



NATIONAL ASSOCIATION OF
WHOLESALE-~~DISTRIBUTORS~~

PREPARED FOR

NAW Member Executives

A white semi-truck is driving on a multi-lane asphalt road during the 'blue hour' of dusk. The sky is a mix of deep blues and soft oranges from the setting sun. The road has white lane markings, and the truck's headlights are on. In the background, there are low mountains and some sparse vegetation.

Extended Producer Responsibility (EPR) Strategy Overview

NAW's Legal Policy Center (LPC)- Addressing the Industry-Wide Threat of EPR Legislation

With a more pro-business Administration in the White House and a Congress that has significantly reduced its legislative activity, the LPC expanded its focus to state-level priorities. NAW members quickly identified Extended Producer Responsibility (EPR) laws as meaningful threats to their profitability and leveraged the LPC to engage in litigation to challenge these laws both at the state and federal level.

Currently, seven states have passed as version of EPR legislation- Oregon, Colorado, California, Minnesota, Washington, Maine, and Maryland- all with varied implementation dates and reporting requirements. Two states, Oregon and Colorado, are fully implemented and require companies that ship material into those states to be compliant or face penalties upwards of \$20,000/day.

In short, compliance requires distribution companies to register with the Circular Action Alliance (CAA), the “Pro” hired by the states to administer this program. Companies need to share a year’s worth of usage information at the item level (measured in pounds), for a range of “covered projects” that fall largely into the paper and packaging arena. Distributors that ship large quantities of small parcels into these states, where they are adding packaging materials to secure shipments (ex. cardboard boxes, tape, sealed air containers, dunnage, pallets, shrink wrap) face significant compliance and tax implications.

NAW is actively challenging these laws in federal court. Since filing a federal lawsuit in the state of Oregon, NAW has become the primary coordinating entity for the distribution industry’s EPR response. Represented by Sidley Austin LLP, NAW is pursuing a two-state litigation strategy designed to protect member companies from immediate financial harm and to establish long-term legal protection for the industry. With continued support from leading distribution companies, NAW hopes to expand litigation to Colorado, in addition to seeking immediate injunctive relief in both Oregon and Colorado prior to the issuance of the 2026 round of EPR invoices.

Below is a timeline of NAW’s litigation strategy and activity to date- we remain confident about our prospects for success.

Oregon:

- NAW [requested](#) a one-year delay of the July 1, 2025, effective date or, at a minimum, enforcement of the Plastic Pollution and Recycling Modernization Act (RMA) due to widespread confusion and a substantial number of outstanding questions from parties who must register, with what organization they must register, and what products are covered by the law. That request was denied by Oregon DEQ on June 23, 2025.
- NAW [filed lawsuit](#) (July 30, 2025) in U.S. District Court for the District of Oregon challenging the constitutionality of Oregon’s *Plastic Pollution and Recycling Modernization Act* and implementing regulations.
- We expect the state of Oregon to file for dismissal at or around November 15.
- NAW will oppose dismissal and seek injunctive relief to prevent 2026 invoices from being issued and collected.

Colorado:

- NAW [submitted](#) a formal request (July 23, 2025) to delay or suspend the *Producer Responsibility Program for Statewide Recycling* (effective July 31, 2025), citing widespread confusion regarding registration, product coverage, and enforcement readiness.
- NAW receives a detailed response from the state agency on October 3, 2025, addressing each question and confirming NAW’s standing as a primary industry stakeholder.
- NAW intends to file a sister lawsuit and request for injunctive relief by November 15, 2025.
- The injunction seeks to protect companies from 2026 payment obligations under Colorado’s program.

California:

- October 7, 2025: NAW submits formal comments to CalRecycle urging reconsideration of the *Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)* and its implementing framework.
- October 14, 2025: NAW leads a coalition letter (signed by 14 organizations) urging CalRecycle and the CAA to delay the initial producer reporting requirement until permanent regulations are finalized.
- October 17, 2025: CalRecycle responds, clarifying that the November 15 reporting deadline is voluntary, not regulatory or statutory—explicitly stating that CalRecycle does not have authority over CAA’s voluntary request.
 - This response validates NAW’s position that CAA exceeded its authority and that the reporting framework lacks legal foundation.
 - NAW circulates this clarification to members and state partners, framing it as a major early win for regulatory transparency.

