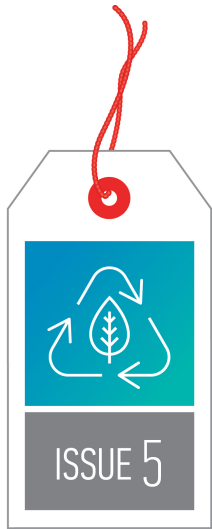


Updates

August 31, 2023

Extended Producer Responsibility Packaging Laws in the United States



Extended producer responsibility (EPR) laws impose liability on producers for the lifecycle

of their products.

EPR laws are found worldwide, particularly in Europe and Canada, but are becoming more prevalent at the state level in the United States. Many U.S. states already impose requirements on producers of e-waste and batteries, but the latest spate of EPR laws has focused on packaging materials, paper and plastic products, and food service service ware.^[1] This Update outlines the current EPR packaging laws in the United States, highlights proposed EPR packaging legislation, and identifies key compliance responsibilities for which product manufacturers should prepare.

Key Components of EPR Packaging Laws

EPR packaging laws typically pertain to the following elements:

- **Covered products.** EPR packaging laws define the specific types of products for which extended responsibility applies (e.g., single-use packaging) and may be further broken down by material (e.g., plastics or paper).
- **Covered producers.** EPR packaging laws apply to "producers," which are typically defined to include manufacturers, brand owners or licensees, and importers/distributors. Many EPR packaging laws exclude certain types of entities from producer requirements, such as small businesses, governments, charities, and retailers.
- **Producer Responsibility Organization.** The crux of EPR packaging laws is the Producer Responsibility Organization (PRO). PROs are tasked with complying with the bulk of EPR packaging requirements and may be comprised of individual producers or a collective of producers. Some states have designated the PRO or will contract with a stewardship organization to manage the program, while other states require producers to form PROs. A few states will require producers to directly register with the state and meet the targets for recycled content, recycling rates, and product composition.
- **Fees.** Producer obligations are funded through fee payments, which can be assessed at fixed rates and/or by variable rate based on product type and volume sold or distributed into the state.
- **Targets.** Many EPR packaging laws include phased targets for recycled content, recycling rates, and product composition.
- **Other.** EPR packaging laws can contain a swath of other requirements that are imposed on covered producers, including infrastructure improvements, education and outreach, labor requirements, and extensive reporting requirements.

Overview of Current EPR Packaging Legislation

The following states have passed EPR packaging or similar laws:

- **California.** [California's](#) Plastic Pollution Prevention and Packaging Producer Responsibility Act has a mandatory producer responsibility program for producers of single-use packaging and plastic single-use food service ware. Producers of covered material sold, offered for sale, imported, or distributed in California are required to: (1) meet plastic source reduction requirements; (2) ensure that covered material is recyclable in the state or eligible to be labeled "compostable" by January 1, 2032; and (3) ensure that plastic covered material meets phased percentage recycling rates. Producers are required to form and join a PRO by January 1, 2024, with some exceptions.
- **Colorado.** Colorado's Producer Responsibility Program for Statewide Recycling Act establishes a producer responsibility program focuses on producers of single- or short-term use packaging materials and paper products, including food and beverage packaging. The state of Colorado has designated a PRO that producers must join by June 1, 2025.
- **Maine.** [Maine's](#) Act To Support and Improve Municipal Recycling Programs and Save Taxpayer Money establishes a producer responsibility program for packaging material that requires producers to pay into a fund based on the amount and recyclability of packaging associated with their products. The Department of Environmental Protection (DEP) is required to select and enter into a contract with a stewardship organization (SO) that will administer the program, and all producers must comply with and fund the program within a year. The DEP does not anticipate selection of an SO until 2026.
- **Oregon.** [Oregon's](#) Plastic Pollution and Recycling Modernization Act creates a producer responsibility program that requires producers of covered products to join and pay into a PRO. Covered products include packaging, printing and writing paper, and food service ware. Each producer must register with the PRO and pay annual fees after the plans go into effect on July 1, 2025.

