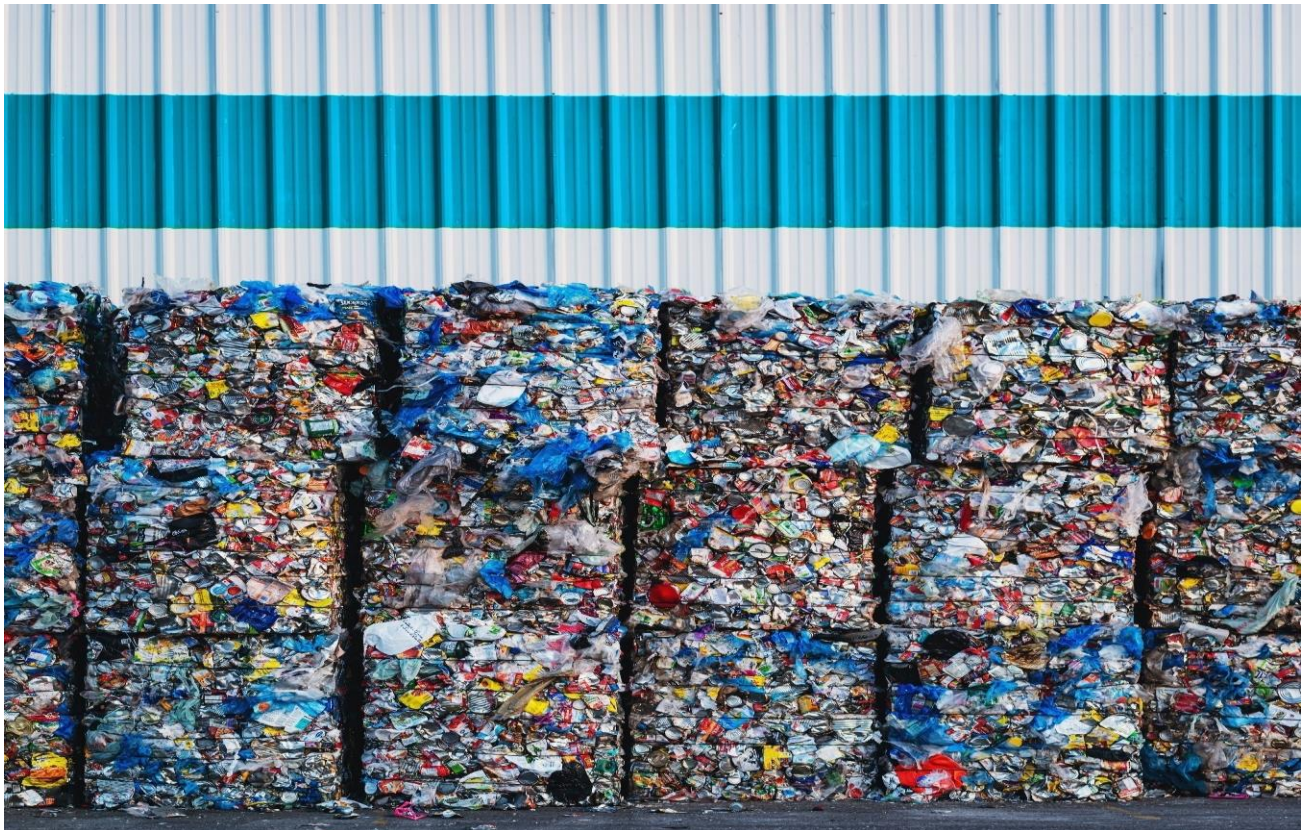


# *All Wrapped Up*

## Extended Producer Responsibility for Packaging

Midsummer 2025 Edition

In this midsummer edition of *All Wrapped Up*, we discuss a blockbuster ending to this year's state legislative sessions, culminating in the official launch of the first packaging EPR program in U.S. history; the passage of packaging EPR in two more states; an unprecedented statutory "fix" to the nation's first packaging EPR law; two new EPR needs assessment laws; and yet another aborted attempt at packaging EPR in New York. We also take a deeper dive – in our *Issue in Focus* section – into whether the new and (ostensibly) improved SB54 rulemaking will result in cost savings as opposed to cost shifting.



