

# **SB 54 Informal Rulemaking Stakeholder Workshop: Informational Items and Draft Regulatory Concepts for Covered Material**

**SB 54 Plastic Pollution Prevention and Packaging  
Producer Responsibility Act Regulations**

**April 25, 2023**

**Department of Resources Recycling and Recovery**

**SB 54 Regulation Implementation Team:**

**Packaging EPR Section**

**Knowledge Integration Section**

**Regulations Unit, Legal Affairs Office**

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## Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop on [April 25, 2023](#), from 10:00AM to 3:00PM, in the Byron Sher Auditorium, located on 2nd Floor, 1001 I Street, Sacramento, CA 95814, to consult with the public, the regulated community, and other interested persons to solicit feedback on some of the requirements outlined in [SB 54 \(Allen, Chapter 75, Statutes of 2022\)](#).

The topic of this workshop will be “covered material.” This workshop is split into three parts:

- **Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **Part 2** will discuss non-regulatory concepts to solicit stakeholder feedback.
- **Part 3** will discuss several regulation concepts to solicit stakeholder feedback to help prepare for the draft regulatory text.

The purpose of this document is to provide stakeholders an overall outline of what is going to be discussed and the type of feedback CalRecycle plans on soliciting in advance of the workshop. All requests for stakeholder feedback or informational items to share with stakeholders will be specified in a gray textbox.

This document and corresponding workshop will not address the following topics:

- Needs Assessment
- Recyclability
- Recycling Rates
- Compostability
- Responsible End Markets
- Covered Material Category Determination
- Source Reduction
- Enforcement
- PRO Plan\*
- Budgets\*
- Document submittals\*
- Annual reports\*

The topics above marked with (\*) are topics that were covered in previous workshops and others will be addressed at a subsequent workshop. Workshop information can be found on the SB 54 [webpage](#) under *Events*.

## **Part I. Background and Informational Items**

“Covered material” refers to the materials that are subject to the requirements of SB 54 (Allen, Chapter 75, Statutes of 2022). Broadly, “covered material” under this program refers to single-use packaging and plastic single-use food service ware with notable exemptions. This section summarizes the statutory requirements pertaining to covered material and the producers of covered material.

### **Relevant Definitions**

Listed below are the existing statutory definitions relevant to the April 25, 2023 rulemaking workshop. CalRecycle may further refine these definitions in regulations.

#### *Covered material – PRC 42041(e)*

- (1) “Covered material” means both of the following:
  - (A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.
  - (B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, “single-use food service ware” includes both of the following:
    - (i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.
    - (ii) Wraps or wrappers and bags sold to food service establishments.
- (2) Notwithstanding paragraph (1), “covered material” does not include any of the following:
  - (A) Packaging used for any of the following products:
    - (i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).
    - (ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.
    - (iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).
    - (iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.
    - (v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the department.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(D) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with products covered under the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7.

(H)

(i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

*Covered material category – PRC 42041(f)*

“Covered material category” means a category that includes covered material of a similar type and form, as determined by the department.

*Packaging – PRC 42041(s)*

“Packaging” means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. “Packaging” includes, but is not limited to, all of the following:

- (1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.
- (2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.
- (3) Transport packaging or tertiary packaging intended to protect the product during transport.
- (4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:
  - (A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.
  - (B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.

*Plastic – PRC 42041(t)*

“Plastic” means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms and includes coatings and adhesives. “Plastic” includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). “Plastic” does not include natural rubber or naturally occurring polymers such as proteins or starches.

*Reusable, Refillable, Reuse, Refill – PRC 42041(af)*

“Reusable” or “refillable” or “reuse” or “refill,” in regard to packaging or food service ware, means either of the following:

- (1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.

(D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.

(2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:

(A) Explicitly designed and marketed to be utilized multiple times for the same product.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

#### *Single use – PRC 42041(ai)*

“Single use” means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

#### **Informational Item for Stakeholders:**

The term “single use” and “single-use” is inconsistently used throughout the statute. CalRecycle intends to clarify in regulations that “single-use” has the same meaning as “single use.”

## **Overview of Covered Material**

Covered material in PRC 42041(e) is defined as single-use packaging and single-use plastic food service ware with exclusions made for certain types of packaging.

Producers of covered material must comply with the requirements to achieve the goals for covered material and plastic covered material set forth in PRC 42050. Covered material categories, as defined in PRC 420241(f), are groupings of covered material by type and form, as determined by the department. Many of the requirements of SB 54 are achieved or implemented by covered material category.