While the scope of potential injunctive relief ultimately rests with the presiding judge in each case, we believe current NAW member companies are well positioned to benefit based on existing federal court precedent. In addition, NAW’s coordinated litigation aims to delay enforcement, protect members from financial exposure, and strengthen the broader case for invalidating these laws, positioning us well for an appellate process that could ultimately reach the United States Supreme Court.

Legal Policy Center Look Ahead- Expanding State Government Lobbying and Litigation Capabilities

NAW’s ability to be nimble and responsive to member priorities is demonstrated through our EPR campaign. This campaign also generated strong enthusiasm from member companies to invest further in a more robust state government affairs operation.

NAW continues to be one of the top business associations in Washington D.C. and are increasingly shifting time and resources to policy matters at the state level to defend our members and support free enterprise policies. Heavy handed state regulations are increasingly impacting distributors on issues including zoning and warehousing restrictions, tax and sales nexus, workforce and labor restrictions, and emerging data, AI, and automation laws. NAW actively monitors laws and regulations impacting the wholesale distribution sectors in all fifty states, with a focus on states with market-limiting tendencies including: CA, OR, MN, IL, NY, CO, OH, PA, MI.

Our blueprint for state engagement is centered on:

- Coalition building
- Working with local lobbyists
- Engaging third-party stakeholders, thought leaders, media, and attorneys

NAW has a multi-year plan to expand our state footprint by hiring in-house expertise, managing consultant networks, and leveraging our network of fifty-six distribution trade association members, and large company members in all verticals. We anticipate expanding our GR staff in the coming months, as well as expanding our current contract lobbyist network. While peer organizations in the retail and manufacturing space often have state chapters, few exist in the wholesale distribution sector. To fill that void we will build distribution coalitions in impacted states to share resources, gain media attention, and lead local issue advocacy.

NAW was created in 1946 specifically to serve as an advocacy organization on issues impacting distribution across all sectors. We are committed to that purpose and see expansion into state advocacy as an important and necessary process.

Differentiating Value to our Largest Member Companies Through the Legal Policy Center

Our largest members operate complex regional, national, and international businesses, spanning across every line of trade. NAW's Legal Policy Center was built by our members in 2024 to augment their in-house and contracted risk management operations and provide a vehicle to meaningfully impact federal and state legislation and regulation. Functionally, the LPC performs several core actions in support of our members' priorities:

Defending Free Enterprise

At its core, the LPC is committed to upholding the values of free enterprise and market-driven competition. It champions legal clarity, limited government overreach, and regulatory environments that enable distributors to thrive.

Challenging Government Overreach

From EPR mandates to labor classification issues, LPC pushes back against regulatory overreach that threatens to disrupt supply chains, inflate costs, or restrict business autonomy.

Regulatory Monitoring & Challenge

The LPC closely tracks and analyzes regulatory developments at both the federal and state levels. When proposed or existing regulations pose a threat to innovation, growth, or operational flexibility, the LPC takes action—whether by providing public comment, coordinating opposition, or leading legal challenges.

Legal Guidance for NAW Members

LPC provides members with timely insights and strategic guidance on how to interpret and comply with key regulatory issues. Whether it's labor law, environmental mandates, or tax policy, LPC helps members anticipate risk and make informed decisions.

Strategic Litigation & Legal Advocacy

The LPC participates directly in litigation both as a lead plaintiff and through supporting amicus briefs in critical cases to safeguard the legal and economic interests of the wholesale distribution industry. These efforts aim to set favorable legal precedent and block rules or statutes that impose unnecessary costs or constraints for our members.

