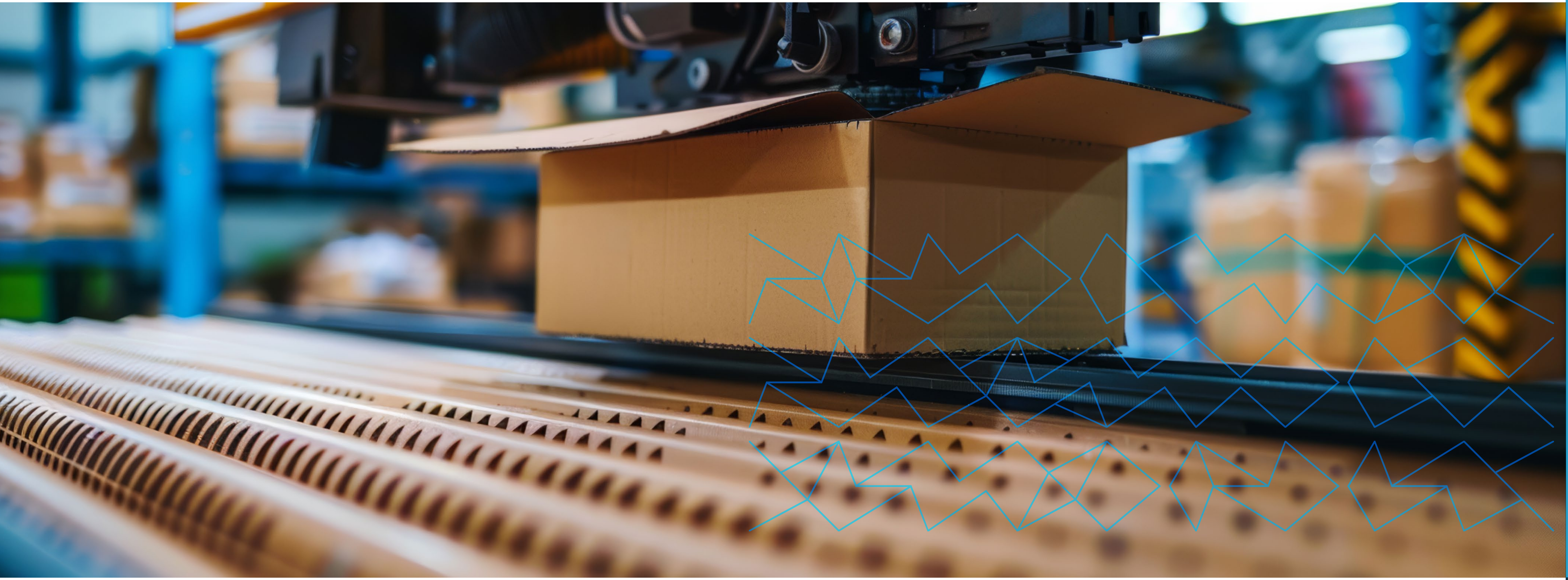

EXTENDED PRODUCER RESPONSIBILITY (EPR) PRODUCER EXEMPTIONS

MINI RESOURCE

POLICY

SUSTAINABLE PACKAGING COALITION®

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 and 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 (EPR) for packaging and paper products is a policy approach that assigns producers (brands, manufacturers, etc.) responsibility for the end-of-life of their products. 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: producers. These producers are defined within the EPR proposals and specify the types of producers that are "obligated" or required to participate under the program.

The purpose of Producer definitions in EPR programs is to clarify who is responsible (or obligated) for the covered product (packaging and/or paper products) and thus, who is responsible for contributing to the financial, operational, or combined program.

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There is no universal definition of producer or definition of who is exempt.

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For definitions of who is an obligated producer, the legislation typically includes a producer hierarchy. First obligated is the brand or manufacturer, then the distributor, and if none of the others are applicable, the importer is the obligated producer. This hierarchy aims to encompass all parties who are responsible for putting products into the market.

Most EPR proposals have exemptions for some entities - that is, entities that are specifically singled out and are not legally required to comply with the producer requirements. This is similar to covered product exemptions in EPR policies. Not every product is covered and exemptions will apply to various products. In the various US laws covered product exemptions include beverage containers that fall under a bottle deposit program, or packaging for medical products. If a product is exempt it could mean a producer is de facto exempt because their product is not covered.

For producer definitions the language varies between all of the laws in the United States. However, they all generally follow the same hierarchy as described above. The first obligated producer is the person who manufactures the product, sold under a brand manufacturer, or if it lacks brand identification it would be the manufacturer. Then if not applicable, it would fall to the person licensed to manufacture the packaging under the brand or trademark. And lastly, if neither brand nor licensee are applicable, the obligated producer is the person who is the importer of record for the product. There can be different business types or other entities that fall under the definition of producer, but the goal of the exemptions are to protect some from the obligations of EPR.

