

All Wrapped Up

Extended Producer Responsibility for Packaging

September 2024 Newsletter

In this month's edition of *All Wrapped Up*, we discuss the California SB54 Advisory Board's evaluation of "barriers and solutions" on EPR packaging concerns; Colorado's proposed post-consumer recycled content targets; an updated timeline for Maine; the launch of Minnesota EPR; and the release of a list of 1200 registered producers in Oregon. We also take a deeper dive – in the "*Issue in Focus*" section – into the growing tension between old state laws that require the use of the chasing arrows symbol and new state laws that prohibit its use unless recycling criteria are met.



September 2024 State-By-State Updates

California

Colorado

Illinois (needs assessment only)

Maine

Maryland (needs assessment only)

Minnesota

Oregon

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Issue In Focus: Chasing Arrows Symbol

The use of a label that was required in California in 2019 – and that remains in widespread use across the country – will constitute a crime by 2027.¹

California required all “rigid plastic bottles” and “rigid plastic containers” of a certain size to have a label consisting of a number placed inside a triangle, starting in 1992. The triangle was to be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius (*i.e.*, the chasing arrows symbol). Dozens of other states passed laws in rapid succession in the late 1980s and early-to-mid 1990s with similar requirements, and 29 states still maintain them.

ASTM, a widely-accepted standard setting organization, also adopted the same labeling regime in 2010. ASTM, however, revised the standard just three years later in an effort to “limit any misplaced associations of [resin identification codes] with recycling codes.”² The revised

¹ CAL. PUB. RES. CODE § 42355.51(a-b) (prohibiting the sales and distribution of products and packaging that display the chasing arrows symbol without meeting statewide recyclability criteria as of 18 months after CalRecycle publishes its first material characterization study); *see also* S.B. 343 (Cal. 2021) (enacted).

² Brad Kelechava, *Resin Identification Codes (RICs), as Specified by ASTM D7611*, American National Standards Institute (Feb. 21, 2019), <https://blog.ansi.org/2019/02/resin-identification-codes-rics-astm->

standard required the use of a “a molded, imprinted or raised symbol or wording that consists of an equilateral triangle, a Resin Identification Number, and an Abbreviated Term for polymeric material. . . .”³ This standard remains in place today. The Federal Trade Commission and the U.S. Environmental Protection Agency have similarly distanced themselves from the chasing arrows symbol surrounding a resin identification code because it is often associated with recyclability, has misled consumers, and may provide the basis for greenwashing claims.⁴

California reversed course in 2020, as the first state to rescind its requirement to label plastic products with the chasing arrows symbol.⁵ Two years later, California outright prohibited the sale or distribution of products and packaging displaying the chasing arrows symbol as of January 1, 2027, unless the product or packaging meets statewide recycling criteria.⁶ As California’s law criminalizing the manufacture of plastic bottles and containers that do not meet the state’s labeling criteria will remain in effect, the continued use of the chasing arrows symbol on products or packaging that do not meet this criteria will be soon punishable as a crime, with a fine of up to \$1000.⁷ Oregon took a similar, but more lenient, approach by repealing its law requiring the chasing arrows symbol, while expressly recognizing the dozens of states that still require its use.⁸ Bills have been introduced in several other states that would similarly restrict the use of the chasing arrows symbol, including in Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, and Washington.

Federal and state law is trending toward embracing the resin identification code placed inside an equilateral triangle, as opposed to being placed inside a chasing arrows symbol, as set forth in the current iteration of ASTM D7611/D7611M-21, *Standard Practice for Coding Plastic Manufactured Articles for Resin Identification*. Given how widespread the use of the chasing arrows symbol is, it would be prudent for producers to initiate discourse as soon as practicable with plastics manufacturers to evaluate how this significant change to long-standing industry practice will be managed.

d7611/#:~:text=Resin%20Identification%20Codes%20are%20used,been%20administered%20by%20ASTM%20International.

³ ASTM D7611/D7611M10, *Standard Practice for Coding Plastic Manufactured Articles for Resin Identification* (emphasis added).

⁴ 16 C.F.R. § 260.12; Letter from EPA to FTC (Apr. 20, 2023), <https://s3.documentcloud.org/documents/23789593/epa-comments-to-ftc.pdf>; see also Chang Che, *His Recycling Symbol is Everywhere. The E.P.A. Says It Shouldn’t Be.*, N.Y. TIMES, Aug. 7, 2023, <https://www.nytimes.com/2023/08/07/climate/chasing-arrows-recycling-symbol-epa.html>.

⁵ CAL. PUB. RES. CODE § 18015 (2020); see also Assemb. B. 1583 (Cal. 2019) (enacted).

⁶ CAL. PUB. RES. CODE § 42355.51(a-b) (prohibiting the sales and distribution of products and packaging that display the chasing arrows symbol without meeting statewide recyclability criteria as of 18 months after CalRecycle publishes its first material characterization study); CAL. PUB. RES. CODE § 42061(a)(3)(A) (requiring CalRecycle to complete the first material characterization study by July 1, 2025); see also S.B. 343 (Cal. 2021) (enacted).

⁷ CAL. PUB. RES. CODE § 18016.

⁸ S.B. 582, 81st Leg. Assemb., Reg. Sess. (Or. 2021) (repealing OR. REV. STAT. § 459A.680 (2019)) (enacted).

King & Spalding + Extended Producer Responsibility

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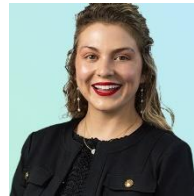
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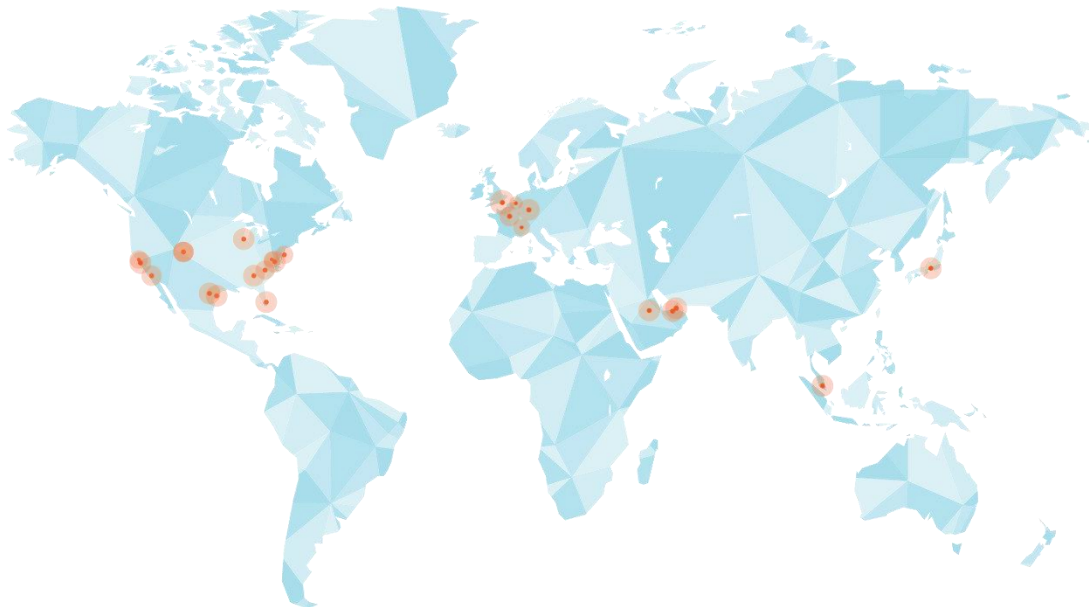
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