## State-By-State Updates

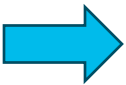
### California

- The California Department of Resources Recycling and Recovery (“CalRecycle”) released new proposed regulatory text on May 16, in advance of an informal public workshop on May 27, then issued revised proposed regulatory text on July 1. CalRecycle advised that the July 1 version was submitted to the Department of Finance in connection with the financial impact analysis, *i.e.*, the Standardized Regulatory Impact Assessment (“SRIA”). The Department of Finance has 60 days to complete the SRIA before the draft proposed regulations can be released for public comment. That noted, CalRecycle has already advised that it is not anticipating that the SRIA will result in any changes: “[w]ith possible minor adjustments, this is anticipated to be the version of the proposed regulations released for the 45-day formal rulemaking comment period following the SRIA review process.” Key changes from last year’s SB54 rulemaking include, but are not limited to:
  - a revised definition of “producer”;
  - several revised exclusions and exemptions, including with respect to:
    - secondary and tertiary packaging for non-covered materials that are subject to categorical exclusions;
    - packaging “used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration”;
    - simplified provisions for the “reusable” and “refillable” exclusions;
    - the process for PRO requests for CalRecycle to deem certain components to be of *de minimis* weight or volume; and
    - the minimum duration of exemptions granted for packaging that poses “unique challenges” and for packaging that cannot comply with the law “for health and safety reasons, or because it is unsafe to recycle,” which was revised from one year to two years.
  - more lenient criteria for the approval of advanced chemical recycling and a wholesale removal of the prior rule’s provisions limiting the use of advanced chemical recycling to only those technologies that do not “consistently generate[] a greater amount of hazardous waste” than mechanical recycling;
  - a requirement for producers to register within 30 days of the effective date of the new regulations and to report supply data for calendar year 2023 simultaneously with registration;
  - a requirement for PRO plan submission between April 1, 2026 and June 15, 2026; and
  - a wholesale elimination of the provisions to make source reduction adjustments in the PRO’s source reduction plan, which would have allowed for the accounting for “fluctuations in economic conditions” and the “increase or decrease in the number of producers participating in the PRO plan.”

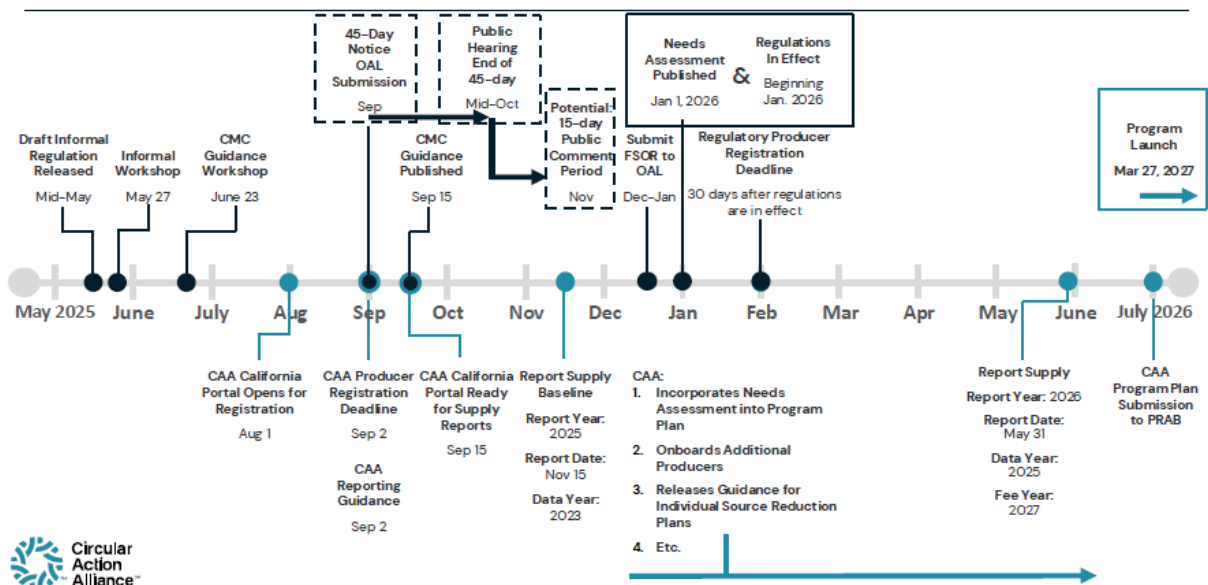
The revised proposed regulatory text is CalRecycle’s attempt to address Gov. Gavin Newsom’s directive to restart the regulatory process to reduce costs for small businesses and producers. As we projected in our March 24, 2025 breaking news edition of *All Wrapped*

