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Extra EPR-a, Read All About It! California Enacts Most Stringent EPR Law Yet

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On June 30, California Governor Gavin Newsom signed into law the most ambitious Extended Producer Responsibility (EPR) law in the country: The Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54).

Not only does it require retailers, manufacturers, and other producers to pay into a $5 billion fund, it also requires them to meet several significant benchmarks-all in the next 10 years-including eradicating the use of single-use packaging that is not recyclable or does not meet the state's strict compostability requirements, decreasing the use of disposable plastic packaging and food service ware accessories by 25%, and increasing recycling rates to 65%.

Background on EPR Laws

EPR laws are intended to shift the cost of post-purchase recycling back onto retailers and manufacturers by requiring them to absorb at least some of the costs for collecting and recycling. The cost-shifting is also designed to promote less wasteful alternatives, and to expand consumer access to recycling facilities.

Already common in Europe, Australia, and parts of Asia, EPR laws related to consumer packaging are gaining traction in the US. This time last year, no states had enacted EPR legislation governing packaging materials. Now, however, California is the fourth state to implement plastic EPR laws, following in the footsteps of Maine, Oregon, and Colorado.

Maine

Enacted on July 13, 2021, Maine's EPR law focuses on shifting the burden of paying for trash collection onto businesses. The law covers most types of consumer packaging (including cardboard boxes and plastic tubs, bags, and pouches), and requires producers to contribute to a fund that reimburses local municipalities for recycling and waste management costs and improves recycling infrastructure and education. The law also includes "eco-modulation," imposing fees on companies for use of certain types of packaging. Maine classifies brands, trademark/license holders of branded items, entities that package and/or distribute products, and importers of foreign products as "producers" subject to the law, but provides modified obligations for small and new businesses and does not apply to tax-exempt organizations.

The Maine Department of Environmental Protection is in the process of developing implementation details and schedules, but plans to issue a quarterly newsletter starting July 2022 to inform all interested parties of its progress in advance of its December 31, 2023 deadline to initiate rulemaking.

Oregon

Just weeks after Maine passed its law, on August 6, 2021, Oregon passed the Plastic Pollution and Recycling Modernization Act, which extended Oregon's previous EPR rules to post-consumer packaging, food service ware, and paper products. Under the new law, at least one entity along a product's path to Oregon consumers must join a Producer Responsibility Organization (PRO), which collects fees from its member producers and proposes and funds improvements to recycling facilities and consumer access. Like Maine, Oregon provides exemptions for smaller businesses and incorporates eco-modulation concepts. The law designates March 31, 2024 as the deadline for PROs to provide EPR proposals to the Oregon Department of Environmental Quality in advance of a target July 1, 2025 implementation, but Oregon has not yet announced details for what these plans must include or how they should be implemented.

Colorado

On June 3, 2021, Colorado signed its own EPR bill into law. Colorado's law, which covers consumer-facing packaging and some paper products, tasks a system of PROs with collecting funds from producers to improve and manage the state's recycling system. Like Oregon, Colorado's law would task a system of PROs with collecting funds from producers of consumer packaging and using the proceeds to improve and manage a statewide recycling system. Also similar to Oregon and Maine, Colorado has not yet announced detailed implementation plans for its EPR program, which is projected to start sometime in 2026. However, Colorado's PROs would play a much more active role in overseeing and administering the eventual improvements, with oversight from advisory groups and government bodies, even beyond raising and disbursing funds.

California's SB 54

California is no stranger to EPR laws or product stewardship. In fact, it already has some of the most comprehensive laws in the country governing products such as paint, carpets, mattresses, and pharmaceutical waste.

California's EPR scheme calls for the establishment of a single PRO, but additional PROs may be formed after January 1, 2031 with permission of the California Department of Resources Recycling and Recovery. Subject to limited exceptions, all "producers" of "covered materials" must join the PRO by January 1, 2024. "Producers" include any "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." Covered materials include single-use packaging materials and single-use food service ware, but do not include medical products and prescription drugs.

Beginning in 2027, the PRO will be required to collect fees from member-producers and to remit $500 million each year to the California Department of Tax and Fee Administration to be deposited into the California Plastic Pollution Mitigation Fund (which SB 54 will create), which will be used, among other things, to "reduce the historical and current environmental justice and public health impacts of plastics, including to mitigate the historical and current impact of plastics on disadvantaged or low-income communities or rural areas." Additionally, the PRO will pay a "California circular economy administrative fee" to be set by the California Department of Resources Recycling and Recovery (CalRecycle), to cover costs associated with implementing and enforcing

SB 54. Fee structures for producers will be determined by a fee schedule to be developed by the PRO, with eco-modulation concepts built into the schedule to reward or punish companies for the packaging materials they use.

But California's EPR provides for more than the payment of funds for pollution reduction and the improvement of recycling infrastructure:

- **Recyclability:** By January 1, 2032, all single-use packaging and food service ware distributed or imported in or into the state must be recyclable or eligible for being labeled "compostable."
- **Plastic Reduction:** Also, by January 1, 2032, the PRO must develop and implement a plan to reduce plastic packaging by 25% for covered material sold, offered for sale, or distributed in California, and enter into enforceable agreements with its producers to ensure this plan is followed. To accomplish the 25% cutback, the bill mandates that at least 10% of single-use plastic packaging and utensils either be entirely plastic free or shift from single-use to "reuse and refill" systems. The remainder of the source reduction can be achieved through altering concentration, right-sizing, light-weighting, or shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers, or shifting to a non-plastic covered material.
- **Recycling Rates:** In addition, all plastic covered material sold, distributed, or imported in or into California must achieve the following recycling rates:
  - at least 30% of covered material must be recycled by January 1, 2028.
  - at least 40% of covered material must be recycled by January 1, 2030.
  - at least 65% of covered material must be recycled by January 1, 2032.
- **Record-Keeping:** Additionally, producers must comply with reporting and recordkeeping requirements related to annual sales, recycling, composting, and source reduction data.

The law also imposes requirements on local jurisdictions and recycling service providers relating to their collection and recycling programs.

Next Steps

Although 10 years may sound like a long runway for compliance, meeting SB 54's requirements may be time-consuming and expensive-especially for companies that currently do not use recyclable packaging or that use large amounts of plastic packaging. Moreover, numerous other jurisdictions are considering similar EPR laws that would exacerbate compliance efforts, including by creating a patchwork of reporting and payment obligations. Retailers, manufacturers, and other producers should keep an eye on this new and rapidly changing landscape.