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EPR Packaging Laws: Transactional Considerations

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U.S. packaging extended producer responsibility ("EPR") laws are entering a new phase, as recently enacted regimes move into implementation and face judicial scrutiny. Challenges in Oregon, California and Colorado have raised constitutional and statutory objections to key features of these programs, creating uncertainty for regulated businesses. Recent developments in Oregon, however, illustrate why businesses should not assume that a pending challenge will eliminate their compliance obligations. A recent decision from the U.S. District Court for the District of Oregon upheld Oregon's EPR law and rejected constitutional challenges to the law from the National Association of Wholesaler-Distributors. Litigation remains pending in California, where plaintiffs are seeking to preliminarily enjoin the state's EPR law, but no relief has been granted. Meanwhile, the European Union's Packaging and Packaging Waste Regulation ("PPWR") became generally applicable on August 12, 2026, bringing new EPR and packaging requirements into effect across the EU. For deal teams, these developments underscore the need to diligence EPR exposure under current law while assessing how litigation and implementation may affect a target's obligations and costs over the investment horizon.

Packaging EPR regimes shift responsibility for end-of-life waste management from governments and taxpayers to those who place packaging on the market. Although EPR regimes exist for product categories ranging from electronics and batteries to end-of-life vehicles and used oil, this article focuses on *packaging* EPR in certain U.S. states, the European Union and the United Kingdom, and why understanding these regimes and a target's potential exposure has become an increasingly important component of transactional diligence.

Packaging "Producer" and "Manufacturer" Distinctions

A central compliance challenge under packaging EPR regimes is determining who qualifies as the "producer." The term is defined differently across the U.S. states with packaging EPR laws, but most adopt a tiered allocation starting with the brand owner and, failing that, shifting to the importer, distributor, retailer, or other entity. Physical presence in the state is generally not required.

The EU's PPWR distinguishes the "manufacturer" (with EU-wide product-conformity duties, one per supply chain) from the "producer" (with EPR duties assessed Member State-by-Member State) – a distinction the Commission's March 30, 2026, guidance was issued to clarify. In the UK, primary responsibility generally falls on the brand owner that makes the first UK supply of filled packaging. For multi-brand packs, the obligation rests with the brand owner making that first supply or, if none does, the brand owner whose brand occupies the largest area of the packaging.

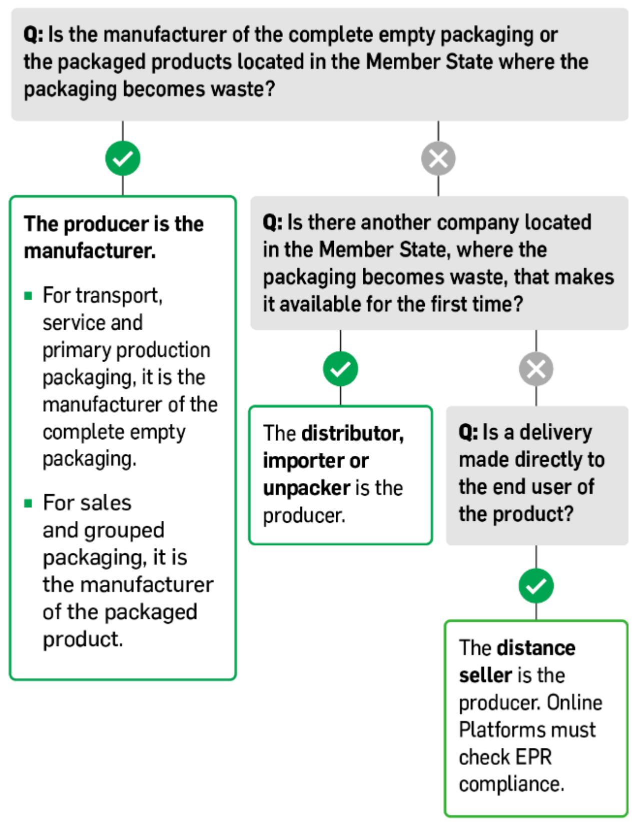
Because the "obligor" role turns on a company's supply chain position, EPR liability can attach to businesses that may not regard themselves as packaging producers – e.g., private-label retailers, e-commerce platforms fulfilling third-party orders, or distributors importing from overseas. The breadth also has transactional consequences: a change in corporate structure can move an entity into the "first placer" position, shifting EPR obligations with it.

Overview of the different roles of manufacturers and producers in the PPWR

	Manufacturer	Producer
Definition	Manufacturers of packaging or a packaged product. According to the above, it is not the person who manufactures the packaging but the person who 'orders and decides on the design specifications for packaging' Exemption for brand owners when they are micro-enterprises, <u>and the person that supplies the packaging is located in the same Member State</u>.	Any manufacturer, importer or distributor who makes packaging or packaged products available for the first time in the Member State where it is present or directly to end users in another Member State.
Quantity	One economic operator EU-wide.	The cconomic operator who makes packaging available for the first time on the territory of the Member State were the packaging is expected to become waste.
Function	Ensures conformity of the packaging with sustainability and labelling requirements.	Finances waste management in the Member State where packaging is expected to become waste.

