility in labeling requirements. The Task Force hopes these recommendations are the beginning rather than the end of discussions on accessibility to ensure that all Oregonians have access to the information they need to fully participate in our recycling system. Further, there were no recommendations or best practices identified for how to integrate commonly used smart labeling technologies into labels to ensure accessibility and comprehension. The Task Force hopes this is a question that can be addressed by a diverse group of interested parties, including producers, recyclers, disability advocates, and non-English speakers.

Recommendations

The following recommendations only apply *if* a producer (as defined under the RMA) decides to place a recyclability claim on a product or its packaging. If no recyclability claim is made on a product or packaging, then there are no requirements made of the producer in these recommendations.

The Task Force derived the following new definition of a recyclability claim – A producer who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is "recyclable," or any other like term, or through the use of a symbol (e.g., chasing arrows symbol) or by otherwise directing a consumer to recycle the consumer good (e.g., text-based claims). Any claim includes but is not limited to the resin identification code surrounded by chasing arrows. It would not include a RIC that adheres to the ASTM standard for the RIC, which does not include chasing arrows surrounding the resin code, instead having the resin code being surrounded by a solid equilateral triangle.

1. **If** a recyclability claim is made on a product or a package (text and/or symbol):

a. **For items on the Oregon local government collection list** (the uniform statewide collection list is a subset of this list) – allow recyclability claims (text and/or symbol) and require all claims to follow standards for language, including instructions where needed.
b. **For beverage containers covered by the bottle bill as defined in ORS 459A.700** – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
c. **For items exclusively on the Oregon depot list** – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
    i. Instructions must say "drop-off recycling only" or "recycle separately" or similar.
d. **For all other items -** prohibit recyclability claims; exemption allows the use of recycling symbol ONLY if surrounded by a circle with a 45-degree slash (universal "do not"). This would not apply use of the RIC within an equilateral triangle, as the code is described in the ASTM standard.

2. Mandate embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology, if adhering to all the above language – allow five years for compliance from July 1, 2025, when the PRO begins implementation of their plan.
3. Provide time for producers to prepare for any changes to be adopted – covers all above items.
4. Oregon Department of Environmental Quality should coordinate with other west coast states on the development of recycling acceptance lists.
5. Require DEQ to review enforceable federal statutory or regulatory recyclability labeling against state criteria within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements, subject to oversight by the Oregon Legislature.
6. Support labeling improvements at the federal level that align with Oregon's goals for Truth in Labeling

Accurate labeling regarding claims of recyclability are helpful in ensuring proper consumer participation in the recycling system and ultimately in achieving the environmental benefits that come with recycling materials. It is the hope of the Task Force that producers of recyclable materials in Oregon continue to label them as such, following the recommendations laid out in this report.

As with any set of recommendations from a body such as the Truth In Labeling Task Force, if recommendations are followed, it could lead to legislation that would both support labeling best practices for producers working to be in compliance with other state's labeling laws, such as California's SB 343, and reducing the prevalence of labels that are confusing or misleading for Oregon consumers.

Task Force members look forward to continued engagement on labeling topics with the Oregon Legislature in the months and years to come.

Appendix

List of presenters

- Cheryl Grabham, Program Manager, Materials Management – Product Stewardship Team, Oregon DEQ
- Dan Brown, Manager of the Knowledge Integration Section, CalRecycle
- David Allaway, Senior Policy Analyst, Materials Management, Oregon DEQ
- Kim Holmes, Principal Consultant, 4R Consulting
- Patrick Krieger, Vice President, Sustainability, Plastics Industry Association
- Steve Alexander, President & CEO, Association of Plastic Recyclers

Public Input

After requesting public input, the following community members and organizations responded. Their full comments are on the TIL website.

Jeanne Roy	Nicholas Georges	David Thorp	Patrick Krieger	Paloma Sparks
Community member	Household & Commercial Products Association	American Beverage Association	Plastics Industry Association	Oregon Business & Industry

Judy Skinner	Sean Daoud	Carol Patterson	Jared Rothstein	Kim Holmes
Master Recycler	Institute of Scrap Recycling Industries	Foodservice Packaging Institute	Consumer Brands Association	4R Sustainability

Additional definitions

Thank you to Laura Leebrick of Rouge Disposal, Inc. for providing these definitions to help the Task Force better understand garbage and recycling jargon.

