

Implementation of the California Plastic Pollution Prevention and Packaging Producer Responsibility Act

On June 30, 2022, Governor Gavin Newsome signed into law [SB 54](#), the *Plastic Pollution Prevention and Packaging Producer Responsibility Act*. The new law creates an Extended Producer Responsibility (EPR) program for printed paper and plastic packaging to be managed by a Producer Responsibility Organization (PRO) with state oversight by the California Department of Resources Recycling and Recovery (CalRecycle). California has joined several other states, such as, Colorado, Maine, and Oregon, to enact a packaging EPR law.

Program Goals

The legislation aims to mitigate the effects of plastic pollution on the environment and human health, reduce the amount of plastic created and increase recycling rates in California. The Act's key initiatives are as follows:

- Requires all plastic packaging material to be reusable, recyclable, or compostable with the state by January 1, 2032.
- Requires the overall amount of plastic packaging material, including the number of products packaged in such material in California is “source reduced” by 10% on or before January 1, 2027; 20% by January 1, 2030; and 25% by January 1, 2032. This requirement can be met by shrinking the size of the packaging; using refillable or reusable containers; or using non-plastic materials for packaging. Member producers in the PRO must submit individual source reduction plans to the PRO, including data regarding plastic usage.
- Requires 30% of all plastic packaging to be recycled by 2028, 50% by 2030, increasing to 65% by 2032. Expanded polystyrene (EPS) food service ware has a separate schedule and must meet recycling rates of 25% by 2025, increasing to 65% by 2032.
- Requires the PRO to remit a \$500 million surcharge to the California Department of Tax and Fee Administration on an annual basis beginning in 2027. These funds will be deposited into the California Plastic Pollution Mitigation Fund, which is projected to amass \$5 billion over the next ten years to help low-income communities impacted by the environmental and health effects of plastic pollution. The PRO is also permitted to collect up to \$150 million from plastic resin manufacturers that sell plastic materials to member producers for the purpose of paying the annual surcharge.

As defined by the Act, “recycling” involves the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise be disposed of and returning them to the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost.

On the controversial topic of “chemical recycling,” the law leaves open the possibility for advanced plastics-to-plastics technologies but does not allow combustion, incineration, waste-to-energy, or waste-to-fuel production (except for anaerobic digestion) to count as “recycling.” Under the law, CalRecycle will adopt regulations to verify that packaging intended for export meets processing and contamination standards and can prohibit any technologies that produce “significant amounts of hazardous waste.”

September 14, 2022

Covered Materials

The law regulates two classes of “covered material,” including single-use packaging and plastic food service ware. Single-use packaging includes a broad array of packaging for both food and non-food purposes unless exempted. Packaging includes any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of user or consumer goods, ranging from raw materials to processed goods.

Food service ware includes, but is not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. This category includes food trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws as well as wraps or wrappers and bags sold to food service establishments.

Product Exemptions

The good news for the printing and packaging industry is that SB 54 provides an “off-ramp” for certain types of materials including “tertiary packaging,” (i.e., packaging materials used to transport products which do not end up in the residential waste stream). To receive an exemption the following criteria must be met:

- The material is not collected through a residential recycling collection service;
- The material does not undergo separation from other materials at a commingled recycling processing facility;
- The material is recycled at a responsible end market; and
- The material has demonstrated a recycling rate of 65% for three consecutive years prior to January 1, 2027, and thereafter, can demonstrate a recycling rate at or over 70% annually, as verified to state officials every two years.

Additional exemptions include beverage containers subject to California’s bottle bill, packaging for medical products and prescriptions drugs, infant formula, medical food, and nutritional supplements, regulated animal products, certain hazardous materials, packaging for long-term storage of products with a lifespan of at least five years, and packaging related to products covered under California’s Architectural Paint Recovery Program.

Needs Assessment

Unlike the other states with EPR laws, manufacturers will not have a seat at the table in California when it comes to determining how much the EPR program needs to raise. That is because under SB 54, the state agency, CalRecycle, and not the PRO, will determine how much revenue the EPR program needs to upgrade the infrastructure and operations of California’s recycling systems. Although the PRO will bear the cost of the needs assessment.

The needs assessment may be done as one assessment covering all materials, or as multiple assessments for each material covered. Local jurisdictions must be consulted as the needs assessment is developed. The first assessment is due prior to the completion and approval of the PRO program plan and subsequent assessments must be updated every five years.

