



July 23, 2025

Jill Hunsaker Ryan
Executive Director
Colorado Department of
Public Health and Environment
4300 Cherry Creek S. Dr.
Denver, CO 80246

Subject: Request for Delay of Effective Date for Registration Under the Producer Responsibility Program
for Statewide Recycling

Dear Ms. Ryan,

On behalf of the National Association of Wholesaler-Distributors, I am writing to request a one-year delay of the July 31, 2025 effective date or, at a minimum, enforcement of the Producer Responsibility Program for Statewide Recycling (hereinafter "Producer Responsibility Program") due to widespread confusion and a substantial number of outstanding questions of impacted parties on who must register, with what organization, and what products are covered by the law. This law will have a major financial impact nationwide on businesses throughout the supply chain who sell or distribute products in Colorado.

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes and national, regional, state, and local line-of-trade associations spanning the \$8 trillion wholesale distribution industry that employs over six million workers in the United States. NAW is made up of direct member companies and a federation of 57 national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation, including companies distributing in Colorado who are impacted by the law.

Wholesale distribution is a business-to-business industry: wholesaler-distributors purchase inventory, generally from manufacturers, and sell it to their customers, generally retailers. Wholesaler-distributors buy inventory in large quantities, warehouse it, break it down into the quantities their customers want (called "breaking bulk"), and repackage it, and ship to those customers. Distinct from warehouse logistics companies, which move someone else's product from seller to buyer, wholesaler-distributors purchase inventory, take title to it, and then re-sell it to customers.

Most wholesaler-distributors are small- to mid-sized private companies with minimal in-house legal and compliance resources as compared to larger corporations. While only a few have recognized name brands (unlike the manufacturers and retailers which are their supply-chain partners) many do have name brands for the products they distribute.

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

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Wholesale distribution's role in the economy is often underestimated, but the industry represents approximately one-third of U.S. gross domestic product and is a key component of our economic supply chain. Wholesaler-distributors are recognized as essential critical infrastructure, as they provide manufacturers with the ability to grow and develop their business. Additionally, distributors simplify logistics and create efficiency for the buyer by providing product expertise, resizing and repackaging products, and bundling purchases from multiple manufacturers and product lines so the buyer has all the items they need in one delivery.

Just days before companies that sell products in packaging and paper products in Colorado are required to sign the Producer Responsibility Program reporting deadline, NAW continues to receive important questions from our members regarding how it applies to their business, the fees that they will be charged, and under who's authority they are responding to.

Below are the most frequent questions NAW continues to receive from its membership.

- 1) How does a covered entity revise their submission when it believes there is overlap with other registered entities?
- 2) Who is the "producer" when a product is manufactured by one company but distributed under the brand of another company? While the statute attempts to answer that question, it does not account for practical realities that will make this analysis difficult for many wholesaler distributors. Manufacturers and brand owners (producers) who sell through distribution channels (such as wholesale) do not necessarily know into which states their products are ultimately sold to end-users and so are unable to provide accurate reports of, by example, packaging shipped into and consumed in Colorado. For instance, NAW has been informed of a manufacturer/national brand (who bears PPR reporting responsibility) but knows only that they ship to one of five distribution centers. The manufacturer does not know where in the distributors' 300+ location retail network (spanning 46 states) those products will ultimately come to rest.
- 3) Are all regulated companies required to use the same methodology to assess the weight of "covered products"? If yes, what is that methodology? How does that apply to packages using multiple recyclable materials (e.g., a cardboard box filled with twenty plastic sleeves of plastic cups) and how does a company assure compliance without double or even triple counting the same materials?

Finally, neither the law nor its contemplated implementation provides any clarity regarding how fees are established and the amounts to be charged. The law simply delegates all fee-setting to a third-party, "producer responsibility organization," giving it wide berth to set membership fees and assess costs. But what those fees are and how they are assessed have been fluid since the law was enacted and remains a mystery just days before producers are required to register.

Moreover, NAW remains concerned that fees may be retroactive. Is that true? If not, how does CDPHE plan to protect against retroactive imposition of fees?

Businesses have no way of knowing with any certainty what their assessed fees will be under the Colorado law and, as a result, have not received adequate time to budget or plan for this process and

expense. That is extremely concerning considering penalties for noncompliance can quickly add up at \$5,000 for the first day and \$1,500 for each day thereafter.

Given the number of outstanding legal and practical questions, NAW urges CDPHE delay the effective date or, at a minimum, enforcement of the Producer Responsibility Program at least one year to July 31, 2026.

NAW appreciates your consideration of this request. If you have any questions or would like to discuss this further, please do not hesitate to contact me at (202) 872-0885.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Wild". The signature is fluid and cursive, with the first name "Brian" being more prominent than the last name "Wild".

Brian Wild
Chief Government Relations Officer
National Association of Wholesaler-Distributors