Some common exemptions include:

Small Businesses

Governments

Charities or Nonprofit Organizations

Retailers

Franchisees

Five states have passed Extended Producer Responsibility laws in the United States. The two tables below go into detail about each state's producer exemptions, who are not legally required to participate in the EPR program. Here you can see the similarities and differences between the states, as well as gain a better understanding of where your organization fits into each state's law.

Keep in mind that rulemaking (the finalization of regulations by state governments) is still in process for these five states that passed EPR laws, so these categories and exemptions are subject to change.

Exemptions Include:

STATE	SMALL BUSINESS	CHARITY/NONPROFIT	GOVERNMENT	RETAILER	OTHER (SEE BELOW)
CALIFORNIA	X				X
COLORADO	X	X	X	X	X
MAINE	X	X			X
MINNESOTA	X	X	X		X
OREGON	X	X	X	X	X

Exemption Language From Passed EPR Bill:

STATE	SMALL BUSINESS	CHARITY/NONPROFIT	GOVERNMENT	RETAILER	OTHER
CALIFORNIA	• Producers, retailers, or wholesalers that, in the most recent calendar year, had gross sales of less than one million dollars ($1,000,000) in the state are exempt.				• Producer does not include a person who produces, harvests, and packages an agricultural commodity on the site where the agricultural commodity was grown or raised.
COLORADO	• A producer is exempt if they have less than 5 million dollars in gross total revenue during the prior year (not including on-premise alcohol sales) or use less than 1 ton of covered materials for products sold, offered for sale, or distributed in Colorado.	• Nonprofits are excluded from the definition of producer.	• The state or local governments are excluded from the definition of producer.	• An individual business operating a retail food establishment that is located at a physical business location and that is licensed as retail food establishments of varying seating capacity and square footage is exempt.	• A builder, construction company or construction contractor are exempt. • An agricultural employer, as defined in section 8-3-104 (1), regardless of where the agricultural employer is located, with less than five million dollars in realized gross total revenue in the state from consumer sales of agricultural products sold under the brand name of the farmer, egg producer, grower, or individual grower cooperative is exempt.
MAINE	• Producers are exempt if their gross revenue within the state is less than $2 million in the previous calendar year, or if the producer sold, offered for sale, or distributed products containing less than 1 ton of covered packaging material in the previous year. • For the period from one to three years after the effective date of the program contract, producers with less than $5 million in total gross revenue during the previous calendar year are exempt. • If more than 50% of a producer's total gross revenue in the prior calendar year is from the sale of goods it acquired through insurance salvages, closeouts, bankruptcies and liquidations they are exempt. • Producer does not include the franchisee operating that franchise.	• 501(c)(3) registered nonprofit organizations are excluded from the definition of producer.			• Producers are also exempt if they sold, offered for sale, or distributed to retailers or direct to consumers products that were perishable food and that were contained, protected, delivered, presented, or distributed in or using less than 15 tons of packaging material in total in the previous calendar year. Perishable food means: • Any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical conditions, including, but not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells and fresh fruits and vegetables. • Does not include any such food that is sold, offered for sale or distributed for sale frozen except for frozen wild blueberries.
MINNESOTA	• De minimis producers are exempt. De minimis producer is a person that in their most recent fiscal year introduced less than one ton of covered material into Minnesota or earned global gross revenues of less than $2,000,000.	• A registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization are exempt.	• State, a federal or state agency, a political subdivision, or other governmental unit are exempt.		• A mill that uses any virgin wood fiber in the products it produces; or a paper mill that produces container board derived from 100 percent post-consumer recycled content and non-post consumer recycled content is exempt.
OREGON	• A small business is exempt if they have a gross revenue of less than $5 million for the organization's most recent fiscal year or sold less than one metric ton of covered products in or into the state in the most recent calendar year.	• Nonprofit organizations are exempt.	• Public bodies such as state government bodies, local government bodies and special government bodies are excluded.	• Retailers that operate a single retail sales establishment, have no online sales, and are not supplied or operated as part of a franchise or a chain are exempt. • A restaurant, food cart, or similar business that sells food to be immediately consumed by members of the public either on or off premises, and is not a producer of food serviceware is exempt.	• A manufacturer of a beverage sold in a beverage container, as those terms are defined in the OR bottle bill, that sold in or into Oregon less than five metric tons of covered products, including but not limited to secondary and tertiary packaging for beverage containers, for use in this state in the most recent calendar year is exempt.

Conclusion

As shown above, there is quite a variety of producer 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 aim to encompass local stores, government agencies, or non profit organizations, not large multinational corporations and big businesses. For example, all five states have exemptions for small businesses. Generally, the business' revenue needs to be under a few million dollars a year, or the business puts out less than one ton of packaging onto the market in a year.

Obligated producers 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 can be found in the state's bill. To learn more about producer exemptions and other elements of EPR bills check out the Guide.

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Sources:

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

FindLaw: Colorado Revised Statutes Title 8. Labor and Industry § 8-3-104

Sustainable Packaging Coalition: Introduction to the Guide for EPR Proposals

Disclaimer:

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

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