- **New Jersey.** Although not a fully fledged EPR law, [New Jersey's](#) Recycled Content Law sets postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibits the sale of polystyrene loose fill packaging. Manufacturers were required to register every year starting in July 2022 and recycled content standards go into effect in January 2024.
- **Washington.** Like New Jersey, [Washington's](#) Plastics Law creates a producer registration and reporting system and establishes labeling and minimum-recycled-content requirements for certain types of plastic products. The Washington Department of Ecology has nearly completed its rulemaking to implement the Plastics Law, with new rules expected to take effect in January 2024. Producers were required to register with the Department of Ecology by April 1 of each year starting in 2022.
- **Connecticut.** In its 2023 legislative session, the Connecticut General Assembly passed [HB 6664](#), which creates a registration program for producers of plastic beverage containers beginning in April 2026 and establishes phased minimum postconsumer recycled content requirements for plastic beverage containers.

Proposed EPR Packaging Legislation

Numerous states have proposed EPR packaging legislation in 2023, including: Connecticut,[\[2\]](#) Hawaii,[\[3\]](#) Illinois,[\[4\]](#) Maryland,[\[5\]](#) Massachusetts,[\[6\]](#) New Jersey,[\[7\]](#) New York,[\[8\]](#) North Carolina,[\[9\]](#) Rhode Island,[\[10\]](#) Tennessee,[\[11\]](#) and Washington.[\[12\]](#)

EPR Packaging Law Compliance Steps

As an increasing number of states propose and enact EPR packaging laws with upcoming compliance deadlines, covered producers need to prepare to meet these requirements by:

- Staying informed and aware of upcoming deadlines, as they differ considerably among states.
- Registering with states and establishing or joining PROs or stewardship organizations.
- Working with suppliers to meet the phased recycled content, recyclability, or composition requirements in covered materials.
- Preparing to compile records required for reporting, which will generally include: (1) types of covered materials sold, offered for sale, imported, or distributed in the state each year; (2) universal product codes (UPC) and brand names of products containing covered materials; (3) weight and/or volume of covered materials sold, offered for sale, distributed, or imported in the state per year; and (4) postconsumer recycled content of covered materials.

Producers should also consider engaging with regulators as they develop and implement regulations for EPR packaging requirements. California, Colorado, Maine, and Oregon all have ongoing rulemaking efforts with upcoming public comment opportunities.

Endnotes

[1] The list of products regulated under the various state laws is extensive and includes: (1) food and beverage containers, (2) foil and wraps; (3) bags; (4) boxes; (5) straws and items used to stir beverages; (6) utensils, plates, bowls and cups; (7) party supplies; and (8) household cleaning and personal care products that use plastic product containers.

[2] Connecticut: An Act Concerning EPR for Certain On-Line Retailers, SB 311.

[3] Hawaii: Relating to Waste Management, SB 1458; Relating to the Environment, HB 1326.

[4] Illinois: Packaging and Paper Products Stewardship Act, HB 2874 and SB 1555.

[5] Maryland: Environment – Statement Recycling Needs Assessment and Producer Responsibility for Packaging Materials, SB 0222 (passed, but in a reduced form establishing an advisory council to make recommendations regarding establishing a producer responsibility program in the State for packaging materials).

[6] Massachusetts: An Act to Save Recycling Costs in the Commonwealth, H.779 and S.572.

[7] New Jersey: Packaging Product Stewardship Act, A1444 and S426.

[8] New York: Extended Producer Responsibility Program for Packaging, SB S1064; Packaging Reduction and Recycling Infrastructure Act, SB S4246A.

[9] North Carolina: Break Free from Plastics & Forever Chemicals, HB 279.

[10] Rhode Island: Act relating to Health and Safety - Extended Producer Responsibility for Packaging, SB 200.

[11] Tennessee: Tennessee Waste Reduction and Recycling Act, HB 550 and SB 573.

[12] Washington: Improving Washington's Solid Waste Management Outcomes, HB 1131 and SB 5154.

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