Up, the vast majority of the prior draft's infrastructure was carried over into the new proposed draft regulations. And as discussed below in this month's *Issue in Focus*, it is not readily apparent how the changes that have been proposed will actually result in cost savings.

- CalRecycle held an informal public workshop on May 27 and a non-regulatory public workshop on June 23.
  - During the May 27 workshop, CalRecycle discussed the proposed regulatory text and the associated SRIA. Most comments were directed at the revised exclusions and the revised criteria for advanced chemical recycling. These revisions received support from industry and opposition from environmental groups. The SRIA discussion shed some light on how CalRecycle could achieve the cost savings sought by Gov. Newsom. The SRIA, for example, will contain two alternative options, the first of which is to allow for "packaging containing up to 20% plastic to be considered 'not plastic' and therefor[e] no need to comply with the plastic-specific requirements of the law." Assuming CalRecycle has the authority to implement this alternative, it may provide a pathway to achieve the cost reductions sought by Gov. Newsom.
  - During the June 23 workshop, CalRecycle presented and solicited feedback on (a) the covered materials categories ("CMC") list released December 31, 2024; (b) draft CMC reporting guidance; and (c) and draft source reduction baseline guidance. The draft CMC guidance document is being developed in an effort to assist producers in identifying how items of covered material should be categorized into CMCs for data reporting purposes. CalRecycle is targeting September for the guidance to be released in final form. The draft source reduction guidance is being developed to assist producers in reporting the number of plastic components and weight of plastic covered material sold or distributed in California in 2023.
- The SB 54 Advisory Board held two meetings in May and one meeting in June.
  - During the May 16 meeting, (a) the SB54 Advisory Board approved the "SB 54 Advisory Board Report on Barriers and Solutions to Creating a Circular Economy" prepared pursuant to CAL. PUB. RES. CODE § 42070(e)(1); (b) needs assessment consultants HF&H and HDR provided an update on the "Collection, Processing, and End Markets" needs assessment, which is one of five needs assessment studies conducted pursuant to CAL. PUB. RES. CODE § 42067; (c) CalRecycle informed the Board of the pending release of the updated regulatory text and discussed the changes; and (d) CAA presented the new SB54 implementation timeline, which includes **a September 2 producer registration deadline and a November 15 data reporting deadline**; and culminates in final regulations by January 2026. See below.

