

PACKAGING EPR COMPLIANCE ACROSS STATE LINES: WHY THERE'S NO ONE-SIZE-FITS-ALL STRATEGY

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For manufacturers that sell products in multiple states, the growing patchwork of packaging extended producer responsibility (EPR) laws is quickly becoming a major compliance burden. Several states, including Colorado, California, Maine, Maryland, Minnesota, Oregon, and Washington now have packaging EPR programs—each with different definitions of producers and covered packaging materials, and each with different registration and reporting requirements. Many states, including Massachusetts, New Jersey, and New York, are poised to follow.

The variability in these laws makes it difficult for manufacturers to develop a one-size-fits-all approach to packaging EPR compliance. However, this is not an excuse for failing to do what each law requires. As a result, manufacturers must take a proactive, custom-tailored approach to managing their compliance obligations and work with an experienced California environmental attorney to ensure their compliance programs are as streamlined as possible.

Examples of Key Variations in State EPR Laws

To illustrate the challenges of effectively managing multi-state packaging EPR compliance, we can look at some of the major differences among the laws currently in place. This is not a comprehensive survey, but rather an illustration of how widely companies' obligations can vary from state to state. Some examples of key variations in the current state EPR laws include:

The Definition of a "Producer"

One thing that the current slate of packaging EPR laws has in common is that they apply to producers of packaging materials. However, the definition of a "producer" varies. For example:

- **California:** In [California](#), a producer is any company that "manufactures a product that uses covered material [including single-use packaging] and who owns or is the licensee of the brand or trademark under which the product is used . . . sold, offered for sale, or distributed in the state." If no company meets this definition with respect to a particular item of packaging, then another party will be deemed the producer, as determined based on its role in introducing the packaging in question into the state.
- **Minnesota:** In [Minnesota](#), the law includes multiple definitions of a producer, with the applicable definition being determined based on the nature of the packaging (or other "covered material" in question. For example, for items "sold in or with packaging at a physical retail location in [Minnesota]," the law establishes a five-tier definition that covers both in-state and out-of-state entities.

- **Washington:** In [Washington](#), the law also establishes multiple definitions—many of which also have multiple tiers—similar to the law in Minnesota. However, the categories of producers in Washington differ from those in Minnesota, and Washington’s tiers (as applicable) are defined differently as well.

This alone makes compliance a challenge for manufacturers and other companies that sell packaging in these states (and potentially other states). Due to these varying definitions, companies may qualify as producers in some states but not others. In states where companies do not currently qualify as producers, they will need to monitor for any changes in the law that expand their applicability to align it with the broader applicability of other states’ packaging EPR laws.

The Definition of “Covered Material”

Another common thread among most of the current packaging EPR laws is their use of the term “covered material” (or “covered product” in [Oregon](#)). This is a critical term, as it determines which types of packaging (and, in some cases, other items) are covered under the law.

However, states’ definitions of covered materials (or covered products) also vary widely. For example:

- **California:** In California, covered material falls into two categories: “single-use packaging” and “plastic single-use food service ware.” California’s packaging EPR law describes each of these categories in detail, providing guidance but also leaving producers to grapple with significant uncertainty. There are also several exceptions—primarily for packaging, but also for certain food service ware items.
- **Maryland:** In [Maryland](#), the definition of “covered materials” initially appears more straightforward. The law covers “packaging and paper products sold, offered for sale, imported, or distributed in the State.” However, Maryland’s definition of “packaging” is both broad and complex, and it covers many “service packaging” items that are defined as “plastic single-use food service ware” in California.
- **Oregon:** Oregon’s definition of “covered product” also initially appears more straightforward, as it covers, “(A) Packaging; (B) Printing and writing paper; and (C) Food serviceware.” However, these are all defined terms as well, and the definitions are all extremely broad.

In many respects, this presents even greater compliance challenges than the varying definitions of the term “producer.” Producers may have compliance obligations under packaging EPR laws in some states but not others, and their obligations may vary depending on how “covered material” (or “covered product”) is defined in each state. Amendments to the existing packaging EPR laws could drastically impact producers’ compliance obligations here as well.

Producers’ Registration, Compliance and Reporting Obligations

Along with relying on different definitions, the current slate of packaging EPR laws also imposes varying registration, compliance, and reporting obligations for producers. From registration deadlines to substantive compliance plans and reporting requirements, these obligations vary widely.

This also poses substantial compliance burdens. Not only must producers track and report different information at different times and in different states, but they must also meet different sustainability-focused operational requirements to satisfy their statutory obligations in those states. While some producers may choose to implement multi-state operational standards that bring them closer to a one-size-fits-all approach, this won’t be feasible for all producers—and, in any case, producers will still need to manage their registration and reporting obligations on a state-by-state basis.

Developing and Implementing a Streamlined Multi-State Packaging EPR Compliance Program

Again, this is just a small sampling of the numerous variations between the current packaging EPR laws, and several bills are currently making their way through state legislatures that could soon add to the complexity of managing packaging EPR compliance. With this in mind, what can (and should) companies do to develop and implement a streamlined multi-state packaging EPR compliance program?

Here are some key considerations:

1. A Comprehensive and Custom-Tailored Approach is Key

Given the complexity of packaging EPR compliance, a comprehensive and custom-tailored approach is key. Manufacturers and other companies must assess whether they fall under each state's definition of a "producer"—and, if they do, they must then assess which of their products qualify as "covered material" or a "covered product." Failure to comply can trigger substantial penalties in many cases (e.g., in California, noncompliant producers can face daily fines of \$50,000), so it is critical for companies to ensure they take the necessary steps to remain compliant given their unique operations.

2. Companies Should Address All Applicable Requirements and Exemptions

When assessing their compliance obligations and developing their compliance programs, companies should address all applicable requirements and exemptions. Addressing all applicable requirements is key to taking a comprehensive approach to compliance, while addressing applicable exemptions can help companies avoid unnecessary compliance burdens. This will require a comprehensive understanding of all applicable state packaging EPR laws, including their respective similarities and differences.

3. Companies Should Prioritize Both Practicality and Flexibility

Due to the inherent challenges of managing multi-state packaging EPR compliance, companies should prioritize practicality when developing their compliance programs. If a company's compliance program is not easily put into practice (or, at least, relatively easily put into practice), this will increase the company's risk of missing reporting deadlines and other statutory requirements. At the same time, flexibility is important, as we expect additional packaging EPR laws to be enacted in 2026 and beyond.

4. Relevant Personnel Should Receive Training On All Applicable Compliance Risks

Training is a critical aspect of compliance program implementation. Once a company has a packaging EPR compliance program in place, relevant personnel should receive training on all applicable compliance risks. Individuals involved in managing any aspect of packaging EPR compliance should have a clear understanding of their roles and responsibilities, and they should be instructed on how to raise compliance concerns internally.

5. Companies Should Monitor for New and Shifting Packaging EPR Compliance Obligations

In light of ongoing efforts to adopt packaging EPR compliance legislation in various states across the country, companies should also monitor new and shifting compliance obligations. As new laws take effect—and as legislatures amend existing laws—companies will need to take proactive steps to ensure they remain fully compliant on an ongoing basis.

Schedule a Consultation with a California Environmental Attorney at Bick Law LLP

At Bick Law LLP, we have extensive experience assisting companies in a wide range of industries with packaging EPR compliance. If you have questions or concerns about your company's compliance obligations, we invite you to contact us. Give us a call at 949-432-3500 to

schedule a consultation with an experienced California environmental attorney at Bick Law LLP today.