



As environmental consciousness grows, so too do regulations aimed at promoting a more circular economy. Within the last few years, the United States has seen a significant increase in extended producer responsibility (EPR) legislation across various product categories.

These new state laws place a greater responsibility on producers for the collection, recycling, and end-of-life management of their products. Since our [last update on EPR laws](#), several state agencies have begun rulemaking processes, coordinated needs assessments within their respective jurisdictions, and selected producer responsibility organizations (PROs), among other activities. This Update outlines the current regulatory process and stage for EPR packaging laws in the United States, highlights new developments, and identifies upcoming compliance responsibilities producers should be aware of.

Updates on Enacted Packaging EPR Legislation

- **California.** [CalRecycle](#) has been hard at work implementing portions of [California’s Plastic Pollution Prevention and Packaging Producer Responsibility Act](#), also commonly referred to as SB 54, which imposes minimum content requirements for single-use packaging and plastic food service ware to be achieved through an EPR program. On December 28, 2023, California released the [draft regulatory text for SB 54 implementation](#), along with [a report to the legislature, categorization of covered materials](#) in California’s EPR program, and a supplementary explanation for the covered materials. The covered material categories list was updated on July 1, 2024, to note any code removals or replacements. California also selected the [Circular Action Alliance](#) (CAA) as the state’s sole PRO, although additional PROs may be approved starting in January 2031. California actively engages with stakeholders, and [CalRecycle is currently seeking stakeholder input](#) regarding its Program Environmental Impact Report by August 26, 2024.

SB 54 requires that by 2032, producers that sell into California cut single-use plastic—including packaging and foodware—by 25%, recycle 65% of single-use plastic, and ensure that 100% of single-use plastic is “recyclable” (as defined in [SB 343](#)) or “compostable” (as defined in [AB 1201](#)). Regarding the “**recyclable**” definition, SB 343 requires the material to be (1) collected in 60% of the population and (2) sorted into defined streams by 60% of large volume transfer processors. On December 28, 2023, CalRecycle released the [SB 343 Preliminary Findings Report for the required Material Characterization Study](#) to provide information to evaluate whether a product or package is recyclable in California. Regarding the “**compostable**” definition, AB 1201 requires products labeled “compostable” to be an “allowable agricultural organic input” under the United States Department of Agriculture’s (USDA) National Organic Program (NOP).^[1] However, the current definition of “allowable agricultural organic input” does not recognize compostable packaging beyond unprinted, virgin paper. As such, the Biodegradable Products Institute petitioned NOP to broaden the definition of “compost” in August 2023. NOP sent the petition for consideration to the National Organic Standards Board (NOSB) in October 2023. NOSB considered the topic at its April 2024 meeting, but final recommendations are still pending to NOP.

- **Colorado.** Colorado’s [Producer Responsibility Program for Statewide Recycling Act](#) establishes a producer responsibility program that focuses on producers of single- or short-term use packaging materials and paper products, including food and beverage packaging. Colorado’s Department of Public Health & Environment (CDPHE) has hosted a number of advisory board and stakeholder meetings. The CDPHE designated CAA as the state’s PRO in May 2023, which producers must join by June 1, 2025. CAA completed a [needs assessment](#) to evaluate existing services and infrastructure in Colorado that manage single-use packaging and paper products at the end of their product life cycle. CAA recommended three plan scenarios to Colorado to achieve target recycling rates (*i.e.*, Low, Medium, and High recycling rates). CDPHE ultimately [recommended](#) the Colorado legislature to adopt the Medium Scenario, which estimates that \$130 million to \$210 million is needed to achieve a proposed recycling rate of 34-40% by 2030. Currently, CDPHE is finalizing regulations for its EPR program.
- **Illinois.** Illinois Governor J.B. Pritzker signed [SB 1555](#) into law, which established the Statewide Recycling Needs Assessment Advisory Council within the Illinois Environmental Protection Agency, in July 2023. The statewide needs assessment bill is due to the legislature by December 1, 2026, and EPR legislation is anticipated to follow shortly thereafter.
- **Maine.** Maine’s Department of Environmental Protection (DEP) recently made changes and [reposted](#) its revised draft [Stewardship Program for Packaging Rule](#) for additional public comment. The revised draft rule provides details for implementing the EPR program, with the goals of reducing the burden to municipalities of managing packaging material and improving the design and management of packaging material. It characterizes packaging material, provides a method for determining municipal reimbursement and producer fees, provides a method and criteria for investing in infrastructure and education, details alternative collection programs, establishes a cap for the packaging stewardship fund, and provides

mechanisms for ongoing assessment and updates to the program. The additional comment period closes on August 26, 2024.

