

SNOWSPORTS INDUSTRIES AMERICA

Navigating U.S. State Packaging EPR Regulations



July 10, 2024

 **MARTEN**

EPR regulations' scope and footprint are expanding

- In **U.S.**, EPR regulations for certain products **have long been in place** (e.g., e-waste, batteries, and mattresses)
- In **Europe**, EPR regulations for **packaging** have existed since **1990s**
- **Japan, Korea, India, and Chile** also have **packaging** EPR regulations
- Closer to home, **Ontario, Canada** has begun implementing packaging EPR regulations
- Packaging EPR regulations are **emerging in the U.S.**



Though state-by-state approach leads to lack of uniformity, EPR programs tend to share common components and terms (1/2)



Covered producers

- **Brands, retailers, wholesalers, distributors, importers, and foreign companies** can be producers
- A **single product** can implicate **multiple producers**; in CA, for example...
 - Brand is responsible for covered material added up until the point of sale/transfer to a consumer, distributor, or retailer
 - If a distributor or retailer adds covered material, they are responsible for that additional covered material
 - But, if a brand cannot be held responsible in California, the retailer/distributor is responsible for the brand's packaging
 - Note, for products sold on retailer premises, packaging does not include materials added at point of sale



Covered products

- Depends on state, but commonly includes **single-use packaging**
 - **Single-use:** “routinely recycled, disposed of, or discarded after its contents have been used or unpackaged...”
 - **Packaging:** “any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer...”
 - Covered components may include: poly bags, hang tags, shrink wrap, tissue paper, cardboard inserts, stickers, and cardboard boxes
- Generally, **does not include products that are federally regulated** (e.g., medical products, infant formula, or packaging used to contain and ship products with dangerous or hazardous materials)

Note: Single-use and packaging definitions are California-specific; covered producer based on draft regulations.

Though state-by-state approach leads to lack of uniformity, EPR programs tend to share common components and terms (2/2)



Producer Responsibility Organization (PRO)

- Company or **org set up by manufacturers to help meet their regulatory obligations**; legislation typically lays out parameters for type and number of PRO
- Example: Circular Action Alliance (CAA)



Fees

- Producer obligations are funded through payments, which can be assessed at **fixed rates and/or by variable rate based on product type** (i.e., eco-modulated fees) and volume sold or distributed into the state



Targets

- Many EPR packaging laws include **phased targets for recycled content, recycling rates, and packaging composition**



Data Collection

- To **determine fees and measure progress** towards targets, **PROs will require producers** to submit data

California’s EPR legislation: an emblematic and timely case study

California: Plastic Pollution Prevention and Packaging Producer Responsibility (SB 54)

Producers	<ul style="list-style-type: none"> • Brands, retailers, wholesalers, distributors, importers, and foreign companies • Exempt: <\$1M annual CA gross sales
Covered	<ul style="list-style-type: none"> • Single-use packaging • Plastic single-use food service ware, including, but not limited to cups, utensils, and straws
PRO(s)	<ul style="list-style-type: none"> • CAA has been approved as the sole PRO • Producers can comply independently, but only if they meet stringent requirements (e.g., achieve a 65% recycling rate for three consecutive years prior to January 1, 2027)
Fees	<ul style="list-style-type: none"> • The PRO will develop the fee schedule for each producer during its first two years of operation • Eco-modulated fees will be incorporated
Targets	<p>By 2032:</p> <ul style="list-style-type: none"> • 100% of single-use packaging sold in the state is recyclable or compostable • 65% of single-use plastic packaging is recycled; and • 25% less single-use plastic packaging is sold
Data Collection	<ul style="list-style-type: none"> • PRO is required to report information on behalf of producers (e.g., aggregate quantities of covered material; source reduction plans); PRO must notify state of noncompliant producers • Department of Resources Recycling and Recovery may request additional data from the PRO or an individual producer
Deadlines / Timeline	<ul style="list-style-type: none"> • Early Registration July 1, 2024. Producers who do not join a PRO will not be barred from selling in CA until January 1, 2027, or when a plan is approved by the PRO, if sooner. First upcoming regulatory deadline Oct. 1, 2024 in Colorado.