### **Summary of Covered Material Specified in Statute**

- Covered material is defined as single-use packaging, regardless of material type, and plastic single-use food service ware. For a summary of exclusions under covered material, see the next section.
- Mandates set forth in PRC 42050 for the year 2032 apply to covered material and plastic covered material:

- All plastic covered material is source reduced by 25% compared to the 2023 baseline year.
- All covered material is recyclable or eligible for being labeled “compostable.”
- All plastic covered material achieves a recycling rate of 65%.
- Producers of covered material are required to join the PRO or comply individually with the requirements of SB 54.
- The source reduction baseline established by the department pursuant to PRC 42057(b) and the source reduction reporting requirements pursuant to PRC 42057(c) pertains to plastic covered material.

### Exclusions under Covered Material

This section summarizes the exclusions in statute under covered material and provides reference information on the Federal laws and regulations noted in PRC 420241(e)(2). The references provided do not constitute legal interpretation of statute. Statutory language on the exclusions under covered material can be found in the definitions above. Exclusions under covered material are:

- Packaging related to human and animal medicine and medical products – PRC 42041(e)(2)(A)
  - References to Federal Food, Drug, and Cosmetic Act
    - PRC 42041(e)(2)(A)(i)
      - [21 U.S.C. Sec. 321\(g\)](#)
      - [21 U.S.C. Sec. 321\(h\)](#)
      - [21 U.S.C. Sec. 353\(b\)\(1\)](#)
    - PRC 420241(e)(2)(A)(iii)
      - [21 U.S.C. Sec. 301v](#) et seq.
  - Reference to Federal Virus-Serum-Toxin Act ([21 U.S.C. Sec. 151](#) et seq.) – PRC 420241(e)(2)(A)(iii)
  - Reference to Federal Insecticide, Fungicide, and Rodenticide Act ([7 U.S.C. Sec. 136](#) et seq.)
  - Reference to U.S. Code of Federal Regulations
    - PRC 42041(e)(2)(A)(iv)
      - [21 U.S.C. Sec. 321 \(z\)](#)
    - PRC 420241(e)(2)(A)(v)
      - [21 U.S.C. Sec. 360ee\(b\)\(3\)](#)
- Packaging used to contain hazardous or toxic substances – PRC 42041(e)(2)(B-D)
  - Reference to Federal Insecticide, Fungicide, and Rodenticide Act ([7 U.S.C. Sec. 136](#) et seq.) – PRC 42041(e)(2)(B)
  - Reference to U.S. Code of Federal Regulations [Part 178 \(commencing with Section 178.0\) of Subchapter C](#) of Chapter I of Subtitle B of Title 49 – PRC 42041(e)(2)(C)



- Reference to 2012 federal Occupational Safety and Health Administration Hazard Communications Standard ([29 C.F.R. 1910.1200](#)) – PRC 42041(e)(2)(D)
- Beverage Containers subject to the California Beverage Container Recycling and Litter Reduction Act ([Division 12.1 \(commencing with Section 14500\)](#)) – PRC 42041(e)(2)(E)
- Packaging used for long-term protection and storage of a product that has a lifespan not less than five years – PRC 42041(e)(2)(F)
- Packaging associated with the California Paint Stewardship Program [Chapter 5 \(commencing with Section 48700\) of Part 7](#)– PRC 42041(e)(2)(G)
- Covered material where a producer demonstrates to the department that it meets criteria set forth in PRC 42041(e)(2)(H)

#### Summary of Covered Material Categories: CalRecycle’s Responsibilities

- Establish and post a list of covered material categories by July 1, 2024 – PRC 42061(a)
- Determine the following for each covered material category:
  - Whether it is deemed recyclable – PRC 42061(c)
  - Whether it is deemed compostable – PRC 42061(d)
  - Recycling rates being achieved – PRC 42061(b)(1)
  - The amount disposed in California landfills through a material characterization study – PRC 42061(a)(2)
- Make requests for data that are consistent with the covered material categories that are established and posted – PRC 42060(a)(2)(C)(i)
- Publish a needs assessment designed to determine the necessary actions and investments needed for covered material to meet the requirements of SB 54, by covered material category – PRC 42067

#### Summary of Covered Material Categories: Producer Responsibility Organization’s Responsibilities

- Some aspects of the producer responsibility organization (PRO) structure and reporting requirements will be implemented according to covered material categories, including:
  - A PRO shall register and annually report information by covered material category – PRC 42052(a)
  - A PRO shall structure the fee schedule required pursuant to subdivision (a), delineated by covered material category - PRC 42053 (d)
  - A PRO shall fulfill data requests made by the department - 42052(c)

## **Part II. Workshop of Non-Regulatory Items**

### **Non-Regulatory Items:**

CalRecycle is seeking stakeholder feedback on items that may not require the department to promulgate regulations. At this time, CalRecycle is informally seeking feedback on topics and concepts that are important to implementing SB 54 but are outside of the scope of proposed regulatory concepts for consideration in Part 3.