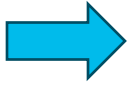


## Draft SB 54 Implementation Timeline



- During the May 30 meeting, the Board provided comments and requested changes to the draft regulatory text, then solicited public comment. Most comments echoed those raised in the May 27 CalRecycle workshop. Other comments related to provisions governing enforcement, reimbursement, contamination, and reuse/refill.
- During the June 20 meeting, (a) the Board presented a summary of the “SB 54 Advisory Board Report on Barriers and Solutions to Creating a Circular Economy” prepared pursuant to CAL. PUB. RES. CODE § 42070(e)(1) and approved during the May 16 meeting; (b) CalRecycle provided a high-level update on the proposed draft regulations, which generated further discussion on the scope of the proposed exclusions; and (c) CAA provided an update on the development of its covered cost methodology and payment mechanism, consistent with CAL. PUB. RES. CODE § 42051.1(g)(1), which requires the PRO plan to include (1) a “process for determining the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others” and (2) a “mechanism and schedule” for reimbursing local jurisdictions.
- CalRecycle released a report to the legislature on May 9, entitled “Building California’s Circular Economy: Plastic Pollution Prevention and Packaging Producer Responsibility Act Implementation,” consistent with CAL. PUB. RES. CODE § 42065(a). The report provides status updates on the SB54 Advisory Board, development of regulations, the needs assessment, covered material category lists, the expanded polystyrene, establishment of a PRO, and producer registration.
- As discussed in our April 2025 edition of *All Wrapped Up*, CAL. PUB. RES. CODE § 42355.51(a-b) prohibits the sales and distribution of products and packaging that display the chasing arrows symbol without meeting statewide recyclability criteria 18 months after CalRecycle publishes its first (and final) material characterization study. CalRecycle





published the study April 4. **The deadline for producers to revisit their continued use of the chasing arrows symbol and other recyclability claims is now October 4, 2026.**

**Colorado**

**Hawaii (needs assessment only)**

**Illinois (needs assessment only)**

**Maine**

**Maryland**

**Massachusetts (needs assessment only)**

**Minnesota**

**New York**

**Oregon**

**Rhode Island (needs assessment only)**

**Washington**

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## ***Issue In Focus: SB54 Cost Reductions or Cost Shifting?***

***Will the revised SB54 regulations result in actual cost reductions, or will the changes simply result in cost shifting?***

Gov. Newsom directed CalRecycle to restart the SB54 rulemaking “to minimize[e] costs for small businesses and working families as much as possible.” The financial impact evaluation for the previous draft regulations projected a per-household cost of approximately \$329 per year, per household, which equates to approximately one dollar a day. We look at three examples of the new changes to the proposed regulatory text and the potential for cost reduction as compared with cost-shifting.

### ***EXAMPLE 1: EXCLUSIONS***

- ***Categorically Excluded Materials: Secondary and Tertiary Packaging Exclusion.*** CAL. PUB. RES. CODE § 42041(e)(2)(A-D) contains several exclusions intended to be “categorical.” The prior draft regulations, however, expressly carved out secondary or tertiary packaging from the scope of these exclusions – unless the secondary or tertiary packaging was “necessary to satisfy health and safety or legal requirements directly related to the good.” The revised Section 18980.2, *Categorically Excluded Materials*, now exclude secondary and tertiary packaging subject to categorical exclusions: “[f]or

purposes of subparagraphs (A) through (D) of paragraph (2) of subdivision (e) of section 42041, packaging used for a good or used to contain a good includes primary, secondary, and tertiary packaging.”

This proposed change would expand the scope of excluded materials, but it would not result in any significant changes in their collection or processing, regardless of whether they are managed through recycling infrastructure or through the municipal solid waste management system. The cost for management of these materials would not be reduced; the costs would instead either be absorbed by producers or will be shifted to municipalities and taxpayers. To the extent the weight and volume of these excluded materials cannot be quantified, PRO fees would be allocated to cover their management costs; these materials would effectively be getting a “free” ride with thanks to other producers. To the extent the weight and volume of these excluded materials can be quantified, they would not be considered covered costs, which would saddle municipalities (and taxpayers) with the costs of managing them. Although there might be some cost savings because there would be no requirement to make packaging changes to excluded materials, the benefits of such changes (e.g., lower costs associated with source-reduced packaging) would be lost.