Note: Colorado and Oregon’s EPR laws are quite similar to California’s

To date, the Circular Action Alliance (CAA) has been the sole and leading PRO



About CAA

- **501(c)3** dedicated to implementing EPR laws for paper/packaging in U.S.
- Founded by **20 companies** including Amazon, Clorox, Coca-Cola, Target, and Walmart
- Footprint to date:
 - Selected as the PRO in **CA** and **CO**
 - Was only org to submit application to be OR's PRO
 - Selected to represent producer interests and serve as single PRO on **MD's** State Producer Responsibility Advisory Council
 - Planning to respond to **ME's** RFP to serve as its sole PRO

Registering with CAA

- **No** registration fee
- Registration can be done for **multiple states simultaneously**
- CAA is pushing **July 1st** deadline across states, but first regulatory deadline is **Oct. 1st**
- Remember, producers can choose to comply **independently**

Some of the unknowns

- **What the fees will be** – this will depend on number of producers who register with the PRO, among other factors
- The process to follow if a producer registers with CAA and **then wants to pursue a different path to compliance**

Your next steps

- **Consult with legal** counsel to determine **if you are a covered producer** based on the scope of your particular business, and, if so, **which of your products are covered**
- **Familiarize** yourself with **CAA**
 - Sign up to receive newsletters, compliance updates, event invites
 - Watch a producer onboarding session
- Create a **strategy to comply with existing legislation**
 - Decide to join a PRO or go your own way
 - Implement changes to decrease reliance on single-use packaging and meet the phased recycle content, recyclability, or composition requirements
 - Compile records that likely will be necessary when reporting requirements are in place (e.g., types of covered materials sold, annually in the state; weight and/or volume of covered materials sold in the state per year)



Our Presenter



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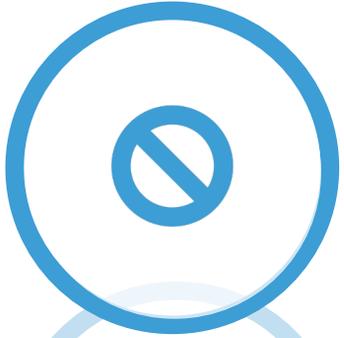
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How did we get here?

