



May 8, 2024

Claire Derksen  
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations  
Department of Resources Recycling and Recovery, Regulations Unit  
1001 "I" St., MS-24B  
Sacramento, CA 95814

*Submitted via [calrecycle.commentinput.com](https://calrecycle.commentinput.com)*

**RE: ACA's Comments on SB 54 Plastic Pollution and Packaging Producer Responsibility Act Proposed Regulations**

Dear Claire Derksen:

The American Coatings Association (ACA)<sup>1</sup> submits the following comments to California Department of Resources Recycling and Recovery (CalRecycle) regarding the proposed regulations for SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act. The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings.

The \$29.5 Billion paint and coatings industry manufactures a wide variety of coatings products for consumers, businesses, and manufacturing establishments alike. With the exception of powder coatings, most paint and coatings products are in liquid form and utilize containers in a range of sizes. The sizes range from small containers of less than a liter or pint to large containers that hold several hundred gallons. These containers are typically either metal, plastic, or a hybrid of metal and plastic. With the increasing number of packaging laws across the country, ACA members will be required to evaluate the packaging being used for paint and coatings products to ensure compliance with these laws. Consequently, ACA has a significant interest in assisting our industry in compliance with any regulatory requirements.

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<sup>1</sup> ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

Currently, California is one of four states that include Maine, Colorado and Oregon that have passed extended producer responsibility (EPR) laws for packaging. However, individual states passing their own version of an EPR law results in significant differences within each of these states' EPR laws. This will be extremely problematic and burdensome for industry because developing compliance plans for companies that manufacture products for a coast-to-coast customer base will be extremely challenging. Furthermore, the coatings industry routinely conducts interstate transactions where their products are shipped across states lines, which thereby requires these companies to comply with various applicable federal and state laws.

To promote compliance to these EPR laws across the coatings industry, ACA recommends CalRecycle consider the following recommendations and provide clarification to better align with other existing EPR laws across the country, which would bolster implementation across California.

**1. Include exemptions to the EPR program that align with other state EPR programs.**

Currently, Colorado and Oregon provide an exemption within their states EPR laws to packaging exclusive to manufacturing or industrial processes. This can be found under Oregon's ORS 459A.863(6)(b)(E), which excludes specialty packaging used exclusively in industrial or manufacturing processes and Colorado's Sec. 25-17-703(13) (b)(VI). Furthermore, Colorado states that "packaging material" does not include packaging materials "used solely in business-to-business transactions where a covered material is not intended to be distributed to the end consumer," as provided under Colorado's Sec. 25-17-703(25)(b)(II). In order to ease the regulatory burden on industry, ACA recommends that California harmonize its EPR laws with these other states and include this provision to facilitate commerce and transportation of goods.

**2. Amend the exemption for long-term storage materials to allow for materials that may be used over an average lifespan of at least 5 years.**

The lifespan of a coating depends greatly on the type of product. Many latex and oil-based paints are manufactured for an average lifespan of ten to fifteen years.<sup>2</sup> The lifespan of paint once the can is opened also depends on the type of paint as well as storage conditions. Paint is a product that can be used up entirely in a project, or it can be partially used and stored for later use. The remaining paint can be reused for touchup jobs or to be used for another project entirely. This requires that the paint packaging also be durable enough to withstand the lifespan of the paint.

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<sup>2</sup> Christin Perry and Samantha Allen, *How Long Does Paint Last?*, FORBES (July 25, 2022), <https://www.forbes.com/home-improvement/painting/how-long-does-paint-last/>.

In the draft proposed regulations, under Sec. 18980.2.1.(b), it states that “[t]o be eligible for the [long-term storage materials] exemption, the packaging must be associated with a product that is a non-consumable good that, through use for their intended purpose, is typically used for at least five years in association with the packaging and not partially or wholly discarded within five years of being sold or distributed...” The current proposed definition puts a limitation by including the phrase “...not partially or wholly discarded within five years of being sold or distributed” that is counterintuitive for the purpose of paints and coatings. The lifespan of paints, especially latex and oil-based, can be up to fifteen years, which would require the packaging to be able to last just as long. Additionally, reuse of any paint that was not entirely used up is also a common occurrence, which would also require that the packaging storing the paint be able to last as long as the product being store in it. As such, ACA recommends that CalRecycle consider removing the limiting phrase “not partially or wholly discarded within five years of being sold or distributed” from the long-term storage exemption found under Sec. 18980.2.1.(b).