### **Item 1: Request for Information on Existing Producer Reporting Systems**

Statute Sections: PRC 42060(a)(2)(C)(ii) & 42060(a)(2)(D)

#### *PRC 42060(a)(2)(C)(ii)*

To the maximum extent feasible, the department shall seek to use records and information that the local jurisdiction, producer, retailer, wholesaler, or PRO already maintains, in order to minimize the burden imposed by the reporting and recordkeeping requirements while still enabling the department to determine compliance with this chapter.

#### *PRC 42060(a)(2)(D)*

The department shall, to the extent feasible, make the reporting consistent with other recognized third-party reporting systems used by producers or other packaging extended producer responsibility programs.

### **Existing Reporting Systems:**

As part of meeting PRC 42060(a)(2)(C)(ii) and 42060(a)(2)(D), CalRecycle is gathering information on existing records and reporting systems, specifically focusing on records and reporting systems for producers.

Listed here is a series of existing records and reporting systems which CalRecycle intends to consider to meet the requirements specified in statute.

- **CalRecycle Extended Producer Responsibility (EPR) Program Reporting**
  - **Paint Stewardship Program Annual Reporting:** Manufacturers of architectural paint sold in this state must, individually or through a stewardship organization, submit annual reports to CalRecycle each year. Reports include information on volume of paint sold, postconsumer paint recovered, methods used to collect, transport, and process postconsumer paint, program costs, an evaluation of the funding mechanism, an independent financial audit, as well as education and outreach efforts.
  - **Carpet Stewardship Program Annual Reporting:** Manufacturers of carpet sold in the state must, individually or through a carpet stewardship organization, submit annual reports to CalRecycle each year. Reports include amount of carpet sold by yards and pounds, the amount of carpet that was source

reduced and the amount of post-consumer carpet that was available for collection, collected, reused, recycled, and incinerated, and a description of education and outreach efforts.

- **Mattress Stewardship Program Annual Reporting:** A mattress stewardship organization must submit annual reports to CalRecycle each year. Reports include information on the stewardship organization's costs and revenues, quantity of mattresses collected for recycling, quantity and use for each recycled material, and methods used to collect, transport, and process used mattresses in the state, and education and outreach efforts. Separately, mattress recyclers, renovators, and solid waste facilities must submit an annual report to CalRecycle each year. Different reporting entities have varying reporting requirements, but they generally include contact information and quantitative information, such as number of mattresses received, recycled (including weight of materials recycled), and renovated and sold.
- **Pharmaceutical and Sharps Waste Stewardship Annual Reporting:** A covered entity must, individually or through a stewardship organization, submit annual reports to CalRecycle each year. Reports include information on the amount of covered products collected, a description of the collection, transportation, and disposal system, participating covered entities and covered products, and education and outreach efforts.
- **Other Relevant CalRecycle Reporting Systems**
  - **Division of Recycling Integrated Information System (DORIIS):** The reporting system for California's Beverage Container Recycling Program used by beverage manufacturers and distributors as well as recyclers and processors. Beverage manufacturers are required to report by container type and pay processing fees on every applicable beverage container. Beverage Distributors are required to report by container type and size and pay California Redemption Value (CRV) on every applicable beverage container.
- **Third Party-Reporting Systems**
  - **Ellen MacArthur Global Plastics Commitment:** Signatories of the Plastics Commitment report data and it is stored in an [online system](#) that provides publicly-available data about packaging producers and users, including plastic packaging weight and information related to reuse and recycling.

CalRecycle recognizes that there may be other reporting systems that exist and are being actively used by producers. CalRecycle is seeking to inquire about other reporting systems that could be used to meet the requirements specified in PRC 42060(a)(2)(C)(ii) and PRC 42060(a)(2)(D).

**Request from Stakeholders:**

CalRecycle is seeking feedback on the above information in Existing Reporting Systems and the following questions to gather information in line with PRC 42060(a)(2)(C)(ii) and 42060(a)(2)(D):

**Question 1:** What third-party reporting systems or other reporting schemes do producers currently use to report and/or track information on single-use packaging and plastic food service ware?