Advisory Board

A producer responsibility advisory board, which includes stakeholders from the recycling industry, brands, the environmental justice community, and the state, will be appointed by CalRecycle by July 2023. The advisory board is responsible for “identifying barriers and solutions to creating a circular economy” and providing initial recommendations to CalRecycle and the PRO.

September 14, 2022

Producer Responsibility Organization

In addition to overseeing the needs assessment and appointing members to the advisory board, CalRecycle is charged with approving a Producer Responsibility Organization (PRO) comprised of consumer brand companies that sell products in California by January 1, 2024. If multiple agencies apply, CalRecycle will determine/select one PRO. More than one PRO is possible after 2030 if they meet multiple requirements and CalRecycle grants approval.

The PRO will administer the program and develop a schedule of fees to ensure the PRO budget is fully funded. The PRO is tasked with assessing and collecting EPR fees from member producers and reimbursing local jurisdictions and recycling service providers.

The PRO must reimburse CalRecycle on or before the end of the 2026-2027 fiscal year by paying a “circular economy administrative fee” to be deposited into the California Circular Economy Fund. The total amount of fees collected may not exceed CalRecycle’s actual and reasonable costs.

The California EPR law includes a unique provision not found in the other EPR laws regarding how the EPR fees are to be paid. Under SB 54 companies cannot explicitly pass EPR fees along to California consumers because the bill includes a provision that “prohibits the fee from being passed on to consumers as a separate item on the receipt or invoice.” Consequently, companies will be required to internalize the costs of the program and pay EPR fees out of general corporate funds. As such, these costs will be embedded into the cost of all goods sold nationwide.

Program Plan

The PRO program plan must be established by January 1, 2027, and include the following elements:

- A source reduction plan to achieve the 25 percent reduction in plastic covered materials by 2023;
- A description of how the organization will provide for the necessary infrastructure and viable responsible end markets to ensure covered material will achieve statute requirements based on the needs assessment;
- An explanation of how the organization will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure based on the needs assessment;
- A description of arrangements with processors or recyclers to ensure that covered materials not collected at curbside are collected and recycled at viable responsible end market; and
- A description of how post-consumer recycled (PCR) content will be incorporated into covered material, including amounts of PCR content.

Producer Definition and Deadlines

SB 54 defines a “producer” for purposes of the Act as:

...a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

The Act will primarily affect those companies that put their product name and brand on the covered material, whether they have manufactured the plastic packaging or not. Otherwise, retailers or distributors will be obligated to comply.

All producers of covered material must join a PRO by January 1, 2024.

Producers must be approved by January 1, 2027, to participate in the PRO, otherwise they will be prohibited from selling, offering for sale, importing, or distributing covered materials in California. By July 2027, member producers will begin paying fees to the PRO.

September 14, 2022

Some organizations will be exempt from having to join the PRO. A producer is exempt if the producer is:

- An individual that assumes responsibility and liability for compliance with the Act and can demonstrate a recycling rate of 65% for three consecutive years before 2027 and 70% thereafter. Producers complying individually undertake the same responsibilities as a PRO;
- A small retailer, wholesaler, and producer with gross annual sales under \$1 million- accounting for size, revenue, number of retail locations, and market share; and
- A person who produces, harvests, and packages agricultural commodities on site where agricultural commodities were grown or raised.

Even though they are exempt from having to join a PRO, small retailers, wholesalers, and producers still need to meet the requirement for all covered material to be recyclable or compostable by 2032.

Production Incentives

The Act includes parameters for eco-modulated fees to incentivize the use of more sustainable, recyclable, or compostable, renewable, and non-toxic materials. The PRO will manage the development and calculation of the fees or credits.

Penalties

SB 54 sets a high price for producers who fail to comply with the law. CalRecycle may issue notices of violation to entities not in compliance with SB 54 and may also impose penalties for noncompliance as high as \$50,000 per day. A first offense violation may not exceed \$25,000 per day. The collected penalties will be deposited into the Circular Economy Penalty Account established in the Act.

Outreach and Education

The PRO program must include efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems.

Resources

- [SB 54](#) Full text of the law.
- [CalRecycle-Product Stewardship and EPR](#) CalRecycle website.

Disclaimer

The information published in this summary is derived from trusted sources and is believed to be the most accurate information at the time of publication, September 14, 2022. Due to the development of regulations and guidance, the information in this publication may become inaccurate or obsolete.

PRINTING United Alliance seeks to keep the printing industry updated on workplace requirements related to environmental compliance. For more information, or if you have questions on this or any other state regulatory issue, please contact Marci Kinter at mkinter@printing.org or Gary Jones at gjones@printing.org.

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