- **Curbside & Depot** (also referred to as public depot, or drop off) refer to the location where we collect material from "generators" (aka – the public)
- **Commingle vs. Segregated** refers to the manner in which the material is collected – commingle means multiple materials mixed together in one vessel (cart or commercial container), and segregated means that it's a single material type (like corrugated cardboard, glass, or newsprint) collected in one vessel. This can happen either curbside or at depots.
- **Source Separated vs. Source Segregated** – this one is confusing – but the first one simply refers to recyclable material that has been separated from solid waste (garbage) for the purposes of collection. The second refers to material that has been broken down into its individual material types by the generator for the purposes of collection for recycling. I have always interpreted "source" to refer to the "generator" of the discarded materials.

Compilations of confusing labeling research

- A Global Mapping and Assessment of Standards, Labels and Claims on Plastic Packaging
- Engaging Middle America in Recycling Solutions
- Launching America's Recycling Moon Shot

- Reduce. Reuse. Confuse.
- US Roadmap to 2025

Compilations of future labeling technology or processes

- Current and Future Use of Smart Labeling Technology to Enable the Circular Economy, *provided by Kim Holmes*
- Pioneering digital watermarks for smart packaging recycling in the EU.

Background questions and answers

1. Labeling lawsuits, consumer protection perspective, legal pathways
    a. Calif. consumers sue [The Coca-Cola Company] over plastic bottles' 'deceptive' recycling labels
    b. Class action against Keurig's recyclability single-serving coffee pod claims
        i. Settlement highlights are below. Additional supporting documents are attached to the email.
        ii. Label changes: larger and stronger qualifying language ("Check locally - not recycled in many communities"). Note that this is the same language as the Canadian settlement.
        iii. Changes to other advertising and marketing
        iv. $10 million settlement fund to pay claims of class members (minimum $5 without proof of purchase, up to $36 with proof of purchase), costs of notice and administration, incentive awards to the plaintiffs, and attorneys' fees and costs, with any remaining going to the Ocean Conservancy (75%) and Consumer Reports (25%).
    c. Keurig Canada to pay $3M fine for misleading recyclability claim
    d. TerraCycle and brands settle California labeling lawsuit
    e. Greenpeace v. Walmart – deceptive labeling
    f. Earth Island Files Lawsuit Against BlueTriton Brands (Formerly Nestlé Waters) for False Advertising
    g. DEQ has requested analysis by DOJ and hopes to share that a future Task Force meeting
2. Potential cost to change molding and labels
    a. Research found that medium- to high-volume injection molds, those with an output ranging from 5,000 to 100,000 units, can cost from $3,000 to $20,000. Link
3. APR Design Guidelines
    a. https://plasticsrecycling.org/apr-design-guide
4. Holy Grail 2.0, DigiMark, QR codes and smart labeling (labeling innovation)
    a. Digital Watermarks Initiative HolyGrail 2.0, Revolutionizing Sorting and Recycling - YouTube
    b. Invisible barcodes recycling story BBC News - YouTube
    c. Circular Economy for packaging - Pioneering Digital Watermarks for intelligent sorting and recycling - YouTube
5. Flushable wipes HB 2344 (OR 2021) (enforcement method)
    a. Oregon HB 2344 Section 3 on enforcement.
        i. A city, county or special district that provides wastewater service has exclusive and concurrent authority to enforce compliance with the requirements.
        ii. Before bringing an action to recover a civil penalty, a written notice of violation shall be sent to the alleged violator. If the covered entity continues to sell or display for sale the packaging, then enforcement may occur.

iii. A civil penalty of not more than $2,000 may be issued for a first violation that occurs between 90 days and 120 days after the date of the notice;
iv. An additional civil penalty of not more than $5,000 for a second violation or for a first violation that continues for more than 120 days after the date of the notice; and
v. An additional civil penalty of not more than $10,000 for a third and any subsequent violation or for a first violation that continues during any part of each 30-day period that follows the period described in (iv) above.
vi. Cumulative penalties for the same violation (from multiple cities, counties or special districts) may not exceed the limits described above.
vii. Local governments may separately recover reasonable enforcement costs and attorney fees.