Legal Policy Center Progress Since Launch in 2024

Following its launch in 2024, the LPC focused first on a set of priorities of wide relevance and importance to distributors at the federal level. On each of these priorities, NAW made a meaningful impact and provided material benefit to our members and the broader industry.

7/16/2025: Last Mile ≠ Interstate Commerce

- On July 16, 2025, NAW lead a business coalition that included the U.S. Chamber of Commerce and NFIB's Small Business Legal Center filed a friend-of-the-court brief with the 9th Circuit Court of Appeals in *Jose Madrigal v. Ferguson Enterprises, LLC*.
- NAW urged the Court to overturn a lower court ruling that wrongly expanded the Federal Arbitration Act's "transportation worker" exemption. The brief explains that non-perishable products often sit in warehouses for extended periods, so the "last mile" delivery is not part of a continuous interstate shipment. NAW stressed the urgent need for clarity so that businesses know the rules and can continue benefiting from arbitration's lower costs and efficiency.
- NAW is awaiting oral argument.

1/15/2025: Supreme Court's Ruling Challenging the Fair Labor Standards Act "Outside Sales" Exemption

- In August 2024, NAW filed an amicus brief providing background on who outside salespeople are and why they are important to businesses. The brief urged the U.S. Supreme Court to hold that the “preponderance of the evidence” standard should apply to exemptions under the Fair Labor Standards Act (FLSA).
- Heard by the Supreme Court in November 2024, this case involved three salespeople for E.M.D. Sales, a food product distribution company in Washington D.C., who sued the organization for failing to pay overtime when they worked more than 40 hours per week. E.M.D. argued that the employees qualified for the “outside salesman” FLSA exemption. The district court previously held that E.M.D. failed to prove the exemption applied by “clear and convincing evidence,” and the 4th Circuit followed its precedent and affirmed.
- On January 15, 2025, the Supreme Court ruled unanimously in favor of E.M.D. Sales, Inc and NAW’s position and held that the “preponderance of the evidence” standard should apply to exemptions under the FLSA.

11/15/2024: Biden Administration Department of Labor Overtime Rule

- NAW joined other business groups in challenging DOL’s “overtime rule” that would have significantly increased the salary threshold employees must be paid to be classified as exempt from overtime.
- As of July 1, 2024, the rule requires overtime be paid to employees making less than \$43,888 per year (\$844 per week). (Up from \$35,568.) On January 1, 2025, the threshold will increase again to \$58,656 per year (\$1,128 per week). The salary threshold will increase every three years thereafter with DOL determining increase amounts based on current wage data.
- On November 15, 2024, Judge Sean D. Jordan ruled in favor of NAW and vacated the entire rule nationwide. As a result, the July 1, 2024 increase is no longer effective, and no more increases will occur.

7/5/2024: Challenges to Federal Trade Commission (FTC) Non-Compete Rule

- NAW submitted amicus briefs in *Ryan, LLC, et al., vs Federal Trade Commission*.
- The federal district court in Texas stopped FTC’s non-compete rule from taking effect. Agreeing with NAW and a coalition of trade associations, the court found FTC exceeded its statutory authority and violated the Administrative Procedure Act by banning employers from using non-compete agreements.
- On February 10, 2025, NAW filed its amicus brief with the 5th Circuit Court of Appeals in support of the district court ruling. Ultimately on September 5, the FTC announced it was taking steps to dismiss its appeal and vacate the rule, a victory for NAW.

5/21/2024: Lawsuit Against OSHA’s Worker Walkaround Rule

- In May 2024, NAW and fellow business plaintiffs (*Chamber of Commerce et al. v. U.S. Department of Labor*) challenged The Worker Walkaround Rule, a Biden Administration OSHA rule.
- This rule permits employees to select another employee or a non-employee third-party individual—including non-employee union representatives—to accompany the agency on inspections. NAW argues that the rule exceeds OSHA’s statutory authority under the Occupational Safety and Health Act, is an unconstitutional taking of private property, and is arbitrary and capricious in violation of the Administrative Procedure Act.
- The case has been briefed; we are awaiting oral arguments.