



EPR for Packaging in the United States: Covered Products and Exemptions



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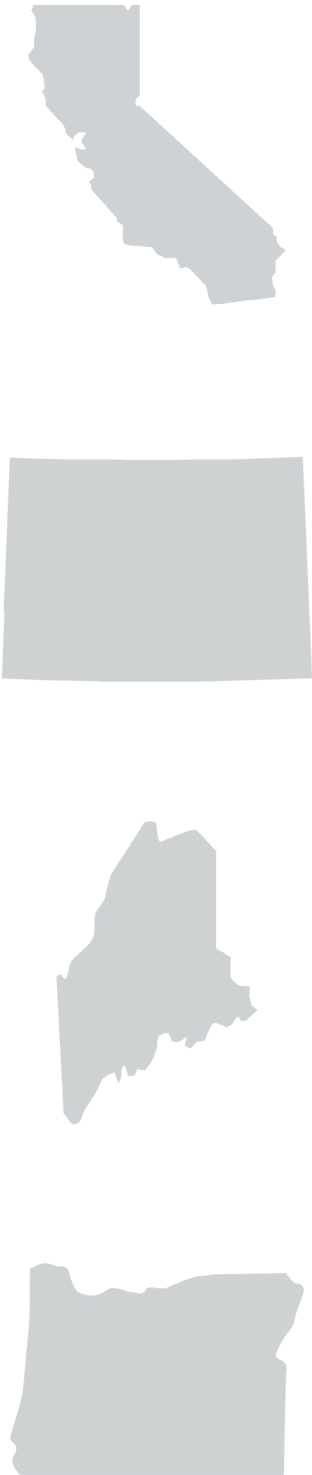


POLICY



GreenBlue is an environmental nonprofit dedicated to the sustainable use of materials in society. We bring together a diversity of stakeholders to encourage innovation and best practices to promote the creation of a more sustainable materials economy.

The Sustainable Packaging Coalition (SPC) is a membership-based collaborative that believes in the power of industry to make packaging more sustainable. We are the leading voice on sustainable packaging and we are passionate about the creation of packaging that is good for people + the environment. Our mission is to bring packaging sustainability stakeholders together to catalyze actionable improvements to packaging systems and lend an authoritative voice on issues related to packaging sustainability. The Sustainable Packaging Coalition is a trademark project of GreenBlue Org.



Introduction

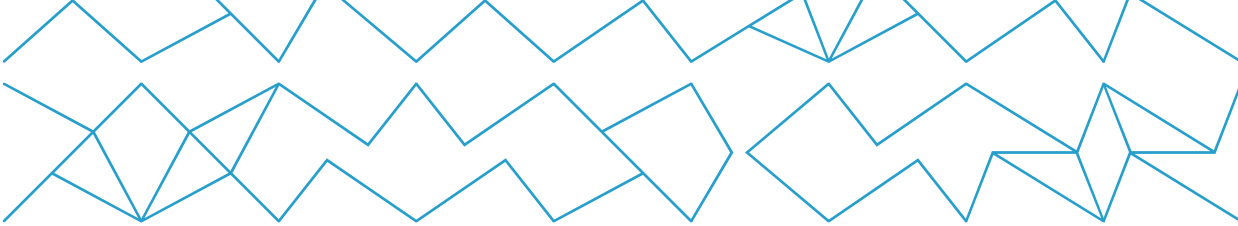
Extended Producer Responsibility for packaging and paper products is a policy approach that assigns producers (brands, manufacturers, etc.) responsibility for the end-of-life of their products, whether that be through recycling, composting, or landfilling. The responsibility part can be financial, operational, or a combination of both. Essentially, producers are required to provide funding and/or services that assist in managing covered products after the use phase of a product’s life.

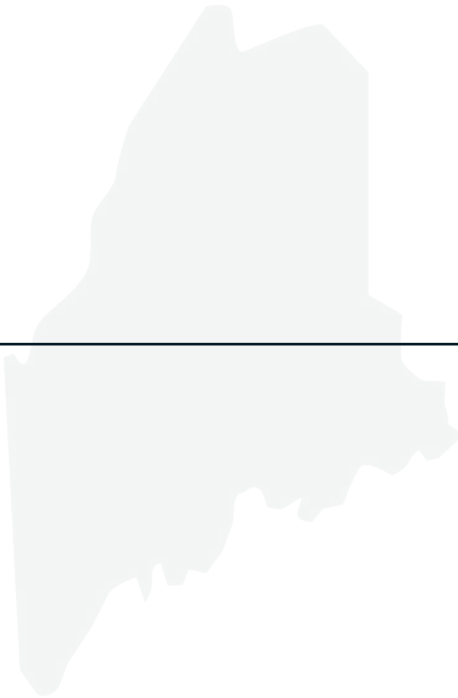
At their foundational level, all Extended Producer Responsibility (EPR) programs have one thing in common: covered products. These products are defined within the EPR proposals and specify the types of products that are “covered” or obligated under the program. For example, in various state laws within the United States, covered products include paint, electronics, tires, mattresses, and batteries. Within the last few years, new EPR for packaging and paper products laws have passed in California, Colorado, Maine, and Oregon. For these kinds of covered products, the “product” is the packaging, rather than the object or item (i.e. the plastic bag around the mattress rather than the mattress itself). Each law defines “covered product” a little differently. The definitions typically include format and material type, as well as any exemptions.