6. More on California SB 343 and how items are identified as "recyclable" (thereby allowing claims of recyclability).
    a. Factsheet
7. Information on the California Statewide Commission on Recycling Markets & Curbside Recycling
    a. Resource Recycling article about California Statewide Commission on Recycling Markets & Curbside Recycling who provided recommendations for ways to move forward similar to Oregon's Recycling Steering Committee.
    b. Statewide Commission on Recycling Markets and Curbside Recycling
8. Metro local recyclability messaging study
    a. Metro recycling behavior research
        i. Page 28 of the DHM slides suggests that labels are not the primary cause of contamination/confusion.
9. Recycling Pulse research from the Shelton Group
    a. Engaging Middle America in Recycling Solutions
        i. Slide 54 of this research shows that 67% of people surveyed always or sometimes look at recycling labeling before making a final decision to recycle or discard.
10. How is the statewide recycling list being created/recyclability determination?
    a. Please refer to Section 22 of the Recycling Modernization Act
    b. New DEQ web page
    c. Criteria for DEQ to consider when evaluating items for the statewide recycling list.
        i. Section 22 of the RMA (3) In determining whether a material should be included in a commingled recycling program for the uniform statewide collection list, collected separately, collected on-route or collected at a recycling depot, or whether a covered product should be collected by a producer responsibility organization under subsection (1)(b) of this section, the Commission shall consider:
        (a) The stability, maturity, accessibility and viability of responsible end markets;
        (b) Environmental health and safety considerations;
        (c) The anticipated yield loss for the material during the recycling process;
        (d) The material's compatibility with existing recycling infrastructure;
        (e) The amount of the material available;
        (f) The practicalities of sorting and storing the material;
        (g) Contamination;
        (h) The ability for waste generators to easily identify and properly prepare the material;

(i) Economic factors;
(j) Environmental factors from a life cycle perspective; and
(k) The policy expressed in ORS 459.015 (2)(a) to (c)

11. Larger implementation of RMA
    a. See details on DEQ's website
12. Federal Trade Commission Green Guides update.
    a. According to the Commission's regulatory review schedule, the Green Guides are scheduled for review in 2022, but the Commission has not made any public announcements regarding initiating the review.
13. Federal labeling regulations (submitted by Dan Felton from AMERIPEN)
    a. The Fair Packaging and Labeling Act (FPLA) includes type size requirements for the statement of net quantity of contents. Type size requirements can be found at 16 CFR 500.21: https://www.ecfr.gov/current/title-16/chapter-I/subchapter-E/part-500/section-500.21
    b. The Federal Hazardous Substances Act (FHSA) requires that hazardous substances bear certain cautionary statements including "Keep Out of the Reach of Children" and first-aid instructions on their labels. Type size requirements can be found in 16 CFR 1500.121(c)(2): https://www.ecfr.gov/current/title-16/chapter-II/subchapter-C/part-1500/section-1500.121
    c. The Federal Food, Drug & Cosmetic Act includes type size requirements for a number of items on the label of cosmetics including directions for safe use, warnings, and ingredients. These requirements can be found in 21 CFR Park 701: https://www.ecfr.gov/current/title-21/chapter-I/subchapter-G/part-701

Meeting Summaries and Recordings

Below are links to all meeting summaries and meeting recordings.

- Meeting #1
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #2
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #3
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #4
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #5
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #6
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #7
  - Agenda
  - Recording
  - Slides
  - Summary
- Meeting #8
  - Agenda
  - Recording*
  - No slides
  - Summary
- Subject matter expert presentations
  - Recording pt. 1*
  - Recording pt. 2*

*Recordings will be added to the TIL webpage as close captioning is completed.

All Truth In Labeling straw person proposals

Thomas Egleston's Proposal

1. Status quo+ Take no action to regulate recyclability claims and the use of the chasing arrows symbol at the state level.