Recycling Has Only Gotten Harder



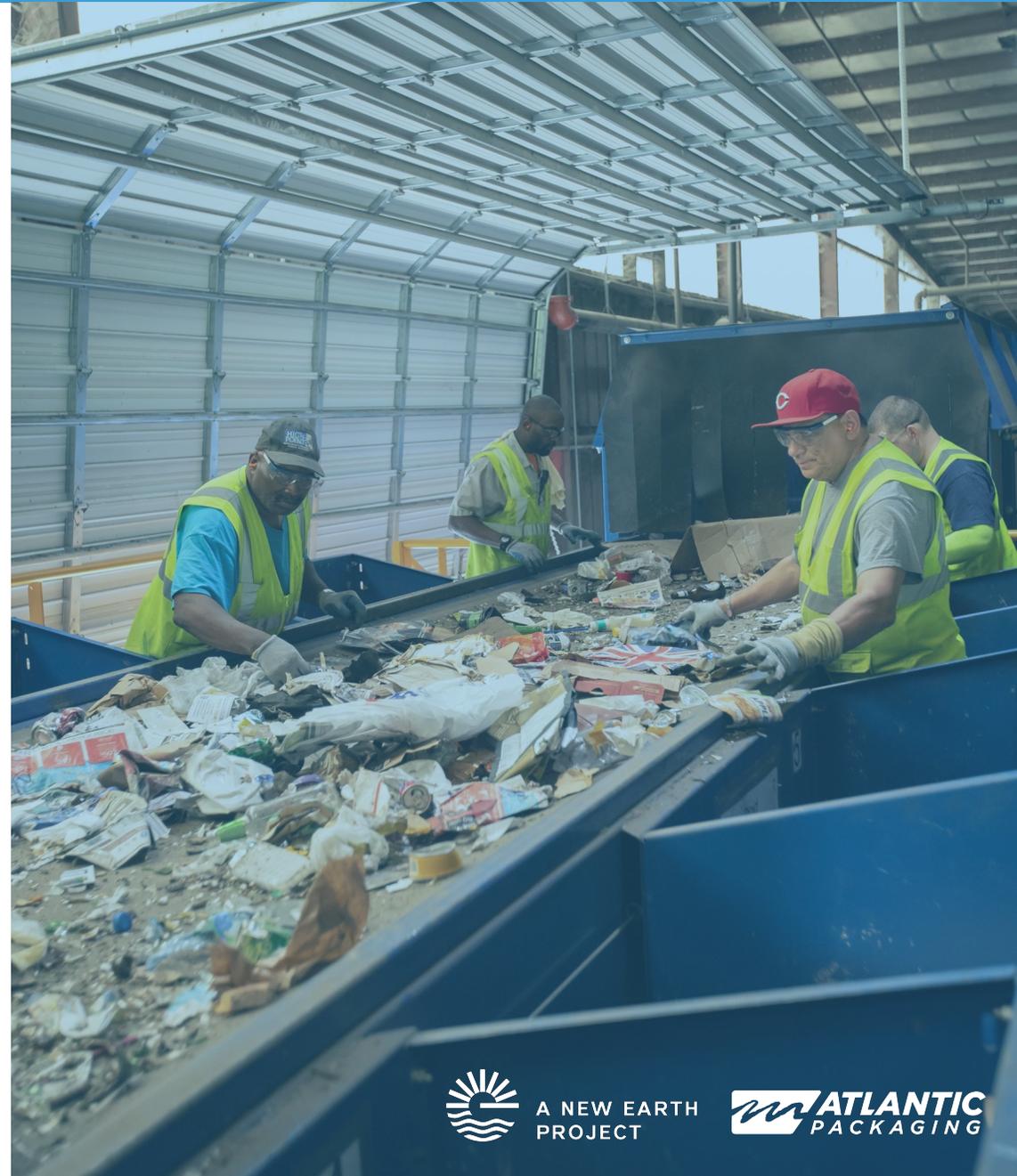
China stopped accepting U.S. recyclables in 2018 due to high contamination rates



U.S. municipalities could no longer recycle as cheaply; many discontinued recycling programs or began incinerating recyclables



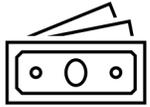
The amount and complexity of packaging has only continued to increase, and recycling systems can't keep up



A NEW EARTH
PROJECT

ATLANTIC
PACKAGING

To Get Out of the Packaging Waste Crisis, We Need To...



