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October 1 Deadline for Producers to Register under Colorado's New Recycling System is Fast Approaching

Insight — September 25, 2024

The Colorado Legislature has adopted an Extended Producer Responsibility ("EPR") Program which requires producers of certain packaging and paper materials to cover the cost of recycling those materials in the state. **If you are a producer of those packaging and paper materials used in Colorado that meets certain requirements discussed below, you MUST register by October 1, 2024.** We address important aspects of the Colorado EPR Program below, but please call the authors if you have any questions.

I. Producers subject to the Colorado EPR program MUST register by October 1 with the Circular Action Alliance

Under the Colorado EPR Program, the Circular Action Alliance ("CAA") has been selected to represent producers as well as to work with the state to design and manage the EPR Program. Producers subject to the Program must register with CAA by October 1, 2024, by submitting information through the CAA's online portal.[1]

II. What happens next?

Producers that fail to register with CAA will be prohibited from selling or distributing products in Colorado that use certain packaging materials beginning on July 1, 2025.[2] Additionally, producers must begin reporting data on their use of covered materials on August 31, 2025 and begin paying dues to CAA on January 1, 2026 based on the materials they produce and use.

The Colorado Department of Public Health and Environment ("CDPHE") provides useful guidance on the requirements of the new Colorado EPR Program on its website. Additional guidance is forthcoming as CAA and CDPHE develop and finalize the EPR Program.

III. How do I know if my entity is a "producer" that must register by October 1?

A Colorado entity must register if it is a "producer" that makes $5,506,200 or more in annual realized gross total revenue[3] or that annually uses at least one ton of "cover materials."[4]

Your entity is a "producer" if it meets any of the below criteria:

- manufactures a product which is sold or distributed in Colorado using packaging material under its own brand or without an identifying brand;
- licenses a brand or trademark for product packaging which is sold or distributed in Colorado;
- imports packaged products using covered materials into the US for use in Colorado;
- produces products sold or distributed in Colorado through an internet transaction in packaging materials used to protect or contain the product;
- packages or ships products sold or distributed in Colorado through an internet transaction;
- first distributes covered materials into or within Colorado;
- publishes paper products that are magazines, newspapers, catalogs, telephone directories, or similar publications;
- manufactures paper products under its own brand; or
- owns or licenses a brand or trademark for paper products sold or distributed in Colorado.[5]

However, the following entities are exempt from the definition of "producer:"

- state and local government;
- nonprofit organizations;
- agricultural employers with less than $5 million in realized gross total revenue from consumer sales of agricultural producers sold under the brand name of a farmer, egg producer, or individual grower cooperative;
- individual retail food establishments located at a physical location and licensed under the Denver Code of Ordinances; and
- builders, construction companies, and contractors.[6]

IV. Which materials are covered by the Colorado EPR Program?

"Covered materials" subject to the Colorado EPR program include all packaging materials and paper products except the following:

1. packaging materials used to transport, protect, or store the product for at least five years;
2. paper products that, through their use, could become unsafe or unsanitary to handle;
3. vital documents that are required by law to be printed (*g.*, financial statements and medical documents);
4. bound books;
5. beverage containers subject to a returnable container deposit, if applicable;

6. packaging material used exclusively in industrial or manufacturing processes;
7. packaging material for products regulated as a drug, medical device, or dietary supplement under the Federal Food, Drug, and Cosmetic Act;
8. packaging material used for vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin under the federal Virus-Serum-Toxin Act;
9. packaging material used for products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act;
10. packaging material used for architectural paint covered under a paint stewardship program;
11. specific packaging material used pursuant to the Poison Prevention Packaging Act of 1970;
12. packaging material for refurbished portable electronic devices;
13. paper products for a print publication that primarily includes content derived from primary sources related to news and current events;
14. packaging material for infant formula, medical food, or fortified nutritional supplements in certain circumstances; and
15. any other material that subsequently excluded by rule.[7]

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[1] Under the Colorado EPR program, entities may also annually submit their own individual proposals to comply with the program rather than participate in the CAA. Colo. Rev. Stat. § 25-17-705(8)(a). To do so for 2025, entities must have submitted notice of intent to propose such plans by January 1, 2024. *Id.*

[2] Colo. Rev. Stat. § 25-17-708(1). However, producers that submitted notices of intent by January 1, and that submit proposals for individual compliance plans by January 1, 2025 are not subject to this prohibition.

[3] 6 CCR 1007-2, Section 1.8.2. Revenue from on-premise alcohol sales are not included in this figure. *Id.*

[4] Colo. Rev. Stat. § 25-17-713(1)(b).

[5] *Id.* § 25-17-703(30).

[6] *Id.* § 25-17-713.

[7] *Id.* § 25-17-703(13)(b).

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