

# *All Wrapped Up*

## Extended Producer Responsibility for Packaging

January 2025 Newsletter

In this month's edition of *All Wrapped Up*, we discuss a high-profile and late-breaking challenge to California's EPR rulemaking; CAA's intent to respond to Maine's RFP to serve as a stewardship organization in yet another state; and legislators in Maryland that may be a bit frustrated with its 6-month (!) delay in developing a needs assessment. We also take a deeper dive – in our *Issue in Focus* section – into state differences in business-to-business packaging exemptions.



# January 2025 State-By-State Updates

## California

- The California Department of Resources Recycling and Recovery (“CalRecycle”) reiterated during a January 17, 2025 SB54 Advisory Board meeting that it remained on track to finalize regulations by March 8, 2025. CalRecycle initially published the proposed regulations in the California Regulatory Notice Register on March 8, 2024, and it has one year to finalize them under preexisting California law at CAL. GOV’T CODE § 11346.4(b). If CalRecycle misses this deadline, it will be required to reissue the proposed rulemaking again, effectively restarting the process. CalRecycle has already missed its January 1, 2025 rulemaking deadline set forth in CAL. PUB. RES. CODE § 42060(a). Several industry groups – including the California Chamber of Commerce, AMERIPEN, the American Chemistry Council, and the California Manufacturers & Technology Association – are pressing Gov. Gavin Newsom to delay the rule because the “most recent draft of the regulations contain significant flaws, both policy and legal, and provide prescriptive requirements more akin to command-and-control regulations than EPR regulations.”<sup>1</sup> Alleged flaws include anticipated costs to consumers and producers that far exceed projections in the rule’s economic benefit analysis; barriers to technological innovation; conflicts with federal laws governing food safety packaging and FDA/European Union regulatory requirements governing drugs and medical devices; confusing definitions of “producer”; and regulations that exceed statutory authority. Another notable concern that producers have increasingly aired is whether and to what extent the law’s 25% source reduction requirement will hamper their businesses’ growth. If these concerns are indeed warranted, then the regulations may wind up mired in litigation regardless of whether Gov. Newsom delays their issuance.
- CalRecycle also presented a high-level summary during the SB54 Advisory Board meeting of the Source Reduction Baseline study and the revised Covered Material Category List, both of which were released on December 31, 2024.
  - With respect to the Source Reduction Baseline study, a Board member commented that (1) there was a “fundamental flaw” in the sales volume estimate because it was based on data from the pandemic, during which plastic use was much higher; and (2) the estimate suggests that California is responsible for 25% of the world’s plastic consumption, which is not credible. The Board member further cautioned others not to “lock in” on the study because CAA may “revisit the numbers and come up with a methodology that makes sense.” As reported in the last edition of *All Wrapped Up*, it remains unclear why the legislature mandated a source reduction baseline study to be conducted prior to producer data reporting, which will invariably provide more accurate information.
  - With respect to the revised Covered Material Category list, CalRecycle explained that 5 covered material categories from the Paper and Fiber and Wood and Other Organic Materials material classes are now deemed compostable, that were not in 2023; and that 11 covered material categories from the Metal material class are now deemed recyclable, that were not in 2023. Three “small” covered material categories that were deemed recyclable in 2023, are no longer deemed recyclable. As also

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<sup>1</sup> See Letter from A. Regele, California Chamber of Commerce, to Hon. Gavin Newsom (Dec. 14, 2024), <https://www.flexpack.org/publication/RG93bmXvYWQ6MTQyMA==/download>.

previously reported, CalRecycle revised these determinations despite the fact there were no associated improvements in recycling infrastructure or capability.