2. Support labeling improvements at a federal level with the Green Guides and keep the status quo in Oregon.

AMERIPEN Preferred Federal Approach submitted by Dan Felton

1. Federal law/regulation does not mandate recyclability labeling for covered packaging.
2. If producer chooses to use make recyclability claims on labeling for covered packaging, federal law/regulation requires producer to follow related criteria established by EPA and enforced by FTC.
3. Criteria should acknowledge approved third-party programs for standardized recyclability labeling.
4. Criteria and requirements should acknowledge packaging elements that require consumer action to achieve recyclability for covered packaging.
5. For non-recyclable packaging, federal law/regulation prohibits use of resin identification code (RIC) within chasing arrows symbol on labeling.
6. For non-recyclable packaging, federal law/regulation prohibits other labeling intending to lead consumer to believe packaging should be sorted for recycling.
7. For covered package with multiple components or material types, under federal law/regulation recyclability statement or symbol may be displayed on external packaging pursuant to criteria established by EPA, with indication of packaging elements that are not recyclable.

AMERIPEN Proposed Oregon-Specific Approach submitted by Dan Felton*

1. Prohibit labeling on covered packaging that makes a deceptive or misleading recyclability claim.
2. Prohibit use of chasing arrows symbol, chasing arrows symbol surrounding resin identification code, or any other symbol or statement indicating that it is recyclable unless it is designated for collection under PRO plan approved by DEQ.
3. Allow recyclability labeling on covered packaging if it:
    a. Is required by another state law or agency or by federal law or agency at time claim is made;
    b. Is part of widely adopted and standardized third-party labeling system; or
    c. Uses chasing arrows symbol in combination with a clearly visible line placed at 45 degree angle over chasing arrows symbol to convey that item is not recyclable.
4. Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling for covered packaging standards within 180 days after such is implemented at federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements.

* Based on last version of compromise language for Washington State 2022 Senate Bill 5297 (Das).

Chair de Thomas's Proposal

1. Prohibit use of chasing arrows symbol, chasing arrows symbol surrounding resin identification code, or any other symbol or statement indicating that it is recyclable unless it is designated for collection under PRO plan approved by DEQ.
2. Following CA SB 343 compliance assessment, offer onramp for materials non-OR-but-CA-accepted materials and amendment of RMA PRO program plan implementation to address infrastructure/education needs.
3. Consider mandating RIC w/o triangle, only number
4. Consider adjusting timeline of statewide list finalization in Oregon to allow for more dialogue with CA.
5. Allow/mandate embedded recyclability labeling via QR code or other "smart" labeling technology.

Oregon Refuse and Recycling Association's proposal submitted by Kristan Mitchel

1. Prioritize labeling efforts. Time is short, a report is due June 1, so focus labeling efforts first on plastic packaging. Other packaging can be considered later, but plastic is the key concern for consumers, the major source of confusion that leads to contamination, and the environmental issue of our time. Other packaging that is of concern, such as freezer boxes and cartons, could be considered and possibly included later, similar to how the bottle bill first began in 1971 and has been amended over time.
2. In order for plastic packaging to label with "chasing arrows," the package must be included in the Oregon Uniform Statewide Collection List for commingled collection - only packaging that is collected in the commingled stream may use chasing arrows. We could go beyond this and also require that non-commingled stream packages have a "don't recycle" label for further clarity.
    a. Meets all three ORRA goals.
    b. Aligns with three of UN/CI/One Planet report's insights and recommendations.
    c. Label could look like:
3. If a plastic packaging is not on the Oregon USCL for commingled collection, it cannot have the chasing arrows on it in any location, nor make any other claims about the packaging being recyclable.
4. Plastic packaging requires a resin ID code, so make it just that – a resin ID code. It could look like this, with RC standing for Resin Code: a. RC1, RC2, RC3…
    a. Does not need a triangle or any other symbol, and it only needs to be recognized by the industry that uses it for recycling.
    b. English is the international business language and that is the audience of the resin ID code.
5. Provide time for packaging producers to prepare for these changes (for example, matching up timeline to Oregon USCL commingled collection designations, with 18 months thereafter to change labels). For any item that comes on or off the USCL commingled list, give 18 months to add or remove the chasing arrows (confirm this aligns with CA SB 343, modify timelines as appropriate). Another option is to align with Oregon's Bottle Bill timeline for adding wine cans via 2022's SB 1520, which is three years (July 2025).
6. Enforcement – use the PRO as a tool for removing a non-compliant product from sale in Oregon. Enforcement should not be on the grocers, but at the source of the packaging labeling. Inventory issues should be considered (maybe longer compliance timeline than 18 months for non-perishables, for example). Consider and modify enforcement elements from other laws, such as Oregon's Bottle Bill program, or the flushable wipes law (2021's HB 2344), which, as an example, includes the following elements (as noted in DEQ's recent follow up email, Information Requests from Meetings 1 and 2):
    a. A city, county or special district that provides wastewater service has exclusive and concurrent authority to enforce compliance with the requirements.
    b. Before bringing an action to recover a civil penalty, a written notice of violation shall be sent to the alleged violator. If the covered entity continues to sell or display for sale the packaging, then enforcement may occur.
    c. A civil penalty of not more than $2,000 may be issued for a first violation that occurs between 90 days and 120 days after the date of the notice;
    d. An additional civil penalty of not more than $5,000 for a second violation or for a first violation that continues for more than 120 days after the date of the notice; and