The two tables below go into detail about each state’s covered products by category, as well as explaining the covered product exemptions. Here you can see the similarities and differences between the states, as well as gain a better understanding of where your product fits into each state’s law. Keep in mind that rulemaking, or finalization of the laws by state governments, is still in process for these four states, so these categories and exemptions are subject to change.

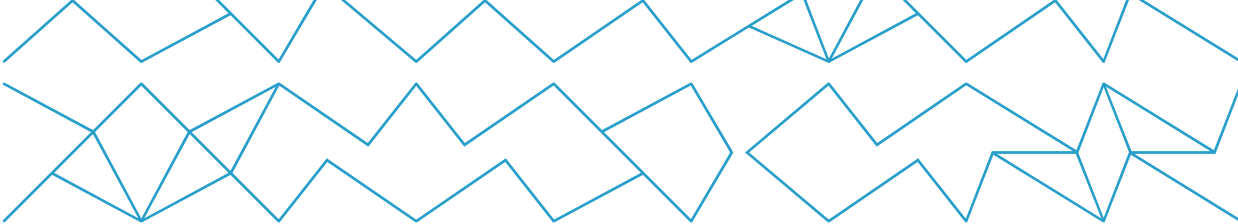


Covered Products



	CALIFORNIA	COLORADO	MAINE	OREGON
SINGLE/SHORT-TERM USE	Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.	Packaging material means any material, regardless of recyclability, that is intended for single or short-term use and is used for the containment, protection, handling, or delivery of products to the consumer at the point of sale, including through an internet transaction. Packaging material includes paper, plastic, glass, metal, cartons, flexible foam, rigid packaging, or other materials or combination of these materials.		
FOOD SERVICEWARE	Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. “Single-use food service ware” includes both of the following: 1. Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws. 2. Wraps or wrappers and bags sold to food service establishments	Packaging material includes products supplied to or purchased by consumers for the express purpose of facilitating food or beverage consumption and that are both: 1. Ordinarily disposed of after a single or short-term use 2. Not designed for reuse or refill		Food serviceware means paper or plastic plates, wraps, cups, bowls, pizza boxes, cutlery, straws, lids, bags, aluminum foil or clamshells or similar containers that are generally intended for single use and are sold to a retailer or a dine-in food establishment or a take-out food establishment, regardless of whether the item is used to pre packaged food for resale, is filled on site for food ordered by a customer or is resold as is.
PAPER PRODUCTS		Paper products means paper and other cellulosic fibers, whether or not they are used as a medium for text or images, including: flyers, brochures, booklets, catalogs, telephone directories, newspapers, magazines, and paper used for writing or any other purpose.		Printing and writing paper includes, but is not limited to, newspaper, magazines, flyers, brochures, booklets, catalogs, telephone directories and paper used for copying, writing or other general use.
PACKAGING MATERIAL		Packaging material means a discrete type of material, or a category of material that includes multiple discrete types of material with similar management requirements and similar commodity values, used for the containment, protection, delivery, presentation or distribution of a product, including a product sold over the Internet, at the time that the product leaves a point of sale with or is received by the consumer of the product.		Packaging means: 1. Materials used for the containment or protection of products, including but not limited to paper, plastic, glass or metal or a mixture thereof 2. Single-use bags, including but not limited to shopping bags and 3. Nondurable materials used in storage, shipping or moving, including but not limited to packing materials, moving boxes, file boxes and folders