- **Categorically Excluded Materials: Food Safety Exclusion.** CAL. PUB. RES. CODE § 42060(b)(1) prohibits the issuance of any SB54 regulations that conflict with regulations issued by either the U.S. Food and Drug Administration or the U.S. Department of Agriculture, essentially codifying existing law on federal preemption. In an effort to address concerns with food safety that were ostensibly not addressed by these federal laws, the revised Section 18980.2, *Categorically Excluded Materials*, adds a process for producers to seek an exclusion for packaging “used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use other packaging or packaging components to comply with regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration.”

The proposed change may expand the scope of excluded materials, but the extent to which remains unclear, injecting regulatory uncertainty with all of its attendant costs.

- (1) “[F]ood commodity” and “agricultural commodity” may be broadly construed, which might increase the scope of excluded materials. “Food commodity” is left undefined; and “agricultural commodity” is defined by cross-referencing 7 U.S.C. § 5602, which broadly defines “agricultural commodity” as “any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in section 1471(2) of this title and insects), and any product thereof.”<sup>1</sup>
- (2) The creation of a “not reasonably possible” standard to support application of the exclusion may invite a host of producers to argue that economic or technical considerations render alternative packaging “not reasonably possible,” which will increase administrative costs, regardless of what exclusions are granted.
- (3) This exclusion appears to be self-implementing – at least in part. Although CalRecycle retains authorization to determine whether it agrees with any given entity’s determination, the rule does not appear to require CalRecycle to take any position at all.

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<sup>1</sup> Another provision in U.S. Department of Agriculture regulations arguably defines “agricultural commodity” even more broadly. See 7 U.S.C. § 1518.

- (4) Notwithstanding (1)-(3), CalRecycle lacks the authority to expand any of the categorical exclusions beyond what is provided by statute, which might warrant in favor of narrowly construing this exclusion. The Legislature was certainly aware of food safety concerns in passing SB54 and yet decided to rely on principles of federal preemption, which rest on “conflict” between state and federal laws as opposed to what is not “reasonably” possible.

If this proposed change indeed results in exclusions for primary packaging for food and agricultural products, then perhaps there would be some direct cost savings realized by consumers, who would not be saddled with hidden fees at the grocery store passed onto them by food and agricultural purveyors required to comply with the EPR program. That noted, someone will still be held accountable for the costs of managing this packaging material. These “additional” costs may come right back to them (or may never leave them) via waste management fees levied by local municipalities or privatized waste management services, as they would have otherwise been managed had there been no EPR in California.

- **Reuse/Refill Exclusion.** CAL. PUB. RES. CODE § 42041(e)(1) defines “[c]overed material” as single-use packaging and food service ware. The revised Section 18980.2.1, *Exclusion of Reusable and Refillable Packaging and Food Service Ware*, eliminates the labelling, instruction, and washability requirements for reusable and refillable packaging that appeared in the prior draft regulations. These revisions significantly reduce the complexity of the reuse/refill requirements and are intended to remove barriers to innovation. The reduced requirements will likely result in cost reductions to producers switching to reuse/refill technologies, which will, in turn, likely translate to some cost reduction to consumers.
- **De Minimis Exclusion.** CAL. PUB. RES. CODE § 42041(s)(4)(A) excludes an “element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component” from the definition of “packaging.” The revised Section 18980.2.2, *Exclusion of Certain Types of Packaging*, generally maintains the substantive criteria that was set forth in the prior draft regulations for *de minimis* determinations, but revised the procedural process for making these determinations. The new process would allow the PRO and independent producers to request that CalRecycle “deem certain components or groups of components to be of de minimis weight or volume” and would require CalRecycle to post *de minimis* determinations on its website. Neither change would appear to result in reduced costs to consumers.