**EXPAND ACCESS
& LOWER COSTS**



**EDUCATE
CONSUMERS**



**IMPROVE
EFFECTIVENESS**



**RECYCLING
CHALLENGING
PRODUCTS**



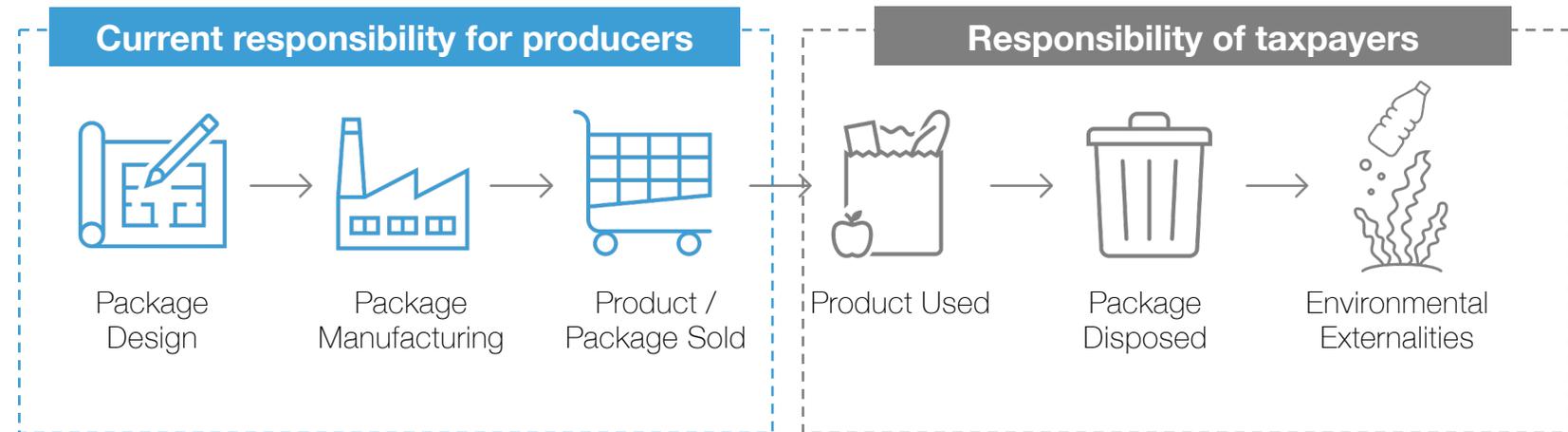
**DESIGN FOR
RECYCLABILITY**

Extended Producer Responsibility (EPR) can help us address these issues either directly through the legislation or indirectly through the downstream incentives EPR creates.



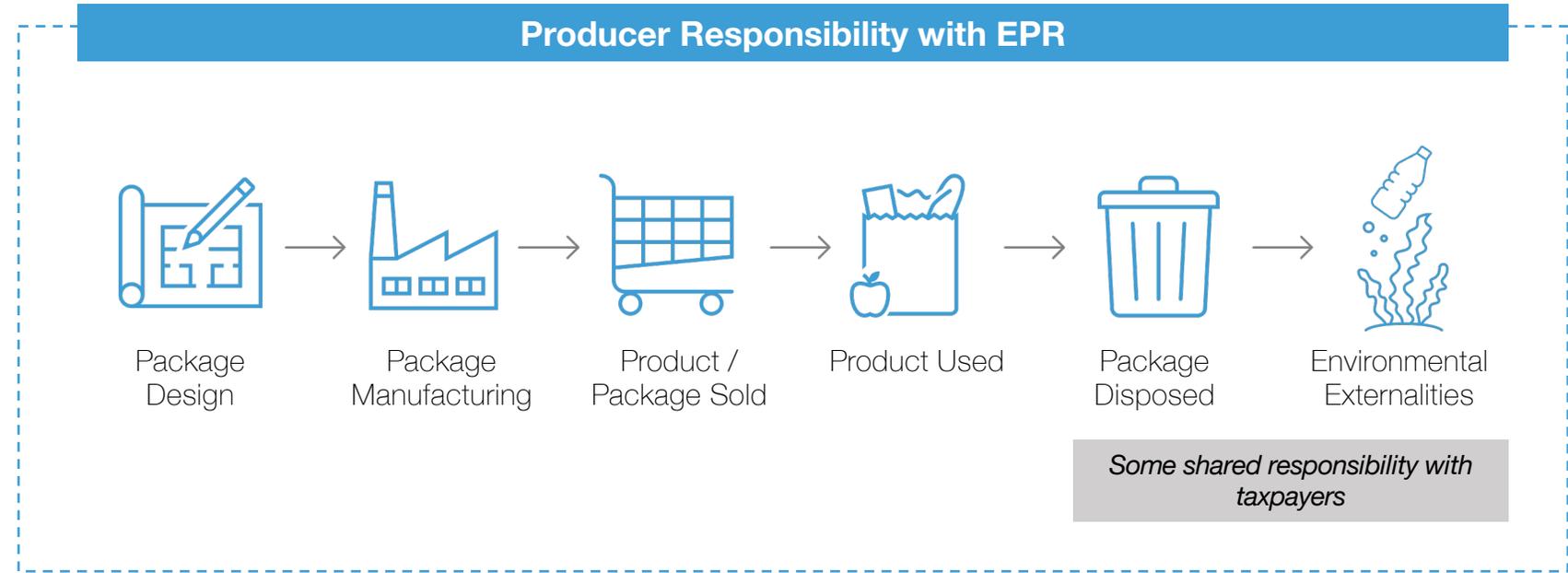
Extended Producer Responsibility (EPR) is a policy approach that places responsibility for the end-of-life of a product on the producer of that product.

