

EXTENDED PRODUCER RESPONSIBILITY FOR PACKAGING

ILMA members are hearing and reading more and more about “extended producer responsibility” or “EPR,” especially for plastic packaging. EPR is commonly defined as a type of environmental product stewardship mandated by law, which includes, at a minimum, the requirement that a manufacturer’s responsibility for its product extends to post-consumer management of that product and its packaging. EPR laws typically (1) shift financial and management responsibility -- with government oversight -- upstream to the manufacturer and away from the public sector (e.g., local trash collection), and (2) provide incentives to manufacturers to incorporate environmental considerations into the design of their products and packaging.

EPR laws are not new. They have been enacted and are in operation throughout Europe and Canada, including for motor oils, for some time. EPR laws are gaining a wider foothold at the state level in the U.S., with at least 135 EPR laws enacted in 33 states across 18 product categories, including packaging. Some of these state laws have imposed requirements on producers of e-waste and batteries, carpeting, mattresses, medical sharps, paints, pesticides, phonebooks, lighting, and refrigerant-containing appliances. However, the latest spate of EPR legislation in state capitals has focused on packaging materials, including plastic and paper products.

This Whitepaper focuses solely on EPR packaging laws in the U.S. It begins with an overview of the design of EPR packaging laws, reviews enacted and proposed EPR packaging legislation, and discusses compliance responsibilities for which independent lubricant manufacturers need to be aware.

EPR Packaging Laws Overview

According to the National Caucus of Environmental Legislators, single-use plastic waste costs the U.S. more than \$2.2 trillion per year, with most of the post-consumer packaging being incinerated or buried in landfills. The push for EPR for packaging is to ensure that packaging producers assume responsibility for the costs of collection and sorting recyclables at the end of life.

ILMA has surveyed existing EPR laws, and it found the following common elements:

- **Covered products.** EPR packaging laws define the specific types of products for which the statute applies, such as single-use plastic packaging (think quart bottles of motor oils); food and beverage containers; foil and wraps; bags; boxes; straws and items used to stir beverages; utensils, plates, bowls and cups; party supplies; and household cleaning and personal care products that use plastic product

containers.

- **Covered producers.** EPR packaging laws typically apply to “producers,” which are broadly defined to include manufacturers, brand owners or licensees, and importers/distributors. Some EPR packaging laws exempt small businesses, governments, charities, and retailers from the definition of “producers.”
- **Producer Responsibility Organization.** Many EPR packaging laws require producers to join a collective producer responsibility organization (PRO). Some EPR packaging laws require “producers” to register directly with the state. The PRO then develops a producer responsibility plan and manages the producer responsibility or stewardship program. PROs are typically required to be nonprofit organizations, and it is common for multiple PROs to operate within a single state or EPR program. The financial structure of the PRO may vary, but producers usually pay fees to the PRO which then distributes the funds to cover the costs required by the EPR law, such as funding end-of-life management of covered products (e.g., collection, sorting, and processing).
- **Fees.** Producer obligations under EPR packaging laws are funded through fee payments – usually to the PRO -- which can be assessed at fixed rates and/or at variable rates based on product type and/or volume sold or distributed in the state.
- **Targets.** Many EPR packaging laws include targets (usually phased) for recycled content, recycling rates, and product composition.
- **Other.** In the miscellaneous category, EPR packaging laws impose other requirements on covered producers, such as infrastructure improvements, labor requirements, and record keeping and reporting requirements.

Current EPR Packaging Statutes

The following four states have enacted EPR packaging laws:

- **California.** [California's](#) “Plastic Pollution Prevention and Packaging Producer Responsibility Act” mandates a producer responsibility program for producers of single-use packaging and plastic single-use food service ware. Producers of covered materials sold, offered for sale, imported, or distributed in California are required to meet plastic source reduction requirements; ensure that the covered materials are recyclable in California or are eligible to be labeled “compostable” there by January 1, 2032; and ensure that covered plastic materials meet phased percentage recycling rates. Producers (with some exceptions) are required to form

and join a PRO by January 1, 2024.