e. An additional civil penalty of not more than $10,000 for a third and any subsequent violation or for a first violation that continues during any part of each 30-day period that follows the period described in (iv) above.
f. Cumulative penalties for the same violation (from multiple cities, counties or special districts) may not exceed the limits described above.
g. Local governments may separately recover reasonable enforcement costs and attorney fees.

7. Require plastics industry, through PROs, to propose and advocate for federal legislation to remove "chasing arrows" laws in all 36 remaining states, or to do the same state-by-state, for repeal at each of the 36 state legislatures. Set specific dates by which to complete law changes. Require plastic packaging PRO members to pay increased, escalating ecomodulation fees, TBD, if deadlines are not met. Use any additional fees generated for more contamination reduction efforts and consumer education. Consider other options for ecomodulation fees to be used as incentives or disincentives.
8. PROs run statewide ad campaigns to teach Oregonians about label changes (as part of SB 582).

Vice Chair Brandon's Proposal

Oregon-specific labeling requirement that is largely aligned with CA – Do Not Recycle Approach

1. Require clear, standardized recycling labels (chasing arrows, instructions for separating products as needed) for items that are on Oregon's statewide recycling collection list.
2. Require clear, standardized "Do Not Recycle" labels (chasing arrows with strike-through and the words "DO NOT") on products that are not on Oregon's statewide recycling collection list AND are not accepted in California.
    a. Option – add a threshold for the "DO NOT" recycle label, e.g., items that are recyclable in less than X% of areas in Oregon but above Y%.
        i. For items that are close to the threshold and accepted in CA, do not add an on-product label either way.
    b. Other Option – "OR Do NOT Recycle" Allow/add "OR" to demonstrate it's Oregon specific
3. Prohibit the sale of any product that makes on-product recyclability claims that are NOT on Oregon's statewide collection list as they would be misleading and deceptive.

Oregon Refuse and Recycling Association's proposal submitted by Kristan Mitchel revised for May 4, 2022, Meeting Discussion (red indicates changes from 4/20 document)

- All Elements in this document are from the TIL Proposal Ranking Survey completed before the April 4 Task Force meeting, and are listed in this document by their number in the Survey
- If an Element is listed, it received a majority vote of "support" (unless otherwise noted), with the number of support votes listed. For example, [Element 2, 7 votes]
- No Elements that were opposed are included
- All recommendations are for the June 1 Report to the Legislature

1. Packaging not on Oregon's Uniform Statewide Collection List for commingled collection cannot have the chasing arrows anywhere on it or make any other claims about the packaging being recyclable. [Element 2, 7 votes]

a. Allow recyclability labeling on covered packaging if it uses chasing arrows symbol in combination with a clearly visible line placed at 45-degree angle over chasing arrows symbol to convey that item is not recyclable. Example shown. [Element 9, 7 votes]
b. Allow glass to be labeled with chasing arrows, but must include language to "recycle separately" as unlike other states, Oregon does not collect glass in commingled