Why do we need EPR for packaging?



In the current system, producers have few incentives to design to reduce **environmental externalities**.

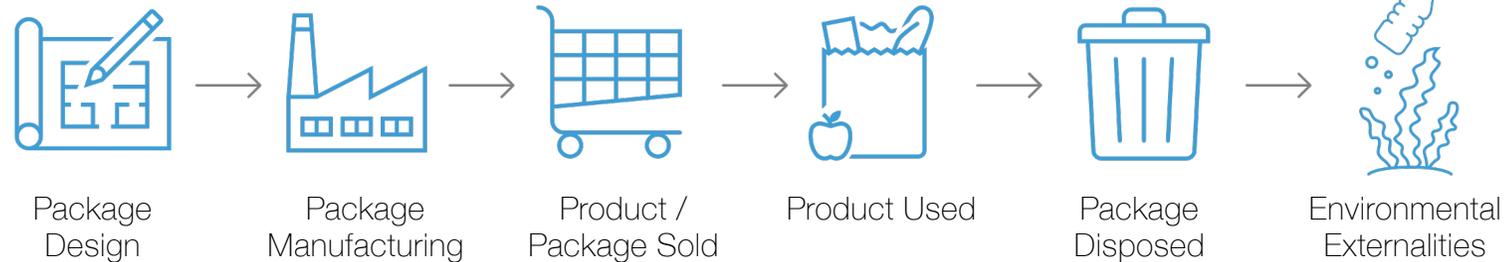
Why do we need EPR for packaging?



Under a packaging EPR system, producers share some or all responsibility for the full life cycle of the product, including the impacts the packaging has as the end of its life.

Incentives Created By EPR

Producers are charged **fees** based on how much packaging they sell into the geography (that will ultimately be disposed of)