- **Colorado.** [Colorado's](#) "Producer Responsibility Program for Statewide Recycling Act" creates a producer responsibility program that focuses on producers of single-use plastic packaging materials and paper products, including food and beverage packaging. Colorado has designated a single, statewide PRO that producers must join by June 1, 2025.
- **Maine.** [Maine's](#) "Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money" similarly establishes a producer responsibility program for packaging material that requires producers to pay into a fund based on the amount (weight/volume) and recyclability of packaging associated with their products. The State's Department of Environmental Protection (DEP) is selecting a stewardship organization (SO) to administer the EPR program. While Maine DEP does not anticipate the selection of the SO until 2026, all covered producers must comply with and fund the EPR program within a year after the SO is announced.
- **Oregon.** [Oregon's](#) "Plastic Pollution and Recycling Modernization Act" establishes a producer responsibility program that requires producers of covered products to join and pay into a PRO. Covered products include plastic and paper packaging, printing and writing paper, and food service ware. Each producer must register with a PRO and pay annual fees after July 1, 2025.

While not full-fledged EPR laws, many experts consider the following three state laws to mimic EPR packaging programs:

- **Connecticut.** The Connecticut General Assembly earlier this year passed [HB 6664](#), which creates a registration program for producers of plastic beverage containers beginning in April 2026 and establishes phased minimum postconsumer recycled content requirements for plastic beverage containers.
- **New Jersey.** [New Jersey's](#) "Recycled Content Law" sets post-consumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags. The law prohibits the sale of polystyrene loose fill packaging. Manufacturers were required to register every year starting in July 2022, and the recycled content standards go into effect in January 2024.
- **Washington.** [Washington's](#) "Plastics Law" is like the New Jersey statute, and it creates a producer registration and reporting system. It also establishes labeling and minimum-recycled-content requirements for certain types of plastic products. The Washington Department of Ecology is finalizing a rulemaking to implement the statute, and it is anticipated that the new regulations will take effect in

January 2024. Producers have been required since 2022 to register with the Department of Ecology by April 1 of each year.

Proposed EPR Packaging Legislation

In addition to Connecticut, the following States considered EPR packaging legislation in 2023: Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, Tennessee, and Washington. ILMA anticipates that more state legislatures will continue to take up EPR packaging measures.

EPR Packaging Law Compliance/NLCRC

As EPR legislation continues to expand across the U.S., ILMA members should take steps to understand EPR packaging laws (importantly because they vary from state-to-state) and begin, as necessary, to manage EPR packaging compliance now. Clearly, ILMA members, because they are brand owners, will be considered “producers” under certain state EPR packaging laws already on the books and will be obligated to meet recycling targets, registration (such as joining a PRO), and reporting requirements for each state in which they introduce products into that state’s market. ILMA will endeavor to keep members apprised as states propose and consider EPR packaging laws.

Additionally, ILMA members should discuss EPR packaging requirements with their packaging suppliers, especially to understand the phased recycled content, recyclability, or composition requirements for covered materials (e.g., single-use plastic bottles).

Further, based on the current state EPR packaging laws, it is important to assess annual record keeping, such as types of covered materials sold, offered for sale, imported, or distributed in the state; product brand names; weight and/or volume of the covered materials; and post-consumer recycled content of covered materials.

Lastly, ILMA intends to engage with the National Lubricant Recycling Coalition (NLCRC) (www.nationallcrc.com), an industry-led technical coalition, focused on establishing solutions for post-consumer recovery and recycling of plastic lubricant containers. The NLCRC was established in January 2021, and its current members include Berry Global, Castrol, Chevron, CKS Packaging Inc., ExxonMobil, Graham Packaging, Nexus Circular, Pennzoil-Quaker State Company, Petroleum Packaging Council, Plastipak Packaging, Safety-Kleen, and Valvoline. NLCRC has initiated a “pilot” bottle collection program in the Atlanta, Georgia area. Additionally, NLCRC is in the process of developing a lubricant-specific solution for EPR compliance.

ILMA members with questions on EPR should contact the ILMA office.