

Oregon Federal Court Upholds Packaging EPR Law: Active EPR Compliance Obligations

Client Alerts

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On August 27, 2026, an Oregon federal district court ruled in *National Association of Wholesaler-Distributors v. Feldon*, No. 3:25-cv-01334 (D. Or.), that Oregon's Plastic Pollution and Recycling Modernization Act does not violate the US Constitution's dormant Commerce Clause or Due Process Clause. The ruling lifts the preliminary injunction that had barred enforcement against National Association of Wholesaler-Distributors members. An appeal to the Ninth Circuit is likely, but absent a new injunction pending appeal, enforcement can proceed unimpeded.

This decision lands amid a rapidly maturing multistate landscape. Seven states have enacted packaging-related Extended Producer Responsibility (EPR) laws—Colorado, Oregon, California, Maryland, Minnesota, Washington, and Maine—though Maine's program remains nonoperational after its Stewardship Organization selection process failed in August 2026. In the other six, active compliance obligations already apply to producers of covered packaging and products (paper products in all but California; food-service ware in California and Oregon), generally requiring registration with a Producer Responsibility Organization (Circular Action Alliance in every operational state) and/or the relevant state agency, reporting, and fee payment. Colorado's, Oregon's, and California's programs are furthest along, with several reports already due and fees already assessed.

Sales prohibitions for failure to register and/or participate in an approved program plan are a particular risk. For example, Colorado's took effect July 1, 2025 (Colo. Rev. Stat. § 25-17-708); Maryland's regulations, effective May 25, 2026, likewise impose a sales prohibition (COMAR 26.04.14.06.C); and California's takes effect no later than January 1, 2027 (Cal. Pub. Res. Code § 42051(b)(1)). In Oregon, the state may seek a court-ordered sales prohibition against a noncompliant producer (ORS 459A.962(6)).

Enforcement mechanics vary meaningfully by state. Circular Action Alliance itself has no enforcement authority; under its Producer Delinquency Policy, it refers unresolved delinquencies to state regulators three months after notice. From there, maximum statutory penalties range widely—up to \$50,000 per day in California—and cure periods, where they exist, range from roughly 30 to 60 days. Producers are not the only parties at risk: in Washington, for example, sellers and

distributors found to be selling or distributing a noncompliant producer's covered materials can themselves face enforcement action and penalties (RCW 70A.208.230(3)(b)).

States may also increasingly make noncompliance public. Oregon's Department of Environmental Quality maintains a quarterly Producer Status List of noncompliant producers, with the first list published April 9, 2026. CalRecycle is likewise required to post and update, every six months, a list of covered material categories, by producer, that are out of compliance (PRC § 42082(a))—though no such list has been published by CalRecycle to date.

Any brand owner, manufacturer, or distributor selling into these states should confirm (1) whether it is considered the producer responsible for compliance—a determination that can turn on brand ownership, manufacturing role, or which party ships the final product; (2) whether its packaging or products are covered; and (3) whether an exemption applies (several states, for example, exempt qualifying business-to-business transactions).

We advise clients across each of these seven states on producer-status and packaging/product-coverage determinations, exemption eligibility, compliance options, and enforcement exposure, including companies with complex, multichannel distribution models. Please contact us if you'd like assistance evaluating your obligations.

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