2. Require clear, standardized recycling labels (chasing arrows, instruction for separating products as needed) for items that are on Oregon's USCL. [Element 11, 10 votes].
    a. Limit this requirement to commingled materials on USCL - see #1 and #1(b) above
    b. Items for Depot or Event Collection (whether using existing infrastructure or Producer-provided), label with "check locally"
3. Mandate embedded recyclability labeling via QR code or other smart labeling technology [Element 13, 10 votes]
    a. This is not in lieu of labeling required in #2 above
    b. Consider pilot program, such as testing smart labeling options with letter coding, for example:
        C – commingled
        D – depot
        S – separate collection
        G - garbage
4. Require the Resin ID Code without any other triangle or chasing arrows shape [Element 4, 9 votes]
5. Use the PROs as a tool for removing a non-compliant product from sale in Oregon. [Element 17, 8 votes]
6. Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements. [Element 10, 8 votes] a. Subject to Oregon Legislature's oversight
7. Provide time for packaging producers to prepare for any changes adopted. [Element 14, 13 votes] a. To clarify, this element applies to all changes recommended in this report. In particular, this includes #3 above, mandating labeling improvements via technology such as QR codes.
8. Support labeling improvements at the federal level [Element 21, 13 votes]

Deleted from April 20 Proposal/Reason:

- Incentivize removal of RIC with chasing arrows via ecomodulation fees [Element 18 – this was a tie, vote 5 to 5, 3 neutral]. Reason: this is a part of the RMA, how ecomodulation will be implemented is outside of the purview of this group
- Provide onramp for new materials or materials that have developing markets [Element 20, 12 votes]
    - Via SB 582/RMA USCL process
    - Also include off-ramp for materials that fail the USCL process

  Reason: this is a part of the USCL process, outside of the purview of this group
  PROs run statewide ad campaigns to teach Oregonians about label changes [Element 16, 9 votes] o Via SB 582/RMA process. Reason: this is a part of the RMA, local governments will work with PROs, with oversight from ORSAC, to determine campaign content
- Create Oregon's USCL after dialogue with California [Element 12, 7 votes] a. Delete "after dialogue with California" and insert ", informing and discussing with California and Washington partners during the process to consider areas of alignment on the West Coast." Reason: this is a part of the USCL process, outside of the purview of this group.
- Ecomodulation fees
    a) Use to provide incentives for good labeling practice (lower fee)

b) Use to provide disincentives for poor labeling practices (higher fee)
c) Aligning with the implementation timelines in SB 582/RMA, for every year that "chasing arrows laws" are statutory requirements in the remaining 36 states, increase the ecomodulation fee paid by plastic packaging PRO members. Use the extra fees for additional contamination reduction and labeling education for Oregon consumers.
    - 12.c. is a revision to Element 15, which received 5 votes support, 4 neutral, 4 opposed, and stated: "Require the packaging industry, through PROs, to propose and advocate for federal legislation to remove chasing arrows laws in all 36 remaining states."

Reason: this is a part of the RMA, how ecomodulation will be implemented is outside of the purview of this group

Truth In Labeling Task Force Chair de Thomas/Vice Chair Brandon Updated & Combined Proposal
Includes adjusted elements from all supported components from all proposals, including ORRA's master proposal.
If a recyclability claim is made on a package (text and/or symbol):

1. **For items on the Oregon local government collection list** (USCL is a subset of this list) – allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
2. **For items covered by the Bottle bill**– allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
3. **For items exclusively on the Oregon depot list** - allow recyclability claims (text and/or symbol), and require all claims to follow standards for language, including instructions where needed.
    a. Instructions must say "drop-off recycling only" or similar.
4. **For all other items -** prohibit claims of recyclability; exemption allows the use of recycling symbol ONLY if surrounded by a circle with a 45-degree slash (universal "do not") {solves the 36 other states problem}
5. **Allow** embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology, if adhering to all of the above language.

Other recommendations

6. Provide time for packaging producers to prepare for any changes to be adopted
7. DEQ coordination with other west coast states on the development of lists
8. Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements.
    a. Subject to Oregon Legislature's oversight
9. Support labeling improvements at the federal level

Recommendations for PROs

1. PROs run statewide ad campaigns to teach Oregonians about label changes (which does not preclude RMA money for local government education)
2. Use eco modulation to support recycling labeling best practices
    a. good labeling practice = lower fee. Poor labeling practices = higher fee
    b. Incentivize via eco modulation embedded consumer-facing recyclability labeling via commonly-used smart-labeling technology.

DEQ/DOJ research RE: Oregon Unfair Trade Practices Act

In response to questions regarding Oregon's existing ability to bring legal action in response to potentially misleading or deceptive claims of recyclability, DEQ consulted with the Oregon Department of Justice regarding potential existing authority.