Covered Product Exemptions



	CALIFORNIA	COLORADO	MAINE	OREGON
MEDICAL PRODUCTS	Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act	Packaging material used to contain a product that is regulated as a drug, medical device, or dietary supplement by the Federal Food and Drug Administration under the “Federal Food, Drug, and Cosmetic Act”		Packaging and paper products sold or supplied in connection with: (i) Prescription drugs as defined in ORS 689.005; (ii) Nonprescription drugs as defined in ORS 689.005; (iii) Drugs marketed under a brand name as defined in ORS 689.515
INFANT FORMULA	Infant formula, as defined in Section 321(z) of Title 21 of the United States Code	Packaging material used to contain a product that is regulated as infant formula, as defined in 21 U.S.C sec. 321		Infant formula as defined in 21 U.S.C. 321
ANIMAL DRUGS	Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals. Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the Federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).	Packaging material used to contain a product that is regulated as animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin under the Federal “Virus-Serum-Toxin Act”, 21 U.S.C. sec. 151 et seq., as amended; packaging material used to contain a product that is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act		Packaging and paper products sold or supplied in connection with drugs that are used for animal medicines, including but not limited to parasiticide drugs for animals.
MEDICAL FOOD	Medical food, as defined in section 360ee(b)(3) of title 21 of the United States code	As a medical food, as defined in 21 U.S.C. sec. 360ee		Medical food as defined in 21 U.S.C. 360ee
NUTRITIONAL SUPPLEMENTS	Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the international classification of diseases, tenth revision, or other medical conditions as determined by the department	As fortified nutritional supplements used for individuals who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined by the world health organization’s “international classification of diseases” (tenth revision), as amended or revised, or any other medical conditions as determined by the commission by rule		Fortified oral nutritional supplements used for individuals who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the international classification of diseases, tenth revision, or other medical conditions as determined by the commission
INSECTICIDE, FUNGICIDE, RODENTICIDE ACT	Packaging used to contain products regulated by the Federal Insecticide, Fungicide, Rodenticide Act	Packaging material used to contain a product that is regulated under the Federal Insecticide, Fungicide, Rodenticide Act		Required under 40 c.f.r. 156.140, or other federal regulation pertaining to toxic or hazardous materials, to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling
HAZARDOUS	Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under part 178 (commencing with section 178.0) of subchapter c of chapter i of subtitle b of title 49 of the code of federal regulations and packaging used to contain hazardous or flammable products regulated by the 2012 Federal Occupational Safety and Health Administration Hazard Communications Standard (29 c.f.r. 1910.1200).	Packaging material used to contain a product that is required under state law to be sold in packaging material that meets the standards set forth in the “poison prevention packaging act of 1970”, 15 U.S.C. sec. 1471 et seq., as amended.		Packaging for products: (i) that are required under 40 c.f.r. 156.140, or other federal regulation pertaining to toxic or hazardous materials, to state on the label or container that the packaging should not be recycled or should be disposed of in a manner other than recycling
BEVERAGE CONTAINERS	Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (division 12.1 (commencing with section 14500)).	Beverage containers subject to a returnable container deposit, if applicable	A beverage container, as defined in section 3102, subsection 2, subject to the requirements of chapter 33	A beverage container, as defined in ors 459a.700
LONG-TERM PACKAGING	Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department	Packaging materials intended to be used for the long-term storage or protection of a durable product and that are intended to transport, protect, or store the product for at least five years	Packaging intended to be used for the long-term storage or protection of a durable product and that can be expected to be usable for that purpose for a period of at least 5 years	
ARCHITECTURAL PAINT	Packaging associated with products covered under the architectural paint recovery program established pursuant to chapter 5 (commencing with section 48700) of part 7.	Packaging material used to contain architectural paint covered under a paint stewardship program in accordance with part 4 of this article 17;	A container for architectural paint, as defined in section 2144, subsection 1, paragraph a, as long as a paint stewardship program is in operation, has been approved by the department pursuant to section 2144 and the stewardship organization operating that program: (a) has demonstrated to the department’s satisfaction that it recycles at least 90% of the containers of architectural paint collected under the program; or (b) subject to the approval of the department, if unable to satisfy the requirements of division (a), has demonstrated to the department’s satisfaction that it recycles at least 80% of the containers of architectural paint collected under the program;	Packaging related to containers for architectural paint, as defined in ors 459a.822, that has been collected by a producer responsibility organization under the program established under ors 459a.820 to 459a.855.