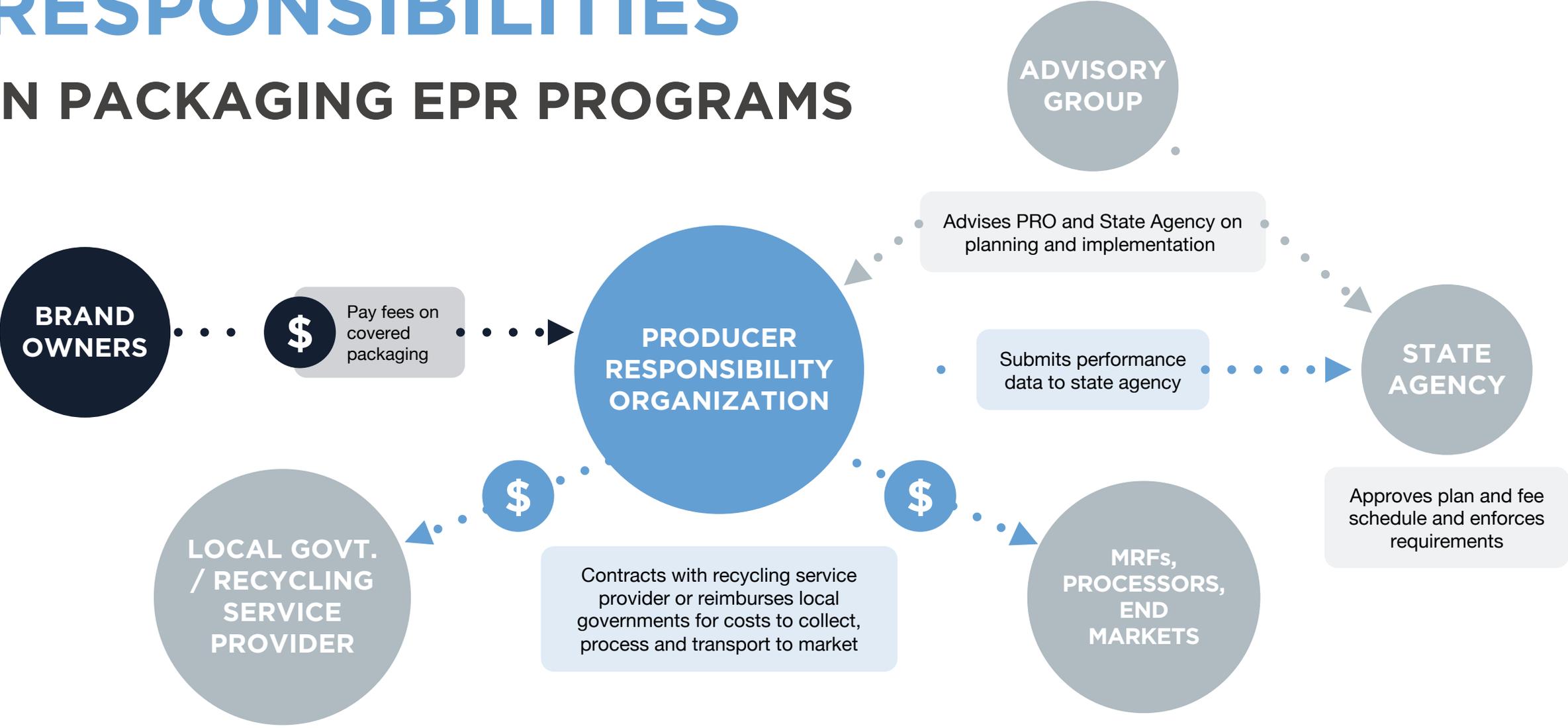
This creates incentives **upstream** to design product packaging that uses less material and is more recyclable, so the producers get to pay lower fees. These “eco-modulated fees” incentives producers to design more sustainable packaging.

Producers receive lower fees for using packaging materials that are:

- More recyclable
- Made from more sustainable materials
- Have recycled content (sometimes)
- Reusable (sometimes)

ROLES & RESPONSIBILITIES

IN PACKAGING EPR PROGRAMS



Source: Adapted from Signalfire Group

What should I do now?

- 1** **Decide if you want to register as a producer.**

- 2** **Gather your existing packaging data & document initiatives.**

- 3** **Look for ways to reduce more and move to recyclable options.**

- 4** **Create alliances and partnerships to manage difficult materials.**

- 5** **Assign someone to keep up with EPR happenings.**

What should I do now?

1

Decide if you want to register as a producer.

- The Circular Action Alliance (CAA) is the named PRO in Colorado, California, & Oregon
- There's no cost to register!
- You'll stay up-to-date on key compliance deadlines
- Early registration deadline was July 1
- Colorado requires registration by **Oct 1**



**Circular
Action
Alliance**TM



What should I do now?

2

Gather your existing packaging data & document initiatives.

