

Packaging EPR Regulations Sputter, as Preliminary Injunction is Issued for Oregon's Law, while California Again Withdraws its Proposed Implementing Regulations

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Seven states have passed Extended Producer Responsibility (EPR) laws related to single-use packaging and plastic food serviceware, with other states considering similar legislation. The intent of these laws is to hold the producers of covered materials financially responsible for their ultimate disposal. Certain states are also requiring the reduction of plastic or non-recyclable plastic used in these materials over time. Legislation is in various stages of implementation, and Oregon is the first state to issue fees to producers. In connection with a legal challenge to Oregon's EPR program, a court recently granted a preliminary injunction, preventing Oregon from enforcing the law against the plaintiff (an industry group) pending resolution of the case. Meanwhile, CalRecycle continues to struggle with finalizing its proposed regulations implementing California's EPR law, this time withdrawing its proposed regulations to tinker with provisions related to food and agricultural commodities.

Below we provide an overview of Oregon and California's laws, discuss the recent preliminary injunction in Oregon and its potential impacts, and summarize the recent regulatory activity in California.

OVERVIEW AND REGULATORY BACKGROUND

Oregon

Oregon's Plastic Pollution and Recycling Modernization Act (RMA), Senate Bill 582, established the nation's first comprehensive EPR program for packaging, printing and writing paper, and food serviceware. Enacted in 2021 and effective January 1, 2022, the law's EPR program officially launched on July 1, 2025, following several years of rulemaking.^[1]

Under Oregon's RMA, EPR compliance obligations apply to "Producers" of "Covered Products" sold or distributed in Oregon. The "Producer" for a given Covered Product can be the brand owner, manufacturer, importers or distributor, and again, different entities may have responsibility for portions of the packaging associated with a single product sold in Oregon.

Producers are required to participate in a Producer Responsibility Organization (PRO) approved by the Oregon Department of Environmental Quality (DEQ), with the currently Circular Action Alliance (CAA) currently serving in that role. Through PRO membership, producers must pay assessed fees that finance statewide recycling-system

improvements. Initial production data from over 1,700 producers was reported by a March 31, 2025 CAA deadline. The next CAA reporting deadline, for 2025 supply data, is expected to be May 31, 2026.^[2]

In May and June 2025, the CAA issued fee invoices to obligated Producers, with payments commencing on July 1, 2025, for Covered Material volumes reported for 2024.^[3] CAA has begun referring unresolved producer delinquencies to Oregon DEQ as required under Oregon law. Once a matter is referred, DEQ may initiate enforcement actions, including the assessment of civil penalties of up to \$25,000 per day. DEQ may also request that the Oregon Department of Justice seek an order prohibiting a noncompliant producer from selling covered products in or into Oregon.

California

California Senate Bill 54, enacted in June 2022, establishes an EPR framework intended to shift the cost and operational responsibility for managing disposal of single-use packaging and single-use plastic food serviceware from local governments to the “Producers” of such “Covered Material” sold or distributed in California.^[4] Determining who the “Producer” is for a given product is fact-dependent, and the Producer may be the brand owner, manufacturer, importer or distributor. In some cases, more than one entity may have responsibility for separate portions of packaging associated with a single product sold in California. By 2032, SB 54 requires:

- 100% of Covered Materials to be recyclable or compostable;
- a 65% recycling rate for single-use plastic packaging and food serviceware; and
- a 25% source reduction compared to 2023 baselines.

Producers are required to join and fund a PRO, currently CAA, to register, report packaging data, pay fees, and collectively finance recycling, composting, reuse, education, and other system improvements in California. CAA requested that Producers submit data to establish the 2023 baseline by late 2025. Using this data, CAA is expected to submit a program plan in mid-2026 for review by the SB 54 advisory board. Once the plan is approved, the program is projected to become active in 2027.^[5]

OREGON PRELIMINARY INJUNCTION

In July 2025, the National Association of Wholesaler-Distributors (NAW) filed a lawsuit in the U.S. District Court for the District of Oregon challenging the constitutionality of SB 582, which established Oregon’s EPR program.^[6] The lawsuit seeks injunctive relief to prevent continued enforcement of the law. NAW represents wholesale distributors across all major industries, and its members collectively account for approximately \$8.2 trillion in annual economic activity according to NAW.^[7]

NAW argues that Oregon’s EPR law imposes “unreasonable, arbitrary, and crushing” obligations on distributors. NAW contends that distributors are uniquely disadvantaged by the law because they are treated as “producers” under SB 582 despite having little or no ability to influence packaging design, recyclability, or material selection. The lawsuit also challenges Oregon’s delegation of key regulatory authority to a private nonprofit entity, the CAA. NAW contends that SB 582 violates the Commerce Clause, Equal Protection Clause, and nondelegation doctrine.

