

Extended Producer Responsibility: A View from the States

September 17, 2025

1:00 – 2:30pm ET



Today's Agenda

- Current State Programs and Requirements
- Industry Challenges and Implementation
- Global Context and Looking Forward
- Audience and Q&A

mcmillan

Why Extended Producer Responsibility and the Circular Economy Demand Boardroom Action

THE NATIONAL LAW REVIEW

EPR Packaging and Greenwashing Laws Expand, Targeting Plastic Reduction and Recycling

JD SUPRA®

U.S. EPR compliance for packaging and paper products begins: Is your business ready?

Today's Speakers



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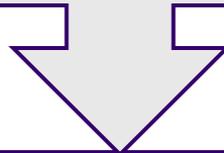
Exploring the Basics

What is EPR?

- **Definition and Origin:** Policy approach that requires manufacturers to take responsibility for end of life of products; implemented through a public/private partnership
- **Key Principles:** (1) Responsibility shifting; (2) improve recycling; (3) improve waste reduction strategies
- **Trends:** Many EPR programs in single industries (e.g., paint, pharma, mattresses); large set of implementation challenges for packaging EPR

Packaging EPR: Needs Assessment

Evaluates the state of recycling program in state and is completed *before* the program becomes operational and PRO submits program plans



Focus on:

Evaluation of lifecycle of covered products

Existing infrastructure to manage recycling, composting, reusability, and waste recovery

What is being recovered and what isn't?
At what rates?

Costs of existing packaging waste and recovery management

Where are shortcomings, and how can PRO and state fill in gaps?

Packaging EPR: Covered Materials

	California	Colorado	Maine	Minnesota	Oregon
Covered Products	Single-use packaging, plastic food service materials	Packaging, some paper	Packaging	Packaging, some paper	Packaging, some paper, food service materials

Washington

Packaging, some paper

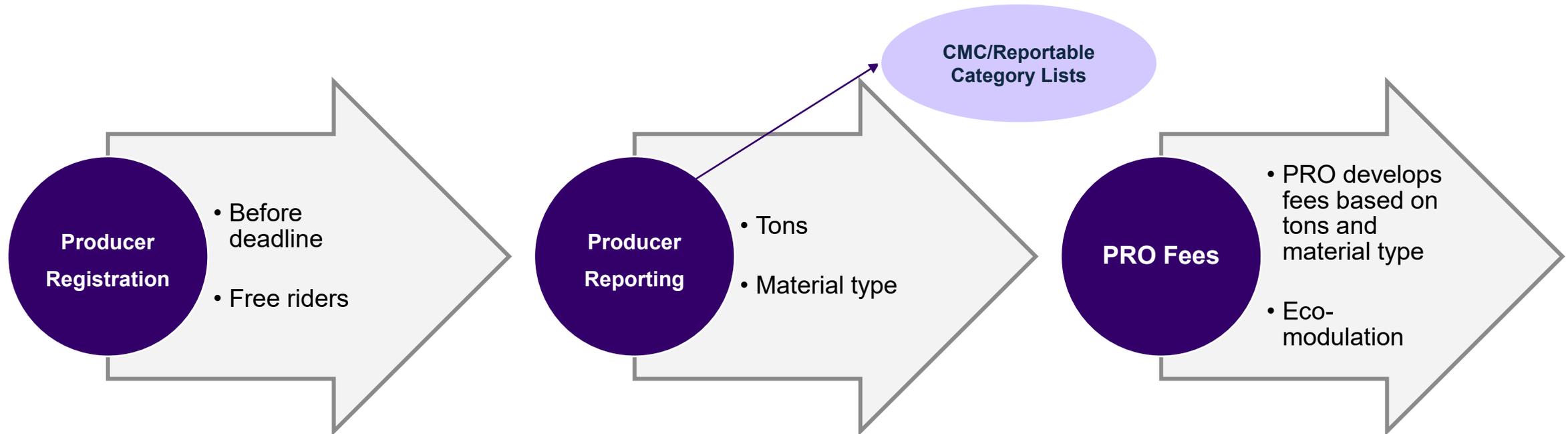
Maryland

Packaging, some paper

Check for Exceptions

Packaging EPR: Fees and Eco-Modulation

Producer fees – based on total costs to fund the program, then allocation of fees:



Ecomodulation allows for fees paid by producers into the PRO to be modulated upwards or downwards based on the sustainability attributes of the packaging

Auditing and Enforcement

Producer Violations

- Failure to join PRO
- Failure to report covered material properly
- Failure to pay fees

Mechanism of Enforcement

- Audits from state of PRO and Producers
- Self-policing; paying Producers will be incentivized to find non-compliant Producers
- Attempted private enforcement/leveraging of EPR data?