## EXAMPLE 2: SOURCE REDUCTION

CAL. PUB. RES. CODE § 42057(h) requires source reduction plans to allow for “businesses to grow.” The prior draft regulations at Section 18980.8.3, *Source Reduction Adjustments*, would have authorized CalRecycle to propose “adjustment factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO” through the PRO’s source reduction plan. These factors were designed, in part, to allow for growth when accounting for source reduction, consistent with CAL. PUB. RES. CODE § 42057(h). The new draft proposed regulations remove this section in its entirety. Eliminating these factors raises the question of how growth will be addressed within the context of source reduction. Although source reduction adjustments at the PRO level would not appear to result in direct cost reduction to consumers, there may be increased costs to producers if SB54’s source reduction requirements do not allow their businesses or product lines to grow. These costs may ultimately be passed onto consumers, thus increasing costs to consumers and small businesses.

### EXAMPLE 3: ADVANCED CHEMICAL RECYCLING

CAL. PUB. RES. CODE § 42041(aa)(5) requires the SB54 regulations to “exclude plastic recycling technologies that produce significant amounts of hazardous waste.” The revised Section 18980.4.1, *End Market Identification*, changes the criteria for responsible end markets by opening the door to new chemical recycling technologies. The prior draft regulations provided: a “technology generates a significant hazardous waste if it consistently generates a greater amount of hazardous waste” than mechanical recycling, which significantly inhibited the use of advanced chemical recycling given available technologies. The new draft proposed regulations define “significant amounts of hazardous waste” as “hazardous waste as defined in Title 40 of the Code of Federal Regulations Section 261.3 that presents a substantial risk of harm to public health, or of contamination of the environment,” *i.e.*, it must qualify as hazardous waste for purposes of federal regulations *and* it must “present[] a substantial risk of harm to public health, or of contamination of the environment.” The revised definition will increase the chances that advanced chemical recycling will qualify as a responsible end market. The benefits, however, will likely be reduced, as more hazardous waste will be generated, resulting in more environmental impacts and associated costs to manage them.



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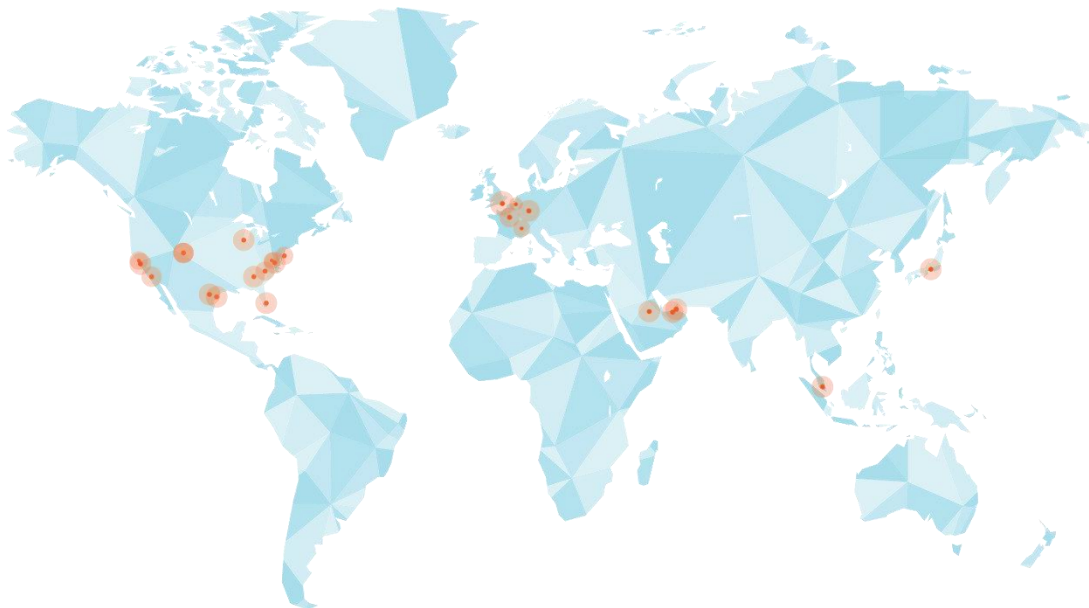
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