

What You Need to Know About Extended Producer Responsibility (EPR) Programs

Donnelly L. McDowell, Katie Rogers

December 6, 2024

If you manufacture or sell packaging or products that are sold in packaging, you should be mindful of a movement to impose liability for packaging waste through Extended Producer Responsibility, or “EPR.” EPR is a policy approach that requires producers of products within the scope of relevant laws to be responsible for the end-of-life management of the product, such as disposal and recycling costs.

Packaging laws shift the responsibility for packaging waste from the consumer and government to the company manufacturing or selling the product, and they incentivize the design of more sustainable packaging.

EPR laws impose a host of legal obligations on producers, including:

- Fees based on the volume and type of packaging produced and introduced into the market. Speaking broadly, entities that introduce more material and less sustainable material are expected to pay higher fees. These fees in turn are allocated to fund collection, recycling, and final disposition activities.
- Source reduction targets.
- Data reporting, including reporting related to material type, material weight, how packaging was supplied to the market, and related information.

Current state packaging EPR laws generally apply to producers of single-use packaging products, with nuances in how these terms are defined and exemptions that vary across states. Presently, six states have EPR packaging laws: California, Colorado, Maine, Maryland, Minnesota, and Oregon. Maryland’s EPR law is a packaging study bill and does not implement an actual EPR packaging program, so it is not addressed in this advisory.

Role of a Producer Responsibility Organization

EPR programs for packaging ameliorate some of the legal burdens on producers by concentrating responsibility in a Producer Responsibility Organization (“PRO”). Producers pay into the PRO and then the PRO distributes the funds to cover the costs for the end-of-life management of covered products.

Speaking generally, paying into the PRO centralizes many of these obligations, which may reduce exposure to potential liability. The option to comply on the individual level exists for many jurisdictions.

California, Colorado, and Maryland have chosen the Circular Action Alliance (“CAA”) to be the PRO in those states. Although not official yet, CAA also will be the PRO in Oregon, and CAA intends to respond to Maine’s request for proposal to serve as its Stewardship Organization (“SO”), which is the term used in place of PRO in Maine. Minnesota will approve a PRO by January 2025 and CAA plans to participate in this process as well.

Entities that intend to join CAA should do so as early as possible. Moreover, CAA recently updated its registration forms, so entities that have already registered should update their registration, including for any associated subsidiaries that have a unique Tax ID or Employer Identification Number (EIN), if applicable.

Reporting and Fees

Reporting requirements will begin shortly after the new year, so it is important for companies to register with CAA. CAA will send a Participant Producer Agreement (PPA) to producer members when they register, which will contain the terms and conditions between producers and CAA and the respective obligations for both parties. After executing the PPA, producers will have access to CAA’s reporting guidance.

The PRO (or SO in Maine) will assess fees for producers based on the data that the producers report on the materials that are in scope of each relevant law. Once the base fees are established, eco-modulation factors will impact the fees in an effort to incentivize sustainable design features, such as lowering the fees for packaging containing higher levels of post-consumer recycled content. California will also assess producers an additional fee to help fund pollution mitigation efforts.

Source Reduction Targets, including PCR Thresholds

Some states like California have announced source reduction targets, while other states like Colorado have left it to the PRO to establish these targets. We recommend closely reviewing the targets under the EPR laws, as well as other state plastics laws that require a certain quantity of post-consumer recycled plastic content, including Washington and New Jersey. Washington’s plastics law requires producers of many common single-use plastics to include a minimum percentage of recycled materials for plastic beverage containers, trash bags, and household cleaning and personal care product containers. Minimum post-consumer recycled content percentage requirements took effect for plastic trash bags and beverage containers last year, and the state has already fined 35 companies a total of \$416,554 for failing to include sufficient recycled plastic in subject products.

State Timelines and Penalties

The following summarizes timelines and relevant dates for reporting and compliance, as well as penalties for non-compliance, in California, Colorado, Maine, Minnesota, and Oregon.

- **California**

- Reporting will take place from May 2025 through the end of August 2025 when CAA will need to report to CalRecycle.
- Fee obligations for members will begin in January 2027.
- Penalties for noncompliance are up to \$50,000/day/violation.

- **Colorado**

- Producers were required to register with CAA by October 1, 2024. Producers who did not register by that date may be subject to enforcement.
 - Reporting will occur in August 2025 and will cover Q1-Q2 of 2025.
 - Fee obligations for members will begin January 2026.
 - Penalties increase with successive violations:
 - First violation - \$5,000 for first day and \$1,500 each day the violation continues.
 - Second violation within 12 months of prior violation - \$10,000 for first day and \$3,000 each day the violation continues.
 - Third or subsequent violations within 12 months after two or more prior violations - \$20,000 for first day and \$6,000 each day the violation continued.
- **Maine**
 - The state will select the SO in September 2025.
 - Producers will need to join the SO by May 2026.
- **Minnesota**
 - Producers will need to appoint a PRO by January 1, 2025.
 - The PRO will register with the state by July 1, 2026.
 - Producers will need to be registered with the PRO by January 1, 2029.
 - Penalties increase with successive violations:
 - First violation - up to \$25,000/day/violation.
 - Second violation within 5 years of after approval of a stewardship plan - up to \$50,000/day/violation.
 - Third or subsequent violation within 5 years after approval of a stewardship plan - up to \$100,000/day/violation.
- **Oregon**
 - Oregon is expected to select a PRO imminently. The first reporting deadline is March 31, 2025.
 - Fees will be announced in late spring of 2025.
 - Program and fee obligations for members will begin July 2025.
 - Penalties for noncompliance are up to \$25,000/day/violation.

California Textile EPR law

In addition to these packaging laws, California recently passed a textiles-focused EPR-adjacent law. California's *Responsible Textiles Recovery Act of 2024* specifically requires producers of apparel or

textiles articles who sell, offer to sell, or distribute apparel into California to join a PRO, which is in turn responsible for designing and managing a recycling program (including collection, transportation, repair, sorting, recycling and management) for the products.

EPR laws operate in tandem with other laws governing packaging and recyclability objectives, along with advertising laws governing claims, to form a complex patchwork of regulations and standards. This patchwork may present significant compliance and operational challenges to producers and advertisers. The complications here are magnified by the numerous tiers of “producers” implicated in these laws, combined with the idea that a product can be covered in one jurisdiction but not another. In this rapidly evolving landscape, it is important to pay close attention to each state’s requirements and stay updated on PRO progress to ensure compliance with each jurisdiction’s requirements.

For inquiries on how this rule may affect you, please reach out to [Donnelly McDowell](#), [Katie Rogers](#), or [Zach Lee](#).