A hearing was held on February 6, 2026, for consideration of the State of Oregon’s motion to dismiss and NAW’s motion for preliminary injunction. The court ruled on the same day, dismissing certain NAW claims without prejudice and issuing a preliminary injunction against Oregon.^[8] The injunction prevents Oregon’s Department of Environmental Quality from enforcing the RMA against NAW members until the court rules on the merits this July, when a 5-day trial is expected to occur.

The standard applied to the motion for preliminary injunction was a “serious questions” standard, which is less strict than the standard used in some other circuits that require consideration of likelihood of success on the merits. Nonetheless, the ruling is a clear win for opponents of these EPR programs, and the same concerns raised by NAW in this case related to the delegation of program implementation to a PRO and the impact of the regulations on interstate commerce are likely to be present in the other six states that recently passed similar laws.

CALIFORNIA REGULATORY UPDATES

On January 9, 2026, the California Department of Resources Recycling and Recovery (CalRecycle) formally withdrew its proposed regulations implementing SB 54 from the Office of Administrative Law's (OAL) review in order to make revisions intended to improve regulatory clarity and implementation.^[9] The revisions are expected to concentrate on packaging used for food and agricultural commodities. Producers in the food and agricultural industries have communicated constraints associated with adopting recyclable or compostable packaging without compromising food safety or product shelf life.^[10]

Following the revisions, CalRecycle intends to reopen a 15-day public-comment period before resubmitting the regulations to OAL. This procedural reset does not alter SB 54's statutory deadlines or the overall program-implementation timeline, which remains aimed at launching California's EPR program for single-use packaging and food serviceware in 2027.^[11]

INDUSTRY IMPLICATIONS

Oregon Preliminary Injunction

At this time, the preliminary injunction only applies to NAW and its members, meaning companies that are subject to Oregon's EPR regulation and that are not members of NAW are still subject to the law's requirements and enforcement related thereto. CAA is continuing to implement the program, and pending any additional challenges or a broader ruling on the merits, CAA expects to receive 2025 data from other covered entities by May 31, 2026 and intends to issue fees thereafter.

More broadly, the preliminary injunction ruling points to a potential structural issue with the constitutionality of these EPR programs, and it is likely to yield similar challenges in other states (to the extent such challenges have not already been filed).

California Regulatory Update

While SB 54 is withdrawn for further revision, the statutory deadlines established by SB 54 remain in effect, and the overall timeline for compliance has not been delayed. CalRecycle is expected to open a new 15-day public-comment period soon. After SB 54 is again submitted to the OAL, the OAL will have 30 business days to approve or reject the new proposed regulations. CalRecycle's decision to withdraw and revise the proposed regulations follows a series of prior delays and revisions, including Governor Gavin Newsom's March 2025 directive to restart the rulemaking process because of concerns about cost impacts on businesses and consumers.^[12]

For further information or questions about EPR developments, please contact your Winston & Strawn relationship attorney or the authors of this post.

We note that governmental actions on the federal, state, and local level involving EPR are changing every day, and the information contained herein is accurate only as of the date set forth above.

[1] S.B. 582, 81st Leg. Assemb., 2021 Sess. (Ore. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB582>.

[2] Oregon.gov, *Producers of Covered Products*, <https://www.oregon.gov/deq/recycling/pages/producers-of-covered-products.aspx>.

[3] Circular Action Alliance, *Producer Supply Reporting Cycle on March 31, 2025* (April 15, 2025), <https://circularactionalliance.org/news-feed/caa-deadline-producer-registration-approaching-p6f9m-6z3bk>.

[4] S.B. 54, 2021–22 Leg., Reg. Sess. (Cal. 2022), <https://legiscan.com/CA/text/SB54/id/2600075>.

[5] Maria Rachal, *California Packaging EPR Rules Delayed Again*, Packaging Dive (Jan. 12, 2026), <https://www.packagingdive.com/news/calrecycle-withdraws-sb54-rules-food-agricultural-revisions/809293/>.

[6] Nat'l Ass'n of Wholesaler-Distrib., *NAW Takes Legal Action Against Oregon's Overreach on Recycling Mandate* (July 30, 2025), <https://www.naw.org/naw-takes-legal-action-against-oregons-overreach-on-recycling-mandate/>.

[7] *Id.*

[8] Nat'l Ass'n of Wholesale Distributors v. Feldon, No. 3:25-cv-01334-SI (D. Or. Feb. 6, 2026), Preliminary Injunction Order - 2.6.25 | DocumentCloud.

[9] CalRecycle, *SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations*, <https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/>.

[10] JD Supra, *CalRecycle Withdraws SB 54 Regulations for Revisions and Another Public Comment Period* (Jan. 13, 2026), <https://www.jdsupra.com/legalnews/calrecycle-withdraws-sb-54-regulations-4005780/>.

[11] *Id.*

[12] Eliyahu Kamisher, *Newsom Delays Plastics Pollution Rules, Citing High Costs*, Bloomberg Law (March 7, 2025), <https://news.bggov.com/environment-and-energy/newsom-delays-plastics-pollution-rules-citing-high-costs-1>.

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