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California's New Plastics Recycling Laws – A Lot to Sort Through

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California has a long history of enacting laws regulating plastic packaging, dating back to the Rigid Plastic Packaging Container law in 1991, a law many manufacturers only learn about when they receive a notice from the California Department of Resources Recycling and Recovery ("CalRecycle"). In the past year, there have been notable additions that manufacturers, importers, distributors, or retailers whose products are sold in California need to know. These are not limited to plastic used in packaging but that is a major focus.

SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, was signed into law by Governor Newsom at the end of June. In the face of declining recycling levels due to a lack of markets for recovered materials, SB 54 establishes a "producer responsibility" model, intended to place the burden of collecting, processing and recycling on those who manufacture and sell plastic packaging and products.

This ambitious law applies to "producers" of "covered material," defined as single-use packaging and plastic single-use food service ware. A "producer" includes anyone who manufactures a product that uses a covered material and who owns the license or brand for that product sold, distributed or used in California. It may also include the exclusive licensee of the brand in the state, or the distributor or retailer of the product in or into the state. Although the Act exempts producers, retailers, or wholesalers that had gross sales of less than \$1M in the state in the most recent calendar year, which is intended to alleviate the impact on small businesses, even they will be required to insure after January 1, 2032 that all covered material sold in the state is recyclable or compostable.

SB 54 sets aggressive targets for recycling of not less than 30% by 2028, 40% by 2030, and 65% by 2032. The law also effectively bans expanded polystyrene food containers, as they cannot be sold in California unless recycling rates of at least 25% are achieved by 2025, with increasing targets over time. Given the very low recycling rates for this material, it seems unlikely those targets can be achieved.

SB 54 requires that producers of covered material form and join a single, state-wide "Producer Responsibility Organization" by January 1, 2024. Although the law theoretically allows producers to avoid the PRO but comply with the law by other means, these narrowly defined circumstances would be difficult to meet.

Among other things, the PRO will be responsible for developing a plan and achieving the aggressive recycling targets established by the Act. This is going to be a major and expensive undertaking by the producers of covered products, all of which will be subject to CalRecycle's approval.

The act requires the PRO to collect fees from the producers who join to fund the extensive work needed to achieve the recycling targets. The PRO is also required to pay \$500M to the State annually to be deposited into a newly-established California Plastic Pollution Mitigation Fund, which will be used by the State to pay for mitigation efforts such as cleanup of plastic litter. The PRO must also establish a fee system that will, in essence, assess penalties against members who fall behind in their financial obligations. In addition, the PRO must report delinquent members to the State, which may initiate enforcement and collect penalties of up to \$50,000 per day over and above any fees assessed by the PRO.

CalRecycle is required to promulgate regulations to implement the new law by January 1, 2025, so further details will emerge on important issues such as a more complete definition of covered material and who is a producer. Unfortunately, the deadline for producers to form and join the PRO is a year *before* the regulations are due to be issued, so there will be considerable confusion even as the PRO must be formed.

This new law is on top of SB 343, enacted last fall, which prohibits selling a product with the recycling "chasing arrows" symbol or otherwise indicating that the product or package is recyclable unless recycling programs actually process the material in areas that service at least 60% of the state population. Putting the recycling symbol on a material that does not meet that standard will be considered making a deceiving or misleading claim. A separate bill, AB 1201, created similar restrictions on what can be labelled as "compostable" or "biodegradable." CalRecycle has responsibilities to implement both of these new laws, as well, including collecting and providing information to the public regarding what materials are, in fact, recyclable in the state. An agency that was already stretched thin has many new and complex responsibilities to juggle.

Manufacturers, distributors and retailers who sell into California have multiple new laws to get familiar with as they take effect over the next several years. As always, coming up with a regulatory compliance strategy when dealing with a state law that is not consistent with federal or other states' laws poses significant challenges.



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