- It will be helpful to gather your 2022 (Maine), 2023 (California & Colorado), and 2024 (Oregon) packaging data for benchmark info for each state.
- Gather SKU-level packaging data with weights and material types.
- If you've made any efforts to reduce packaging use or replace with more recyclable materials, document those as well as you can with metrics – you may be able to get “credit” for existing work.

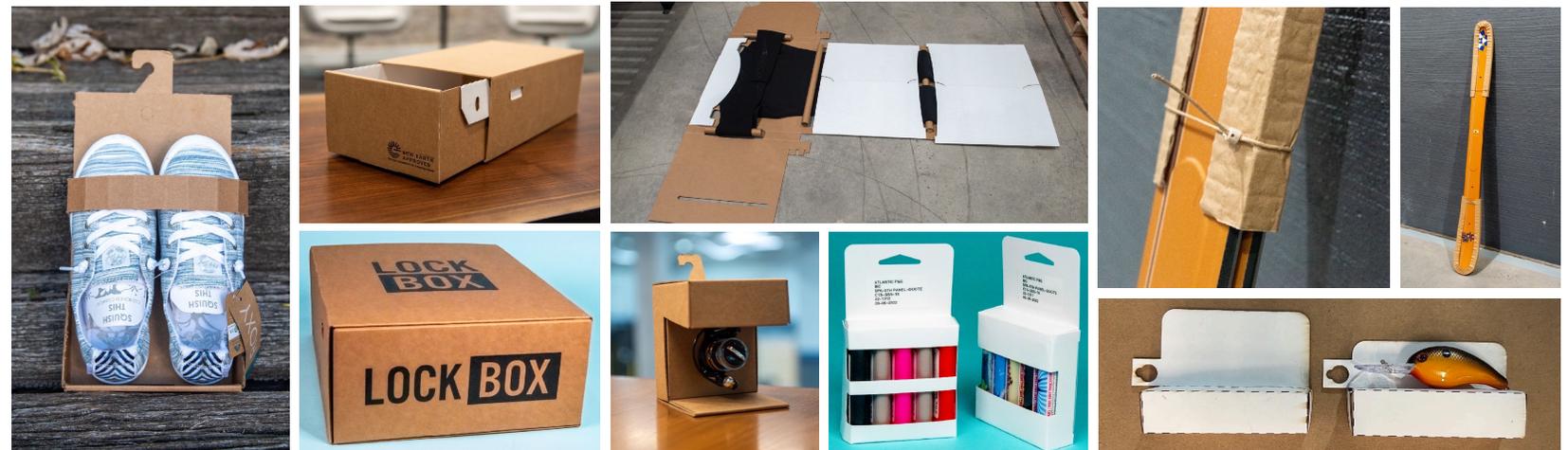


What should I do now?

3

Look for ways to reduce more and move to recyclable options.

- If you make any changes: document, document, document!
- Move to recyclable materials when possible and reduce number and weight of plastic components
- Review what products you label as “recyclable” – do most people (60%+) actually have access to recycle that kind of packaging? Consider revising your use of the chasing arrows symbol if not
- Consider compostables for food-contact products



What should I do now?

4

Create alliances and partnerships to manage difficult materials.

- For some packaging, it's going to be really hard to reach required recycling rates without entire industries moving together. Explore partnerships to take back or recycle items that are unlikely to be recycled curbside.
- When you can, be open-source and collaborative about your packaging changes.



What should I do now?

5

Assign someone to keep up with EPR happenings.

- There's a lot happening! It can be useful to have 1-2 people on the team who subscribe to relevant listservs to stay on top of deadlines.
- We recommend:
 - Signing up for CAA's newsletter (circularactionalliance.org/newsletter-subscription)
 - Joining CAA's Producer Working Group sessions (circularactionalliance.org/producer-resource-center)
 - Diving deeper into packaging EPR with A New Earth Project (anewearthproject.com/pages/extended-producer-responsibility)
- Checking out the state-specific packaging EPR webpages