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Environmental Alert

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California resets EPR rulemaking

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California restarts Extended Producer Responsibility (EPR) rulemaking, focusing on reducing costs and improving fairness.



What's the impact?

- California is restarting the rulemaking process for EPR regulations, citing the need to balance the State's plastic pollution reduction goals against cost concerns for families and small businesses.
- California's delay in finalizing regulations creates some uncertainty for businesses preparing for California's EPR requirements.
- Upcoming rulemaking creates an opportunity for businesses to give feedback on anticipated EPR compliance challenges and costs.

California has been working to implement EPR requirements since 2022, with the State's enactment of [SB 54, California's Plastic Pollution Prevention and Packaging Producer Responsibility Act](#) (SB 54). Hailed as a landmark law, SB 54 requires packaging and food ware producers to reduce plastic waste, increase recyclability and compostability, and finance the collection and processing of their products. The law also required CalRecycle, the State's waste management agency, to adopt implementing regulations by March 8, 2025, following a public consultation process. CalRecycle issued a [first draft of implementing regulations](#) in March 2024

and received extensive public comment. The proposed regulations were also discussed in several public hearings. CalRecycle substantially revised the draft regulations in response to public comment. The agency issued new proposed regulations, with public feedback accepted until December 2024, with plans to finalize the regulations by the statutory deadline of March 8, 2025.

During the initial phases of public consultation, CalRecycle received more than 5,000 comments and letters. While some stakeholders applauded it as a necessary first step to reducing plastic pollution and increasing incentives for businesses, others raised concerns about costs to businesses and consumers, reporting structures, alignment with other regulatory requirements (e.g., The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)), and feasibility for certain products, such as food products. The complexity of the regulatory definitions, requirements, and fee determination makes it difficult for many businesses to determine their EPR obligations.

In part, a response to cost and complexity concerns, instead of finalizing the regulations, Governor Gavin Newsom directed CalRecycle to restart the regulatory process on March 10, 2025. The State's Advisory Board discussed the directive and CalRecycle's next steps at a public meeting on March 21, 2024.

CalRecycle will be issuing new proposed regulations to implement SB 54

On March 21, 2024, California's SB 54 Advisory Board held a virtual public meeting to discuss Governor Newsom's direction on SB 54 implementing regulations, the next steps for CalRecycle, and hear feedback from interested stakeholders. During the meeting, the Advisory Board noted that Governor Newsom raised concerns over CalRecycle's proposed regulations after [a State analysis](#) showed the law would cost the State approximately \$36 billion to implement, resulting in an extra \$300 annually in expenses for each Californian household. While the State analysis also noted that these costs would likely be mitigated by estimated increases in personal income, Governor Newsom's office wanted to ensure SB 54 regulations appropriately balanced environmental goals against rising costs for California families.

For the next steps, CalRecycle will be revisiting and reissuing proposed SB 54 regulations with the following goals in mind:

- / Ensuring California's EPR Program can be implemented in an affordable and effective manner.
- / Balancing EPR Program requirements and plastic pollution reduction goals against potential impacts to California consumers and small businesses.
- / Clarifying EPR Program requirements to ensure businesses can fully understand the requirements and readily comply with them.

Stakeholders attending the Advisory Board meeting stated mixed opinions over the delay in California's finalization of EPR requirements, with many noting that the delay will result in significant compliance challenges. Some stakeholders, however, felt that the delay would be beneficial in helping craft regulations that work for both consumers and businesses and encourage innovative recycling technologies. Others also felt that the delay provides a beneficial opportunity for CalRecycle to ensure full consideration of feedback on proposed EPR requirements. Several stakeholders, for example, noted that guidance is needed from CalRecycle on how businesses should comply with both SB 54 and other California laws, such as Prop 65 and California's Truth in Labeling Laws, which appear to conflict with the current version of EPR regulations.

No changes to SB 54 statutory deadlines or goals

While changes to SB 54 regulations will be further defined in rulemaking activities and are uncertain at this time, the statutory deadlines and targets in SB 54, which include reviewing and approving producer responsibility organization (PRO) plans in **2026**, remain unchanged unless California's legislature intervenes. As a result, producers of packaging and food ware introduced to California have ongoing compliance deadlines, even without clear guidance or rules from the State. During the Advisory Board meeting, CalRecycle even noted that unless the legislature delays SB 54 implementation, producers have upcoming compliance deadlines, which include:

- / Producers must register with Circular Action Alliance (CAA), an approved PRO for California by **April 2025**.
- / Producers must register with CalRecycle or have CAA register on their behalf by **July 2025**.
- / Producers must report the first six months of 2025 packaging data to CAA by **August 2025**.

Changes to the SB 54 implementing regulations also will not change any established goals. The implementing regulations will, for example, continue to require that by **2032**:

- / 100% of single-use packaging and plastic food service ware sold in the State is recyclable or compostable.
- / 65% of single-use plastic packaging and food service ware is recycled.
- / 25% less single-use plastic packaging and food service ware is sold, used, and disposed of in the State.

Complying with California's EPR requirements Even though California is issuing new EPR regulations, the State legislature has not acted to delay EPR deadlines, which require registration by April 2025. Businesses that place packaging and food service ware in the State must determine whether their products and packaging are subject to California's EPR requirements and prepare for compliance despite significant unknowns. Producers can also assume that since California is a pioneer in environmental regulation, other states will pay close attention.

Businesses that place packaging and food service ware in the State should also actively participate in CalRecycle's upcoming rulemaking activities and provide feedback on proposed regulations, guidance materials, PRO expectations, and covered material lists. Businesses should also provide feedback on expected costs and reporting burdens from CalRecycle's proposed regulations, as the agency is specifically tasked with balancing costs and reporting burdens in the next iteration of proposed regulations.

Nixon Peabody's [Environmental Team](#) has extensive experience assisting clients in navigating CalRecycle regulations and defending CalRecycle enforcement actions and is here to navigate current or pending EPR compliance requirements.

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