Oregon's consumer protection statutes are at ORS chapter 646.605 through .665. These are known as the "Unfair Trade Practices Act" or UTP. Some relevant provisions can be found at ORS 646.607(1) which states:

> "A person engages in an unlawful trade practice if in the course of the person's business, vocation or occupation the person … [e]mploys any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation;"

and ORS 646.608(1)(e), which states:

> "A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person … [r]epresents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have."

How is the UTP Enforced?

A "prosecuting attorney," which includes the Attorney General or a district attorney, may investigate violations of ORS 646.607 and 608 and bring actions in court enjoining violations and seeking restitution (see ORS 646.618, investigative demand, ORS 646.632, enjoining unlawful trade practices).

The UTP also contains provisions that allow private individuals that have suffered damages as a result of a violation of the act to bring a civil action for violations of ORS 646.608 (see ORS 646.638, Civil Actions by Private Party).

Oregon DOJ takes and investigates consumer protection related complaints from the public via a complaint-driven process that fields more than 50,000 complaints annually (see DOJ website). This is probably the primary means by which a UTP action might begin. A prosecuting attorney must have some reason to believe a violation has occurred for an investigation and probable cause to undertake an action to restrain a violation.

Once an investigation begins the statutes lay out a process for resolving a claim. At a high level this involves notice and an opportunity for voluntary compliance, followed by court action if voluntary action is not successful. There are also sanctions available to enforce compliance at various points in the process, including to enforce voluntary compliance or a court order.

Application of the UTP to Claims of Recyclability

DOJ staff did not identify any Oregon case law directly regarding UTP claims involving recycling.

If a claim regarding recyclability were made, the Federal Trade Commission rules would come into play. These rules are designed to establish "safe harbor" practices relating to recyclability claims (see FTC website). The FTC Green Guides could be used as evidence of what the federal government sees as misleading (and not) when it

comes to recyclability claims. DOJ believes that it may be arguable that compliance with the FTC guidance prohibits a claim under the state UTP. See ORS 646.612 ("Conduct in compliance with the orders or rules of, or a statute administered by a federal, state or local governmental agency.").

Other Relevant Case Law

To the extent a recycling claim does not comply with the federal FTC guidance, the state would be required to factually prove all of the elements of a violation in order to succeed in bringing a UTP action. An important barrier to bringing a UTP action related to misleading recycling claims may be the requirement from recent case law that a claim of a violation of the UTP involving misrepresentation must also prove that the misrepresentation was "material to consumer purchasing decisions."

In the recent case, *State ex rel. Rosenblum v. Living Essentials, LLC*, 313 Or App 176 (2021), the state brought a UTP action concerning various advertising claims about the "5 Hour Energy" product. The state lost the case because the court found as a factual matter that the state had not proved that any of the misrepresentations were material to purchasing decisions. The court's reasoning illustrates some of the things that might be relevant to proving materiality:

"After weighing the competing testimony of the parties' experts, the court found more persuasive defendants' expert, who offered a consumer survey demonstrating that the NCI [non-caffeine ingredients] blend in defendants' caffeinated products is not a significant factor in consumer purchasing decisions; that most consumers were repeat customers who were satisfied with their experience with the product; that consumer buying was influenced by a multitude of factors, including product effectiveness, taste, convenience, and price."

The court also suggested, but did not definitely conclude, that the "materiality" element may be necessary to avoid a violation of the free speech protections in the Oregon Constitution. That last part may have implications beyond the UTP as far as the state's ability to regulate advertising claims. This case is on appeal to the Supreme Court, so it may be worth paying attention to the Court's resolution of the issue.

Compilation of all proposal elements and their outcome in the final proposal

Prohibit labeling on covered packaging that makes a deceptive or misleading recyclability claim.	Prohibit recyclability labeling on covered packaging unless it uses the chasing arrows symbol to convey the item is not recyclable.	Create a statewide list after dialogue with CA.	Support labeling improvements at a federal level	Allow/mandate embedded recyclability labeling via QR code or other "smart" labeling technology.	Require DEQ to review state criteria against enforceable federal statutory or regulatory recyclability labeling within 180 days of implementation at the federal level and permit DEQ to adopt federal criteria in lieu of state recyclability labeling requirements.
The final recommendation includes the overarching theme and expands it to include four different recycling material lists.	This element is included in the final recommendation.	The Task Force revised this recommendation and then expanded it to include all West Coast states. As revised, included in the final recommendation.	This element is included in the final recommendation, as revised to support federal labeling that aligns with Oregon's goals for Truth in Labeling.	This element is included in the final recommendation as a mandate and with a five-year implementation timeline, down from an initially suggested 10 years.	This element is included in the final recommendation, revised to note legislative oversight.