- **Maryland.** Similar to Illinois, Maryland also only adopted a needs assessment for its [EPR Program](#). Maryland's statewide needs assessment is due to the legislature by December 1, 2024. The State Producer Responsibility Advisory Council must then provide recommendations on a packaging EPR program. Maryland's law required a designation of a PRO to represent the interests of producers during this process. On October 18, 2023, the [Maryland Department of the Environment selected CAA](#) to serve as the single nonprofit PRO on the Advisory Council.
- **Minnesota.** On May 21, 2024, Minnesota became the fifth state to pass an EPR law that encompasses packaging in its [Packaging Waste and Cost Reduction Act](#). After the PRO is appointed, producers must register with the PRO by July 1, 2026. The PRO stewardship plan is due on October 1, 2028. More details on the implementation of this law will likely follow in the coming months.
- **Oregon.** Oregon's [Department of Environmental Quality](#) (DEQ) has undergone two sets of rulemaking. The [second set of rulemaking](#), which included PRO fee obligations and clarifications on covered products, closed on July 26, 2024. DEQ is currently reviewing comments and will publish responses in a report to the Environmental Quality Commission, which will be available later this fall. DEQ intends to present proposed rule changes to the Environmental Quality Commission for a decision at its meeting scheduled for November 21-22, 2024. Oregon also [reviewed and provided feedback](#) to CAA on its proposed product responsibility plan. The revised plan must be submitted by September 27, 2024, with the full EPR program being implemented on July 1, 2025.
- **Washington.** Washington's [post-consumer recycled \(PCR\) content law](#) sets minimum recycled content requirements for plastic packaging for certain types of products. The PCR content requirements began for beverage containers and plastic trash bag producers in 2023, along with plastic trash bag labeling requirements. Annual reports for these products were due to the Washington Department of Ecology on April 1, 2024. Minimum PCR content requirements will begin in 2025 for household cleaning and personal care products and 2029 for dairy milk and plastic wine containers.
- **New Jersey.** The New Jersey Department of Environmental Protection (NJDEP) has continued clarifications on its Recycled Content Law in its [frequently asked questions](#). Notably, NJDEP has stated that it "does not consider the outputs from pyrolysis and gasification processes to be 'postconsumer recycled content.'" In addition, other forms of feedstock generated from other forms of advanced recycling are also not considered to be post-consumer recycled content "at this time." Manufacturers are required to submit their first-year compliance reports by July 18, 2025, and then annually thereafter.

Proposed EPR Packaging Legislation

Other states, such as [Hawaii \[2\]](#), [New Jersey \[3\]](#), [New Hampshire \[4\]](#), [New York \[5\]](#), Massachusetts [\[6\]](#), [Rhode Island \[7\]](#), [Tennessee \[8\]](#), and [Washington \[9\]](#) have considered EPR legislation this legislative session. These bills have either stalled or failed in their respective legislative committees. [Illinois \[10\]](#) also proposed a full EPR program even though its state legislature passed a needs assessment bill last year, as noted above.

Endnotes

[1] AB 1201 first required CalRecycle to determine whether bifurcation of the composting stream was possible between organic compost and packaging compost. CalRecycle determined in December 2023 that bifurcation was not possible.

[2] Hawaii: SB 2368 is not a full EPR scheme. Instead, this bill would have required the Department of Health to conduct a statewide needs assessment, similar to those in Maryland and Illinois.

[3] New Jersey: Packaging Product Stewardship Act, A 2094 and S 208.

[4] New Hampshire: an act relative to extended producer responsibility, HB 1630.

[5] New York: Packaging Reduction and Recycling Infrastructure Act, A S 4246. Notably, this is the same EPR bill from New York's 2023 legislative session. The bill has undergone four sets of amendments, passed in the New York Senate, and ultimately stalled in the New York Assembly in June 2024.

[6] Massachusetts: An Act Establishing The Commission On Extended Producer Responsibility, [H 833](#); An Act To Reduce Plastics, [S 570](#); An Act To Save Recycling Costs In The Commonwealth, [H 4263](#).

[7] Rhode Island: Extended Producer Responsibility for Packaging, H 7023.

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

[9] Washington: Improving Washington's solid waste management outcomes, HB 2049 and SB 6005.

[10] Illinois: Plastic Recycle Modernization, SB 3795.

© 2024 Perkins Coie LLP

Authors



[Kristine E. Kruger](#)

Senior Counsel

KKruger@perkinscoie.com [206.359.3111](tel:206.359.3111)



[Sichang \(Cathie\) Chen](#)

Associate

SChen@perkinscoie.com

Explore more in

[Retail & Consumer Products](#) [Food & Consumer Packaged Goods Litigation](#)

Related insights

Update

[Summer Sustainability Series](#)

Update

[Extended Producer Responsibility Packaging Laws in the United States](#)