OREGON'S EXTENDED PRODUCER RESPONSIBILITY LAW UPHELD FOLLOWING CONSTITUTIONAL CHALLENGES IN *NATIONAL ASS'N OF WHOLESALE DISTRIBUTERS V. FELDON*

Date: 2 September 2026

US Policy and Regulatory Alert

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The first federal lawsuit addressing the constitutionality of a state extended producer responsibility (EPR) law has concluded in a decision upholding Oregon's Plastic Pollution and Recycling Modernization Act (RMA). Following a five-day bench trial, the court rejected industry challenges alleging the RMA violates the dormant Commerce Clause and the Due Process Clause of the US Constitution.

National Ass'n of Wholesale Distributers v. Feldon[1] provides the first judicial analysis of legal issues that have been raised in similar litigation brought in other early-adopter states, including California and Colorado. For companies subject to Oregon's EPR regulations, the decision clarifies that, for now, the RMA's registration, fee, and compliance requirements remain in effect.

THE COURT FINDS THE RMA IS NOT UNCONSTITUTIONAL

The *National Ass'n of Wholesale Distributers v. Feldon* decision addresses two constitutional challenges by industry participants: (1) that the RMA violates the dormant Commerce Clause and (2) that the RMA constitutes an unconstitutional delegation of authority to the Circular Action Alliance (CAA), the producer responsibility organization (PRO) tasked with implementing much of the program.

The RMA Does Not Violate the Dormant Commerce Clause

The court rejected each of the National Association of Wholesale Distributers' (NAW) dormant Commerce Clause theories, namely that the RMA (1) discriminates against interstate commerce, (2) imposes an unreasonable “user fee,” and (3) places an undue burden on interstate commerce.

First, the court found that NAW failed to present sufficient evidence to support its claim that the RMA would result in discriminatory effects on interstate commerce as a whole, over and above its representations that its individual members would suffer significant financial burdens in compliance. The court generally concluded that the RMA regulates both in-state and out-of-state businesses similarly and, thereby, does not discriminate against out-of-state businesses.

Second, the court found that the fees imposed by CAA were not unreasonable, despite the allegation that CAA collected approximately US$90 million more in fees than it spent in its first year. The court accepted representations by CAA and the Oregon Department of Environmental Quality (ODEQ) that this surplus amount

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was attributable to the significant uncertainty in developing initial implementation plans and could be used as a credit going forward.

Finally, the court found that NAW had failed to make the threshold showing necessary to establish the quantifiable effect of the RMA on interstate commerce. Regardless, the court held that even if the alleged effect had been shown, the RMA would withstand scrutiny because it advances Oregon's strong interest in promoting waste management and public health and safety.

The RMA Does Not Violate the Due Process Clause

The court also rejected NAW's claims of due process violations under the 14th Amendment. NAW's arguments focused on two issues: (1) whether the RMA unconstitutionally delegates authority to CAA and (2) whether producers have a sufficient means to challenge CAA-imposed fees.

On delegation, the court dismissed this argument on the basis that the RMA does not, strictly speaking, obligate producers to join CAA. The RMA presents alternative options for compliance, including allowing producers to form their own PRO or to privately recycle their covered products. The court found that the practical difficulties identified by NAW in utilizing these alternatives did not establish that CAA membership was compulsory. The court also found that ODEQ retains ultimate authority over the RMA's administration and enforcement, including oversight of CAA's fee methodologies and reporting framework. The court likewise rejected NAW's argument that the RMA provides no meaningful opportunity for producers to contest CAA membership fees. NAW maintained that ODEQ lacks access to CAA's proprietary fee-setting formula and that CAA could modify the formula without ODEQ approval. The court rejected this position, finding methodology acceptable so long as ODEQ retains ultimate authority to approve the proposed fees.

Finally, NAW argued that the RMA provides insufficient process for challenging fees set by CAA. The court disagreed, finding that because CAA participation is presumptively voluntary, there can be no due process violation for fees imposed by CAA itself. The court further confirmed that CAA's “fee cadence,” which establishes current fees based on past sales volumes, was a rational means to support the legitimate purpose of the RMA. Additionally, the court found that the civil enforcement provisions of the RMA, which are triggered only upon recommendation by CAA, offer sufficient procedural safeguards in the form of a notice-and-cure period, administrative hearing, and a final right of appeal to court.

CONCLUSION

Producers subject to state EPR programs should take note that the first lawsuit addressing EPR statutes found the program to be constitutionally valid. Oregon's RMA is similar in many respects to EPR statutes enacted in California, Washington, Colorado, Maine, Maryland, and Minnesota. While the lawsuits challenging other state EPR statutes will turn on their own text, factual record, and regulatory structure, the court's reasoning provides some insight into how similar federal constitutional claims may be evaluated.

Further, while the court's decision will likely be appealed, for the moment, companies subject to Oregon's EPR regulations are required to comply with its mandates.

FOOTNOTES

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[1] *Nat'l Ass'n. Wholesale Distrib. v. Feldon*, No. 3:25-cv-1334-SI (D. Or. Aug. 27, 2026).

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