Provide time for producers to prepare for these changes	Use the PRO as a tool for removing a non-compliant product from sale in Oregon	Incentivize removal of Resin ID code with chasing arrows via eco-modulation.	PROs run statewide ad campaigns to teach Oregonians about label changes	Packaging not on the Oregon USCL for commingled collection, cannot have the chasing arrows on it in any location, nor make any other claims about the packaging being recyclable.
This element is included in the final recommendation.	Removed from the final recommendations.	Combined into a recommendation to PROs to support labeling best practices via eco-modulation.	Included in recommendations to PROs.	Since 36 other states' laws require the chasing arrows on plastic containers, not allowing the chasing arrows would be difficult. The Task Force suggests if chasing arrows are on the packaging or product, and the item is not on the USCL, then there must be a slash over the chasing arrows. This allows items to comply with the 36 other states, as well as Oregon laws.

Require the plastics industry, through PROs, to propose and advocate for federal legislation to remove "chasing arrows" laws in all 36 remaining states	Require clear, standardized recycling labels (chasing arrows, instructions for separating products as needed) for items that are on Oregon's statewide recycling collection list.	Take no action to regulate recyclability claims and the use of the chasing arrows symbol at the state level.	Provide onramp for materials	Focus labeling efforts first on plastic packaging
This element did not receive enough votes to move forward. Some Task Force members questioned the legality of mandating or penalizing private companies for laws in other states.	The Task Force changed this element from requiring all items on the USCL to have recycling labels and instructions to only items where a producer makes a recyclability claim. Recycling labels or instructions are not needed if a recycling claim is not made.	This element did not receive enough votes to move forward. The majority of the Task Force did not want to wait and see how California's SB 343 will be implemented and enforced before acting in Oregon.	The Task Force removed this element because the RMA provides for this already.	This element was vigorously discussed. The Task Force voted on this element, and it did not receive enough votes to move forward. While Task Force members agreed that plastic packaging is the driving issue of the work of the Task Force, a majority of the Task Force felt that consumers would benefit from less confusing and misleading labels on all types of packaging.

RIC without triangle or chasing arrows	Packaging not on the Oregon USCL for commingled collection, cannot have the chasing arrows on it in any location, nor make any other claims about the packaging being recyclable.	In order for plastic packaging to be labeled with "chasing arrows," the package must be included in the Oregon Uniform Statewide Collection List (USCL) for commingled collection	Prohibit recyclability labeling on covered packaging unless it is part of a widely adopted & standardized third-party labeling system	Prohibit recyclability labeling on covered packaging unless it is required by another state/agency/federal law	Require that non-commingled stream packages have a "don't recycle" label
This element was supported by a majority of the Task Force but was not included in the Recommendation. There was discussion about the element – there are several numbers on containers, and removing the chasing arrows/ASTM triangle could be confusing to folks using the RIC to assist with recycling. The USCL may also use the RIC as a tool for consumers to know what is and isn't accepted for recycling.	This element was changed in the final recommendation to address the multiple lists and producer feedback better.	A form of this element is included in the final recommendation and expanded to include more than plastics and include all recycling under the RMA.	The final recommendation includes "standards for language" that must be met for recycling labeling. If a third-party labeling system meets the requirements of the standards for language and is on a product allowed to claim recyclability, it would be allowed.	This element did not receive enough votes to move forward to the final recommendation. Discussion included whether this meant no change could occur for products sold in Oregon because 36 states still have laws requiring the RIC inside chasing arrows symbol. Federal and state laws requiring recycling labels on items such as batteries are not changed and could be in conflict with this element.	This element was removed because mandating a state-specific "do not recycle" label would make establishing new markets or new recycled materials very difficult and could lead to more, not less, consumer confusion. For example, if an item is recycled at 10% and must have a "do not recycle" label, it would be challenging to increase the amount recycled if market conditions changed. This element also received strong pushback from producers who reported that an Oregon-only label would be difficult to implement.