### **3. Clarify CalRecycle’s timeframe when responding to a producer seeking an exemption.**

In the proposed draft regulatory text, under Sec. 18980.2.1. Exemptions for Long-Term Storage Materials and Sec. 18980.2.2. Exemptions for Product-Specific Material, it lays forth the instructions in how a producer (or producer responsibility organization (PRO) if submitting on behalf of a producer) can seek an exemption under each section and the duration for which each exemption would be valid for. However, it is unclear how long CalRecycle is expected to take in reviewing the exemption submissions. Understandably, the review time needed by CalRecycle is somewhat dependent on the intricacy of the submission material, yet it is unclear in the proposed regulations. Furthermore, if a producer does not receive a timely exemption, that producer would likely then be required to pay into the PRO for that material. Therefore, ACA requests that CalRecycle provide a timeframe with which the agency would be held to in responding to these exemption submissions.

### **4. Clarify cost control measures with respect to end market viability requirements.**

Ensuring viable and responsible end markets is crucial in the implementation of California extended producer responsibility program. In the proposed draft regulatory text, under Sec. 18980.4.4 End Market Viability, it states that to “ensure viability of responsible end market, a PRO or Independent Producer shall...[p]rovide financial support to help existing end markets that do not meet the standards specified...[and] [p]rovide financial support to help divert materials from an end market that does not meet the standards specified...” This would be one way to promote circularity since the funds collected by the PRO through the EPR program could improve the recycling infrastructure.

However, without notable thresholds or concrete criteria to guide these financial decisions, there could be a significant potential for fraud, waste, and abuse. Additionally, it is

unclear whether the PRO or CalRecycle decides on which markets to provide financial support to and whether the PRO or CalRecycle decides on the amount of support to provide. This requirement to provide financial support for viable end markets without any guidelines to control costs and minimize financial losses could potentially lead to excessively increasing fees that fail to provide viable end markets. ACA recommends that CalRecycle provide clarification on (1) whether the PRO or CalRecycle decides on which end markets to provide financial support to; (2) whether the PRO or CalRecycle decides on the amount of financial support to give; and (3) what criteria or demonstrated thresholds may be used to guide the decision making to reduce fraud, waste, and abuse.

**5. Clarify which costs are being reimbursed to the Department under the eco-modulated fee and fee schedule.**

The proposed draft regulatory text, under Sec. 18980.6.7(a)(5), states that a “PRO shall charge all participant producers a fee based on the following items...[including] [c]osts to reimburse the Department.” Without further clarification, these reimbursement costs could potentially further raise fees the PRO must charge to producers, yet there lacks transparency on why these costs must be reimbursed to the Department and what type of oversight would be in effect. ACA seeks clarification and more transparency on what types of costs are being reimbursed (i.e., labor, equipment, or other resources), how these costs are identified as needing to be reimbursed, and what oversight would be in place regarding these reimbursements to minimize fraud, waste, and abuse.

**6. Clarify how manufacturers account for a variety of sales and distribution configurations.**

In the proposed draft regulatory text, under Sec. 18980.1(27)(B), specifies whether a particular person is considered a “producer” and delineates scenarios for when the brand owner is located within or outside of the state and whether there is distributor or wholesaler obtaining the goods and sells or distributes to the goods. However, there should be clarification on whether goods (from an out of state brand owner) transferred to a distributor located within California for sale outside of California would still be subject to California’s EPR laws. A separate concern stems from the fact that the Los Angeles/Long Beach shipping port is one of the busiest in the nation and many consumer goods pass through there without being offered for sale in California. Would goods that are simply passing through a distributor in that state also be subject to California EPR laws? Furthermore, subject goods to the California EPR laws that would simply be using an in-state distributor without any intent of being sold in California could potentially disincentivize business and local economies dependent on interstate commerce. ACA would like clarification on when a product may only be using an in-state distributor but not being sold in the state of California.

**7. Clarify reporting requirements with regards to “sold, distributed, or imported in or into the state” and downstream packaging reporting.**

In the proposed draft regulatory text, under Sec. 18980.6.8 Recordkeeping and Reporting Requirements, it states that the “PRO shall keep the following records, disaggregated by each participant producer...” and then lists several categories including the total weight of covered material by covered material category that is “sold, distributed, or imported in or into the state.” Additionally, the proposed draft regulatory text, under Sec. 18980.1(27)(B), specifies whether a particular person is considered a “producer.”

However, for instances under Sec. 18980.1(27)(B)(i), it is unclear whether the producer would be responsible for the added packaging a distributor may introduce further downstream in the sales transactions. Producers are not likely to have knowledge of the packaging configurations for downstream distribution, and it is likely that these packaging configurations may change depending on the length and/or anticipated time of transportation. Adding to the confusion is that under Sec. 18980.1(27)(B)(ii), it appears that the distributor would be responsible for reporting any new packaging introduced, which seems to contradict what is stated in Sec. 18980.1(27)(B)(i). ACA seeks clarification on downstream packaging requirements.

**Conclusion**

ACA appreciates the opportunity to provide comments to CalRecycle on this issue and looks forward to working cooperatively on this matter.

Sincerely,

/s/

Heidi K. McAuliffe  
Vice President, Government Affairs

/s/

Suzanne Chang  
Counsel, Government Affairs