- The SB54 Advisory Board continued its discussions during its January 17, 2025 meeting on “barriers and solutions to a circular economy” per the directive in CAL. PUB. RES. CODE § 42070(e)(1). The Board is operating under a February 2025 deadline to issue recommendations regarding barriers and solutions, which are intended to inform the needs assessment.<sup>2</sup> Of note:
  - With respect to recyclability/recyclable covered materials, the Board expressed concern with the lack of recycling markets for plastic films and plastics with resin identification codes 3, 4, 6, and 7, and with flexible films being a “humongous question mark for this legislation.” CAA stated that the PRO plan must include some “pathway” for flexible packaging, which accounts for up to an estimated 51% of the total plastic packaging market.
  - With respect to compostability/compostable covered materials, the Board discussed more closely aligning the January 1, 2026 sale and distribution prohibition of products mislabeled as “compostable,” as set forth in CAL. PUB. RES. CODE § 42357(g)(1)(B), with the January 1, 2032 sale and distribution prohibition of covered material that is not recyclable or eligible for being labeled “compostable,” as set forth in CAL. PUB. RES. CODE § 42050(b). The former provision currently prohibits the sale and distribution of a product labeled “compostable” as of January 1, 2026, unless it meets applicable ASTM standards and is an allowable agricultural component under the U.S. Department of Agriculture National Organic Program (“USDA NOP”). CalRecycle, however, is expressly authorized to grant a 5-year extension with this requirement if “[t]he product or substance has or will soon be, as determined by the director, included as an allowable organic input for compost under federal law.” The rationale for the extension is to allow products to continue to be labeled as compostable so as to allow for additional time to assess what materials would actually meet the USDA NOP. These are key issues to the success of the program: compostable food waste is the largest source of waste in landfills, and landfills are the third-largest source of human-related methane, a climate “super-pollutant.”

**Colorado**

**Illinois (needs assessment only)**

**Maine**

**Maryland (needs assessment only)**

**Massachusetts (needs assessment only)**

**Minnesota**

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<sup>2</sup> CAL. PUB. RES. CODE § 42070(e)(1)(A) (requiring the Board to provide initial recommendations by “no later than one year after the advisory board’s initial meeting,” which took place February 2, 2024).

Oregon

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## Circular Action Alliance

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*Issue In Focus: Business-to-Business Packaging*

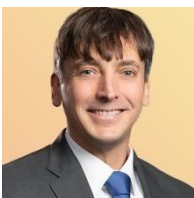
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### Authors for this edition



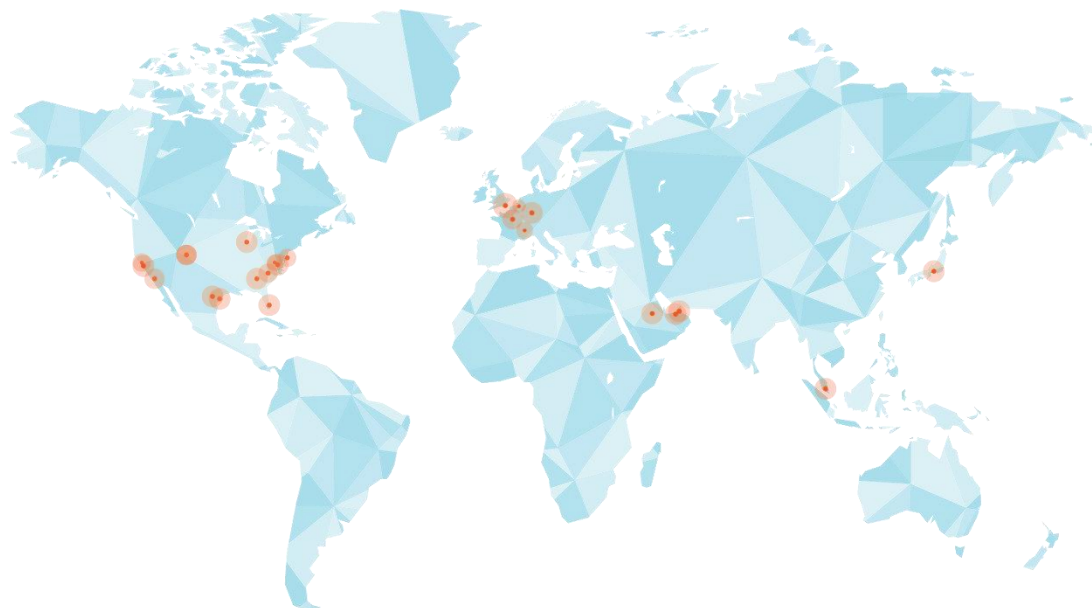
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