AND / OR

Demonstration diagram of how the producer in the EU can be identified



The U.S. Landscape: Fragmented and Evolving

The United States has no federal EPR law for packaging. Instead, packaging EPR has emerged at the state level in a patchwork fashion. Seven states — California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington — have enacted packaging EPR statutes, and several others are considering similar legislation. These laws differ materially in scope, fees, reporting and administration.

This fragmentation creates a distinctive M&A diligence challenge. Unlike regimes where the task is to verify compliance with known requirements, U.S. packaging EPR diligence requires evaluating exposure to a regulatory environment still taking shape. A target may be compliant today but face significant new obligations as additional states bring programs online or existing programs phase in new requirements.

Compounding this, several state packaging EPR laws face legal challenges, and the political landscape remains contested. For buyside diligence, this means traditional backward-looking compliance verification is necessary but may not be sufficient. Deal teams may also model forward-looking scenarios accounting for regulatory expansion.

Practical takeaways for U.S.-focused transactions include:

- **Operational mapping.** Identifying states where the target places packaging into commerce, cross-referencing against enacted and proposed packaging EPR statutes, and reviewing commercial arrangements where producer status, compliance responsibility, or costs may be allocated among supply-chain participants.
- **Compliance infrastructure assessment.** Evaluating whether the target has systems to track packaging volumes, material types, and recycled content. In many organizations, packaging EPR data lives within existing environment, health, and safety ("EHS") compliance management systems. Some companies, particularly mid-market targets, lack this data infrastructure, which may signal broader EHS governance gaps.
- **Cost projection.** Stress-testing financial models against a range of fee scenarios, recognizing that U.S. packaging EPR fees will likely increase as programs mature and fee-modulation mechanisms (which charge higher fees for harder-to-recycle materials) are introduced. Deal teams should consider whether packaging EPR requirements may necessitate packaging redesign, supplier changes or other operational or capital investments beyond projected fees.
- **Litigation and legislative risk.** Monitoring legal challenges to state packaging EPR laws and tracking legislative activity that could expand or narrow the scope of existing programs.

Litigation Challenges

Packaging EPR laws have been subject to constitutional and statutory challenges in Oregon, Colorado and California, although the litigation is at different stages in each state. Oregon has produced the first merits decision: in *National Association of Wholesaler-Distributors v. Feldon*, the U.S. District Court for the District of Oregon preliminarily enjoined enforcement against the plaintiff and its members in February 2026, while dormant Commerce Clause and Due Process claims proceeded; however, following a five-day bench trial in July 2026, the court upheld Oregon's EPR law, concluding that it violates neither constitutional provision. *See Nat'l Ass'n of Wholesaler-Distribs. v. Feldon*, No. 3:25-cv-01334-SI, Findings of Fact & Conclusions of Law, ECF No. 205 (D. Or. Aug. 27, 2026).

Challenges remain pending in Colorado and California. In Colorado, plaintiffs in *Independent Lubricant Manufacturers Association v. Colorado Department of Public Health and Environment* (Denver Dist. Ct., filed Mar. 12, 2026) assert statutory, nondelegation, due-process and First Amendment claims, while plaintiffs in *National Association of Wholesaler-Distributors v. Ryan* (D. Colo., filed July 30, 2026) raise related federal constitutional challenges. In California, plaintiffs in *State of Nebraska v. Heller* (E.D. Cal., filed June 22, 2026) challenge the state's EPR law (the Plastic Pollution Prevention and Packaging Producer Responsibility Act, or "SB 54") on Commerce Clause, due-process, speech and nondelegation grounds. On August 19, 2026, plaintiffs amended their complaint and moved to preliminarily enjoin implementation and enforcement of SB 54; that motion remains pending, with a hearing scheduled for January 15, 2027. The amended complaint also adds vagueness theories following a July 14, 2026, decision in *California League of Food Producers v. Bonta,* No. 3:26-cv-01675-WQH-BLM, 2026 WL 205589 (S.D. Cal., July 14, 2026), which preliminarily enjoined California's SB 343 "Truth in Recycling" restrictions based on likely vagueness and First Amendment violations. Because SB 343 and SB 54 are components of California's broader recyclability framework, developments in the SB 343 litigation may also inform SB 54 compliance assumptions.

For deal teams, pending litigation creates contingent regulatory and financial risk that conventional compliance diligence may not fully capture. A successful challenge could invalidate regulations or program features, restrict enforcement, or alter fee-setting mechanisms, potentially reducing projected fees or rendering some compliance investments unnecessary; if challenges fail, projected obligations may instead become more certain. This uncertainty can complicate cost projections over a typical hold period, particularly for targets with material sales into states with active litigation. Practitioners should therefore assess how potential outcomes could affect a target's exposure and, where material, consider addressing that uncertainty through purchase price assumptions, indemnities, escrows or other risk-allocation mechanisms.

