

Insights: Alerts

New State EPR Laws Regulate Manufacturers, Brand Owners, and Others Who Control Packaging Materials; Registration Required in Colorado as of October 1, 2024

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Does your company produce products or packaging that ultimately winds up in landfills? If so, are you aware that you may be defined as a “producer” under new state laws and required to comply with new regulations to reduce the flow of garbage headed to landfills? Until recently, solutions to reduce garbage headed to landfills have been focused on the end-of-life stage; that is, how to recycle items otherwise headed to the landfills. Recently, though, and following in the European Union’s footsteps, five U.S. states have enacted laws regulating the front end of the process. These Extended Producer Responsibility (“EPR”) laws, including in California, Colorado, Oregon, Maine, and Minnesota (with more than 10 states considering similar EPR legislation), aim to shift the burden of managing product/packaging end-of-life processing (e.g., collection, disposal, recycling) from the state and taxpayers to the entities that produce the packaging in the first instance.

By redistributing this burden to what EPR laws call “producers,” EPR laws are designed to incentivize those that have the most control over the creation of packaging in the first instance—that is, brand owners, manufacturers, and sometimes licensees, distributors, and importers—to reduce the negative environmental and social impacts of the resulting waste. While each state comes at the issue with a varied approach, each encourages producers to (a) use less packaging, (b) increase the proportion of recyclable or otherwise environmentally friendly packaging used, or (c) design packaging that is more compatible with state recycling, composting, or other preferred processing plans.

Most states plan to create these incentives in two primary ways: (1) requiring producers to fund and/or manage recycling or other packaging end-of-life processing and related community programs and educational efforts, and (2) setting up a producer fee structure that requires higher fees for higher quantities of packaging materials and/or gives credits or lower fees for use of more environmentally friendly materials. To date, states have opted for a Producer Responsibility Organization (“PRO”) to develop the fee structure and producer requirements, though most states allow producers to operate independently if they submit an individualized plan for otherwise meeting the state’s EPR requirements.

So far, each state that has completed the PRO selection process has chosen Circular Action Alliance (“CAA”) to implement the states’ EPR programs. **Colorado regulations set October 1, 2024 as the deadline to register**

with CAA for all companies that meet the definition of “producer” under the state's EPR law (HB22-1355, known as the Colorado Producer Responsibility Program for Statewide Recycling Act).

For those entities that qualify as producers under Colorado's law that have not yet registered, registration can still be completed at <https://circularactionalliance.org/registration>. At this time, registration does not require a fee or detailed disclosure requirements. The CAA registration form seeks only contact information and identification of whether your entity is likely to be covered as a producer in California, Colorado, or Oregon. The scope of enforcement against registration compliance failures remains to be seen, but by July 1, 2025, no producer may sell or distribute any products that use covered materials in Colorado unless the producer is participating in the PRO program. Colorado's EPR law also provides for tiered penalties for violations, including an initial penalty of \$5,000 for the first day of a violation and \$1,500 dollars each day the violation persists.

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