	CALIFORNIA	COLORADO	MAINE	OREGON
PAPER PRODUCTS		Paper products that, through their use, could become unsafe or unsanitary to handle Printed paper used to distribute financial statements, billing statements, medical documents, or other vital documents required to be provided in paper form by applicable consumer protections laws or other state or federal laws		Napkins, paper towels or other paper intended to be used for cleaning or the absorption of liquids
BOUND BOOKS		Bound books		Bound books
INDUSTRIAL PACKAGING		Packaging material used exclusively in industrial or manufacturing processes		Specialty packaging items that are used exclusively in industrial or manufacturing processes, including but not limited to: cores and wraps for rolls of packaging sold by a mill to a packaging converter or food processor; and trays, whether designed for a single use or multiple uses, used for the transport of component parts from a parts supplier to a manufacturer that assembles those parts.
REFURBISHED ELECTRONICS		Packaging material used to contain a portable electronic device, as defined in section 10-4-1501, that has been repaired and reconditioned to be sold as a refurbished product		
NEWS SOURCES		Paper products used for a print publication that primarily includes content derived from primary sources related to news and current events		
PALLETS AND PALLET RELATED PACKAGING				Rigid pallets used as the structural foundation for transporting goods lifted by a forklift, pallet jack or similar device. Pallet wrap or similar packaging used to secure a palletized load if added by a person that is not the producer of the palletized covered products.
GAS CANISTER				Liquified petroleum gas containers that are designed to be refilled
FARMS AND PLANTS				Items sold on a farm or used on a farm, including items used for farm use, as defined in ORS 215.203, or for processing on a farm, provided that an item used on a farm is not subsequently sold at a retail establishment that is not located on a farm Items used by a nursery licensed under ORS 571.055 that generates the majority of the nursery's revenue through the sale of nursery stock, as defined in ORS 571.005, provided that the items are not sold through retail sales
WINE AND SPIRITS				Wine and spirit containers for which a refund value is established under Oregon law.
STATUTE SET EXEMPTIONS	Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria: (i) the covered material is not collected through a residential recycling collection service (ii) the covered material does not undergo separation from other materials at a commingled recycling processing facility (iii) the covered material is recycled at a responsible end market (iv) the material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years. (ii) if only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter	Any other material that, based on an analysis by the organization of the operational and financial impacts of the proposed changes and after consultation with the advisory board, the commission determines by rule to not be a covered material.		
NON-CONSUMER PACKAGING MATERIALS		Packaging material does not include: 1. Packaging materials used solely in transportation or distribution to nonconsumers 2. Packaging materials used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer 3. Packaging materials that are not sold or distributed to covered entities 4. Packaging materials that are used for products sold or distributed outside the state		

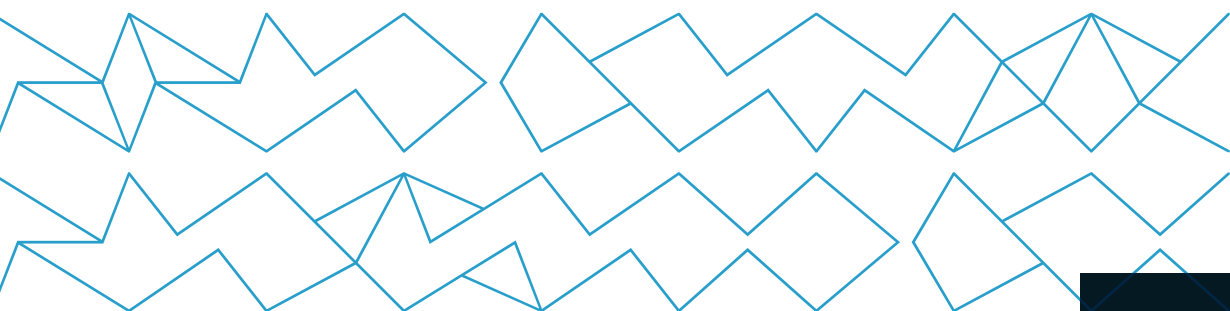
Conclusion

As shown above, there is quite a variety of covered product exemptions and they are very circumstantial to the individual state laws. In the case of EPR for packaging materials and paper products, many of the exemptions fall under categories where the majority of that packaging should not end up in the residential or commercial waste streams, as these materials are already regulated at their end of life or are handled in alternative streams. For example, architectural paint is exempted from all four states as an EPR program already exists for these packages and will be handled through that alternative stream. Another example is products that could become unsanitary after use. Packaging and paper EPR covers all types of paper, but paper towels or napkins are excluded because they're inherently used for unsanitary purposes, unlike printing or wrapping paper that is generally directed for the recycle bin once used. Covered products and exemptions are the foundation of any EPR program. As such, they are highlighted in the SPC's [Guide to EPR Proposals tool](#), and further explanation of what products are covered under each state's bill can be found in the "Covered Products" category.



Explore the tool here:

<https://epr.sustainablepackaging.org/>



Disclaimer:

This document is not legal advice. We advise you consult with legal counsel to determine whether or not your organization is exempt from EPR laws.



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