Public-facing Issues

- Annual public reports from PRO
- Lists of largest producers (CA) and, in some cases, details on amount of packaging used by each producer (ME)
- Statewide Non-compliance lists (ME)

Registration and Reporting Deadlines

State	Registration Deadline	Reporting Deadline
Oregon	March 31, 2025	April 30, 2025
Colorado	October 1, 2024	July 31, 2025
Minnesota	July 1, 2025	Reporting not yet set (anticipated 2028-2029)
California	September 5, 2025 (CAA deadline)	November 15, 2025 (CAA deadline)
Washington	Not yet set but prior to March 2029	Reporting not yet set
Maine	May 1, 2026	May 1, 2026
Maryland	Registration not yet set	Reporting not yet set

Will the Packaging EPR Scheme Withstand a Legal Challenge?

Challenge to the constitutionality of Oregon's Plastic Pollution and Recycling Modernization Act

- **Non-delegation doctrine:** Delegates control over program to a private party
- **Dormant Commerce Clause:** Unfairly targets out-of-state producers and disrupts national markets
- **Unconstitutional Conditions:** Mandates producers sign with PRO and waive certain rights
- **Due Process:** Fee setting and other requirements without opportunity to object or appeal

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

NATIONAL ASSOCIATION OF
WHOLESALE-DISTRIBUTORS,

Plaintiff,

vs.

OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY; OREGON
ENVIRONMENTAL COMMISSION; DANIEL
A. RAYFIELD, in his official capacity, and
DOES 1 through 25,

Defendants.

Case No. 3:25-cv-1334

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Discussion



Industry Challenges and Implementation

Too little time

Too much
information

Lack of consistency
in programs

Critical Points

01

Basic understanding of programs and cooperation needed across different departments

02

Need system in place for monitoring new developments

03

Careful documentation required to comply with record-keeping requirements and claim credit for eco-modulated fee

Industry Challenges

Small format and multi-material packaging

Inadequate supply of PCR for packaging materials

New operational expenses

Industry Opportunities

01

Reduce material and shipping expenses through source reduction

02

Targeted sustainability claims present less legal risk and builds brand loyalty

03

Packaging redesigns can present competitive advantage

Discussion



EPR Across the European Union

- Introduction of the Packaging and Packaging Waste Regulation (PPWR)
 - The 1994 Packaging Waste Directive first introduced EPR principles across the EU. However, the EPR structure is changing and will now be governed by the proposed PPWR (entered into force on 11 February 2025).
- The PPWR introduces harmonized obligations across Member States, including:
 - Eco-modulated fees based on recyclability performance;
 - A requirement that non-recyclable packaging be phased out by 2030;
 - Minimum recycled content and new design-for-recycling rules.

United Kingdom EPR

- Packaging and Packaging Waste Regulations (EPR) entered into force on the 1st of January 2025.
- Replacing: ‘Producer Responsibility Obligations (Packaging Waste) Regulations 2007’.
- Key elements include:
 - Full net cost recovery: producers must cover costs of collection, sorting, and processing;
 - Mandatory data reporting began in April 2023;
 - Fees are set to commence in 2025;
 - Separate compliance tracks for household and non-household packaging

Canadian EPR

- EPR regulations in Canada are set provincially, not federally.
- A federal strategy encourages alignment, but implementation varies province by province.
- Producers must review distinct obligations, thresholds, and reporting rules depending on where their products are sold.
- Current provinces with EPR regulations:
 - British Columbia
 - Alberta
 - Saskatchewan
 - Manitoba
 - Ontario
 - Quebec
 - New Brunswick
 - Nova Scotia
 - Yukon Territories

Keeping Up with Global EPR Changes

- In the EU, the PPWR is driving harmonization and stricter targets.
- The UK is implementing a full-cost EPR regime with phased requirements.
- In Canada, most provinces are transitioning from shared to full producer responsibility.
- Programs are emerging in Latin America, Australia, and Asia.

Staying Compliant

- The diversity of EPR frameworks presents challenges for global brands. While many countries are working toward harmonization, key differences remain:
 - Who is considered an obligated producer?
 - What materials qualify as 'covered packaging'?
 - What data must be reported—and when?
- To stay compliant, businesses should begin developing a consistent internal process, one that includes:
 - Registration in each relevant jurisdiction,
 - Data tracking and timely reporting, and
 - Payment of applicable fees.

More Than Recycling

- New proposals expand the scope of EPR
- Issues may include:
 - Advanced recycling
 - Regulating chemicals in packaging
 - Source reduction
 - Material bans
 - PCR content requirements

Compliance: Not Just a Data Exercise

- Organization — RACI
- Compliance scoping
- Data prep & reporting
- Forecasting & budgeting for total exposure
- Socialization with C-suite

Discussion



Thank you!

