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Environmental Alert

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Are you ready for Extended Producer Responsibility (“EPR”) compliance?

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Businesses that offer, sell, ship, or distribute products now must determine whether their packaging is subject to emerging Extended Producer Responsibility (“EPR”) requirements as EPR deadlines in several states are here or quickly approaching.



What’s the impact?

- Packaging laws in California, Colorado, Oregon, Maine, and Minnesota establish new and stringent requirements for packaging producer responsibility. A few other states, such as New Jersey and Washington, have also introduced strict stewardship expectations.
- Compliance with these laws require businesses to have a firm understanding of their product value chains and ready access to traceable and accurate data on packaging.

Packaging issues dominated state legislative and regulatory discussions in recent years as states grappled with increasing consumer product waste, lagging waste management infrastructure, and widespread consumer confusion about recyclability. In 2021, [Maine became the first state to pass an EPR law aimed at consumer packaging](#). Incorporating EPR policy approaches that have

been effective for managing industrial wastes (e.g., batteries and paint), Maine's EPR law aspires to reduce consumer packaging waste by improving state waste management infrastructure and packaging material circularity. To do so, the law shifts responsibility for packaging disposal from municipalities to packaging "producers" through reporting and assessed fees. Other states soon followed, with California, Colorado, Oregon, and Minnesota enacting similar EPR laws, but with varying definitions, program criteria, implementation timelines, and scope of packaging subject to assessed fees.

As of January 31, 2025, five states have enacted and are implementing EPR laws that set strict expectations for packaging disposal and stewardship.

These laws include:

- / [California's Plastic Pollution Prevention and Packaging Producer Responsibility Act \(SB 54\)](#).
- / [Colorado's Producer Responsibility Program for Statewide Recycling Act \(HB 22-1355\)](#); Codified at [Colo. Rev. Stat. Article 17, Part 7](#).
- / [Oregon's Plastic Pollution and Recycling Modernization Act \(SB-582B\)](#).
- / [Maine's Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money \(HP 1146/LD 1541\)](#), Codified at [38 MRSA §2146](#).
- / [Minnesota's Packaging Waste and Cost Reduction Act \(HF 3577\)](#).
- / Maryland, through [SB0222, Environment - Statewide Recycling Needs Assessment and Producer Responsibility for Packaging Materials](#), has also passed legislation supporting EPR development and currently undergoing a needs assessment.

While not establishing an EPR program, [New Jersey's Recycled Content Law \(P.L. 2021, c. 391\)](#); and [Washington's Post Consumer Recycled Content Law \(70A.245\)](#) also take aim at consumer packaging and set minimum recycled content standards for regulated containers and packaging products. As these initiatives progress, the states are expected to consider additional consumer packaging requirements, and may consider EPR programs.

Businesses that place packaging products or materials in these states must, as a result, carefully evaluate whether they are "producers" that are subject to EPR requirements and implement necessary programs and procedures to ensure EPR compliance.

PARTICIPATION IN AN EXTENDED PRODUCER RESPONSIBILITY ORGANIZATION

Current EPR laws contemplate producer participation in a state-selected or state-approved stewardship or Extended Producer Responsibility Organization ("SO," "PRO," or "PO" depending on the state's law). While individual producers can also establish independent plans to satisfy their requirements, participating in the state's selected organization can reduce compliance obligations. To participate, a business and brand owners must self-identify as a "Producer", become a member of the state's SO/PRO/PO, register as a producer in applicable

states, report packaging product and material data according to state mandates, and pay required fees.

To date, California, Colorado, and Oregon have approved the Circular Action Alliance (“CAA”) to serve as their PRO/PO. The CAA has also applied to Minnesota and plans to submit a proposal to Maine to serve as the state’s SO. These states have also established strict timelines for producer registration, including:

- / California producers must register with the CAA by **April 1, 2025**.
- / Minnesota requires producers to join a PRO by **July 1, 2026**.
- / Colorado producers are required to register with the CAA by **October 1, 2024**.
- / Oregon mandates participation in a PRO, with registration and the first supply report due by **March 31, 2025**.
- / Maine is still finalizing its framework, with registration details pending. Registration requirements are expected to be in place by the end of 2025.

PACKAGING REPORTING

EPR laws require producers to submit periodic reports detailing the types and quantities of covered materials placed into the market. While reporting requirements vary, requirements typically include data about packaging type, weight, material composition (e.g., plastic, paper, glass), quantity of products sold, waste streams generated, and origin and volume of recovered recycled waste. Some state programs will also require details about any additives, barriers, or color added to the packaging. In all instances, however, businesses must have precise product data traceable to regions where products were sold, shipped, or distributed to accurately report on packaging and determine assessed fees.

- / Oregon producers are required to submit their first report by **March 31, 2025**.
- / California producers must submit their first report by **August 1, 2025**, with information and data for 2025 year to date.
- / Colorado producers must submit initial reporting in **August 2025**, with information and data for 2025 year to date.
- / Maine is still finalizing its reporting framework, with further details to be determined.
- / Minnesota has not yet specified reporting deadlines, but reporting obligations are expected to align with its phased program implementation through 2029.

FEE ASSESSMENT

EPR laws require producers to pay fees for packaging placed in the market to support recycling infrastructure, waste management, and environmental impact reduction. Using producer-

reported data, producers will be assessed fees based on a state's EPR program criteria and numerous other and varying factors, such as packaging material type, recyclability, and environmental impact.

- / Colorado's fee obligations commence on **January 1, 2026**.
- / California producers will begin paying quarterly fees in **January 2027**, with amounts determined by the CAA.
- / Oregon is finalizing its fee structure, but payments will be based on packaging and paper product data submitted in annual reports, with amounts determined by the CAA and approved by the state's environmental agency.
- / Maine's fee system is still under development, with rates expected to be set as the program finalizes its framework.
- / Minnesota will implement fee assessments gradually, with full program enforcement by 2029.

Businesses that do not meet registration, reporting, fee payment, or packaging stewardship requirements established in EPR laws can face severe penalties, depending on the state and the violation. For example, California contemplates a penalty of up to \$50,000 per day for failure to meet EPR requirements, Maine contemplates a \$100 fine for EPR failings, which can be assessed on a per-package basis; and Oregon contemplates a fine of up to \$25,000 per day. Some state EPR laws, such as California's, also contemplate private legal action against non-compliant producers using various theories of liability, such as fraud, and allow injunctive relief in the form of state removal of non-compliant packaging from the market.

Nixon Peabody's Environmental Team is here to ensure that you clearly understand emerging and evolving EPR requirements and how to navigate current or pending EPR compliance requirements.

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