

The New Cost of Packaging: Five Compliance Risks Companies Shouldn't Ignore

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States across the country are shifting the financial responsibility of managing packaging waste from local governments and consumers to the companies that place the packaging into the marketplace. These packaging Extended Producer Responsibility (EPR) laws are already in effect in several states, including California, Colorado, Oregon, Maryland, Maine, Minnesota and Washington, and other states are actively considering similar legislation. For companies that sell products in, or into, a state with EPR laws, these programs represent a significant change in compliance obligations. Below are five key takeaways companies should consider.

1. Your company may be a “producer” even if you do not manufacture the product or packaging.

Most state programs make the “producer” of the product responsible for that product’s packaging, typically referred to as the “obligated producer.” While states’ definitions of producer slightly differ, most states have a tiered definition that sometimes results in an unexpected party being the obligated producer and responsible for EPR compliance. If the manufacturer is the brand owner, that entity is the obligated producer. In many cases, however, the manufacturer does not own the brand of the product it is manufacturing. In that case, the obligated producer is the owner of the brand that appears on the packaging—not the contract packager or upstream materials supplier. Companies should be aware that:

- If you own a brand, sell private-label goods or import products into the United States, you may be the obligated producer.
- As an obligated producer, you may bear reporting, fee and compliance obligations even if you have limited control over packaging decisions.
- Companies that sell products should consider reviewing how each state defines “producer,” mapping their supply chain and deciding whether they—or another entity—must register and report.

2. Registration and reporting obligations are extensive and require robust data systems.

Packaging EPR programs rely on detailed reporting to determine fees, recycling rates and system performance. Typical programs require producers to report:

- The total weight of packaging sold into the state, broken down by material type
- The number of components or units for each packaging category
- Post-consumer recycled (PCR) content used for specific materials
- Information on recyclability, compostability and design features

Many producers do not currently track packaging data at this level of granularity. Building internal systems, or coordinating with suppliers and co-packers, takes time. Early preparation is key to compliance.

3. Producer Responsibility Organizations (PROs) set fees that vary based on packaging material and design.

States typically require producers to join a Producer Responsibility Organization (PRO) that collects fees and manages recycling programs on behalf of its members. PROs administer eco-modulated fees, meaning the fee a producer pays depends on the environmental implications of its packaging. Factors that generally increase fees include:

- Use of hard-to-recycle materials or multi-layer formats
- Components with inks, adhesives or labels that hinder sorting
- Packaging that lacks sufficient PCR content

In contrast, packaging that is highly recyclable, standardized, lightweight or made with verified PCR may be subject to reduced fees. Manufacturers should expect fee schedules to change over time as recycling infrastructure develops and program requirements evolve.

4. Mandatory changes to packaging design are coming.

Packaging EPR laws are not just funding mechanisms—they often require packaging to meet new design, recyclability, PCR content or source-reduction requirements. These requirements may include:

- Minimum recycling rates for specific materials
- Requirements that packaging be recyclable, compostable or reusable by certain dates
- Mandatory source-reduction targets (e.g., reductions in overall packaging weight or plastic components)

Manufacturers should consider monitoring agency rulemaking because these design mandates often phase in over several years, affecting procurement cycles, product development and long-term sustainability commitments.

5. Noncompliance can lead to penalties, product restrictions or loss of market access.

States with packaging EPR programs have granted their environmental agencies broad enforcement authority. Depending on the jurisdiction, noncompliance may result in:

- Administrative penalties, which can reach tens of thousands of dollars per day
- Listing a producer as “noncompliant” on a state website
- Restrictions on selling or distributing packaged goods in the state
- Mandatory corrective action plans

Maintaining compliance requires timely registration, accurate reporting and adherence to packaging standards as they evolve.

Attorneys in Haynes Boone’s [Environmental](#) and [Food, Beverage and Restaurant](#) practice groups are working to help entities in the product distribution chain understand their obligations under various EPR laws across the country. For more information, or assistance on this topic, please contact one of the attorneys listed at the bottom of this webpage or a member of our Environmental or Food, Beverage and Restaurant practice groups.