The European Landscape

The EU and UK have more established packaging EPR architectures than the U.S. However, operational detail remains in flux through delegated and implementing acts, regulator guidance, fee-setting methodologies, and national implementation choices, and, in the UK, further secondary legislation and scheme-administrator decisions. EU diligence is particularly complex: a target may understand its existing Member State EPR filings yet be underprepared for the PPWR's harmonised product-compliance layer, particularly where packaging specifications are controlled by suppliers, contract manufacturers, or non-EU group entities.

EU PPWR

In the EU, packaging EPR now sits within a more harmonised framework following the PPWR's general application as of August 12, 2026.

The PPWR applies broadly to packaging placed on the EU market and creates a single, directly applicable set of rules governing packaging design, recyclability, recycled content, labelling, waste prevention, reuse and producer responsibility. This makes the EU framework less fragmented than the U.S. landscape, but not free from uncertainty. Much of the regime's practical content depends on future Commission delegated and implementing acts.

The PPWR requires Member States to designate competent authorities and lay down effective, proportionate and dissuasive penalties by February 12, 2027, which may include fines and exclusion of non-compliant packaging from the market.

Key transactional considerations include verifying producer registration and packaging EPR arrangements in each Member State; testing the reliability of historical packaging-volume and material-composition data, as underreporting may create retroactive fee exposure; and assessing readiness for the PPWR's product-facing obligations, including conformity assessment and technical documentation. Buyers should identify areas where compliance assumptions depend on unsettled rules.

The UK Regime

In the UK, packaging EPR is governed by the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 (SI 2024/1332), in force from January 1, 2025. The Regulations apply the "polluter pays" principle by requiring in-scope producers to fund the full net cost of managing household packaging they place on the market, overseen by the scheme administrator, PackUK, and the Environment Agency in England.

An organisation is in scope if it has annual turnover of at least £1 million, supplied or imported more than 25 tonnes of packaging to the UK market in the previous year, and carries out a packaging activity such as selling under its own brand, packing or filling, importing packaged goods, operating an online marketplace for non-UK sellers, or supplying empty or reusable packaging.

The regime separates "small" producers (broadly, £1-2 million turnover or 25-50 tonnes) from "large" producers (£2 million or more and over 50 tonnes), with large producers bearing fuller obligations including registration, six-monthly data reporting, recyclability assessment and recycling targets, and disposal fees that from 2026-27 are modulated by recyclability. Non-compliance carries both civil and criminal exposure, including fixed and variable monetary penalties, with potentially substantial penalties for larger businesses.

Key transactional considerations include: verifying registration status and correct categorisation as a producer, including whether the target is a brand owner, importer, packer/filler, distributor, online marketplace or service provider with obligations under the UK allocation rules; assessing whether the target can collect and report granular packaging data including material type, weight, and nation-of-sale; and testing whether reported data has been subject to resubmissions, regulator queries or internal uncertainty. The Packaging (Essential Requirements) Regulations 2015 also continue to apply.

Businesses supplying Northern Ireland may face dual-regime obligations under both UK domestic rules and EU-derived requirements via the Windsor Framework.

Packaging EPR Is Changing Deal Documentation

Several developments are visible across deal practice:

- **Compliance representations are becoming more specific.** Some buyers now request standalone representations addressing packaging EPR registration status, reporting accuracy, fee payment history, and compliance with recycled-content mandates. Sellers may reasonably resist unqualified representations, and buyers should anticipate negotiation around materiality and knowledge qualifiers and temporal limitations.
- **Disclosure schedules are being scrutinized for packaging data.** Buyers are asking for disclosure of packaging EPR registrations, PRO memberships, reported packaging volumes, fee payment records, and known non-compliance. A target that cannot produce granular packaging data may have compliance gaps extending to broader environmental, social, and governance ("ESG") reporting capabilities. Where the target makes ESG disclosures, buyers should cross-check those representations against packaging EPR records to mitigate greenwashing risk.
- **Indemnities are appearing for known or contingent packaging EPR exposure.** Where diligence identifies specific risks such as historical underreporting, missed registration deadlines, or exposure under recently enacted laws, buyers may seek special indemnities or purchase price adjustments to cover potential liability.

Looking Ahead

Packaging EPR is evolving rapidly and unevenly across jurisdictions, creating complexity for cross-border businesses. In transactions involving packaging-intensive businesses, EPR should be a core diligence, representations and warranties, and valuation consideration. Early coordination across legal, sustainability, procurement and finance can help identify exposure, anticipate rising obligations and reduce compliance costs and deal risk.

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