**Question 2:** What groupings of materials, categorizations for packaging and plastic food service ware, or other standards are used when reporting into these systems, including categorizations in terms of different forms, designs, and materials?

*Instructions for submitting written feedback are on page 21 of this document.*

## **Part III. Workshop of Regulation Concepts**

### **Regulation Concepts:**

The rulemaking process is for implementing, interpreting, or making specific statutes the department administers or enforces. Generally, the rulemaking process must follow the requirements of the Administrative Procedures Act, commencing with Government Code section 11340. Currently, CalRecycle is in the period of public participation prior to the publication of the Notice of Proposed Regulatory Action. This means CalRecycle is informally seeking feedback on proposed regulatory concepts for consideration when drafting proposed regulations to implement, interpret, or make specific provisions of SB 54 necessary for the Department's implementation of its provisions.

CalRecycle would like to solicit initial stakeholder feedback on regulatory concepts pertaining to covered material. The regulation concepts discussed in this workshop include:

- Item 1 – Clarification of the definition “single use”
- Item 2 – Clarification of the definition of “reusable”
- Item 3 – Clarification of terms “food service ware,” “single-use food service ware,” and “plastic single-use food service ware”
- Item 4 – Clarification of the terms “packaging,” “single-use packaging,” and “plastic single-use packaging”
- Item 5 – Clarification of the term “plastic covered material”
- Item 6 – Clarification of the “long-term protection or storage of a product”
- Item 7 – Covered material exemption demonstrated by producer

We welcome written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 21.

## Item 1: Clarification of the definition “single use.”

Statute Sections: PRC 42041(ai), PRC 42041(e)(1)

### *Single use – PRC 42041(ai)*

“Single use” means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

### *Covered material – PRC 42041(e)(1)*

(1) “Covered material” means both of the following:

(A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.

(B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, “single-use food service ware” includes both of the following:

- (i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.
- (ii) Wraps or wrappers and bags sold to food service establishments.

### **Regulation Concept:**

CalRecycle is seeking to clarify the definition of “single use” by defining the phrase “not sufficiently durable or washable.” In CalRecycle’s implementation of [SB 1335](#) (Allen, Chapter 610, Statutes of 2018), CalRecycle deems a food service packaging item to be “reusable” if meets either of the two criteria (specified in [14 CCR, Section 17989.3](#)):

- 14 CCR Sec. 17989.3(a)(1): The item maintains its shape, structure, and function after 780 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section [114101](#) and [114099.7](#), respectively, as demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory.
- 14 CCR Sec. 17989.3(a)(2): The manufacturer of the food service packaging item provides an express, written warranty to purchasers of the item that it will remain reusable for its intended purpose for a minimum of one year or else the manufacturer will take back and replace the item at the manufacturer’s expense.

CalRecycle is proposing to define in regulations the terms “washable” and “durable” based on the standards set in 14 CCR Sec. 17989.3(a):

- Washable: For a product to be considered sufficiently “washable,” CalRecycle will require the product to maintain its shape, structure, and function after 780 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory. This standard is based off of 14 CCR Sec. 17989.3(a)(1).
- Durable: For a product to be considered sufficiently “durable,” CalRecycle will require the item to remain reusable for its intended purpose for a minimum of one year. This standard is modified from 14 CCR Sec. 17989.3(a)(2).

CalRecycle recognizes that the food service packaging standard in SB 1335 implementation may not necessarily capture all packaging types that would be covered under SB 54. However, CalRecycle is seeking to build upon the precedent set by SB 1335.

**Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept to clarify the definition of *single use* by adding new terms (washable and durable) to the list of definitions and developing language based on reusability standards specified in the regulations for SB 1335 (Allen, Chapter 610, Statutes of 2018).

**Item 2: Clarification of the definition of “reusable.”**

Statute Section: PRC 42041(af)

*Reusable, Refillable, Reuse, Refill – PRC 42041(af)*

“Reusable” or “refillable” or “reuse” or “refill,” in regard to packaging or food service ware, means either of the following:

- (1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain.
  - (B) Designed for durability to function properly in its original condition for multiple uses.
  - (C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.
  - (D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.
- (2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:

- (A) Explicitly designed and marketed to be utilized multiple times for the same product.
- (B) Designed for durability to function properly in its original condition for multiple uses.
- (C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

**Regulation Concept:**

CalRecycle is seeking to clarify the term “durability” in this definition. For a product to be considered sufficiently “durable,” CalRecycle will require the item to remain reusable for its intended purpose for a minimum of one year. This standard is modified from [14 CCR Section 17989.3\(a\)\(2\)](#).

**Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept to clarify the definition of *Reusable, Refillable, Reuse, Refill* by adding a new term (durable) to the list of definitions and developing language based on reusability standards specified in the regulations for SB 1335 (Allen, Chapter 610, Statutes of 2018).

**Item 3: Clarification of definitions “food service ware,” “single-use food service ware,” and “plastic single-use food service ware.”**

Statute Sections: PRC 42041(e)(1)(B)

*PRC 42041(e)(1)(B)*

- (1) “Covered material” means both of the following:
  - (B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, “single-use food service ware” includes both of the following:
    - (i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.
    - (ii) Wraps or wrappers and bags sold to food service establishments.

**Regulation Concept:**

SB 54 does not contain a definition of *food service ware*. The definitions of *plastic single-use food service ware* and *food service ware* are included in the definition of *covered material*. *Plastic, single use* and *reusable or refillable* are separately defined. To provide additional clarification for these terms, CalRecycle proposes developing new



definitions to provide additional clarity and separately define these terms. This is important for the purpose of overall data collection relative to covered materials and developing specific regulatory text. These definitions include:

- Food service ware
- Single-use food service ware
- Reusable food service ware
- Plastic single-use food service ware
- Plastic reusable food service ware

**Proposed Definitions:**

*Food service ware:* “Food service ware” includes but is not limited to trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, wraps or wrappers and bags sold to food service establishments that is intended that is intended to contain, serve, store, handle, protect, or market food, foodstuffs, or beverages, and to facilitate the consumption of food or beverages.

*Single-use food service ware:* “Single-use food service ware” includes food service ware as defined in Section X (i.e., definition of *food service ware* above) that meets the definition of single use as defined in PRC 42041(ai).

*Reusable food service ware:* “Reusable food service ware” includes food service ware as defined in Section X (i.e., definition of *food service ware* above) that meets the definition of *reusable or refillable or reuse or refill* as defined in PRC 42041(af).

*Plastic Single-use food service ware:* “Single-use food service ware” includes food service ware as defined in Section X (i.e., definition of *food service ware* above) that meets the definition of single use as defined in PRC 42041(ai) and is made partially or entirely of plastic as defined in PRC 42041(t).

*Plastic Reusable food service ware:* “Reusable food service ware” includes food service ware as defined in Section X (i.e., definition of *food service ware* above) that meets the definition of *reusable or refillable or reuse or refill* as defined in PRC 42041(af) and is made partially or entirely of plastic as defined in PRC 42041(t).

**Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept to add new terms pertaining to “food service ware” to the list of definitions in order to provide additional clarity for the purpose of data collection and drafting regulatory text.



#### **Item 4: Clarification of the terms “packaging,” “single-use packaging,” and “plastic single-use packaging.”**

Statute Sections: PRC 42041(s)

##### *Packaging – PRC 42041(s)*

“Packaging” means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. “Packaging” includes, but is not limited to, all of the following:

- (1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.
- (2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.
- (3) Transport packaging or tertiary packaging intended to protect the product during transport.
- (4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:
  - (A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.
  - (B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.

##### **Regulation Concept:**

SB 54 does not contain a definition of *separable and distinct*. CalRecycle proposes developing new definitions to provide additional clarity and separately define these terms. These definitions include:

*Separable*: “Separable” means any covered material designed by the producer to be detachable upon use.

*Distinct*: “Distinct” means any recognizably distinguishable component of the covered material.

##### **Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept to clarify the definition of “packaging” by adding new terms to the list of definitions (separable and distinct).

## Item 5: Clarification of the term “plastic covered material.”

### **Regulation Concept:**

The term *plastic covered material* is used throughout the statute. CalRecycle intends to define the term *plastic covered material* as meaning either “plastic single-use packaging or plastic single-use food service ware.” *Plastic single-use packaging* is not currently defined in statute. As mentioned previously in Part 3, Item 3, *plastic single-use food ware* is somewhat defined in the definition of *covered material* and CalRecycle is proposing to define this term separately as proposed in Part 3, Item 3.

CalRecycle proposes developing new definitions to provide additional clarity and separately define these terms. These definitions include:

- Plastic covered material
- Plastic single-use packaging
- Plastic single-use food ware

### **Proposed Definitions:**

*Plastic single-use packaging*: “Plastic single-use packaging” includes materials that meet the definition of packaging as defined in Section PRC 42041(a) that meets the definition of single use as defined in PRC 42041(ai) and is made partially or entirely of plastic as defined in PRC 42041(t).

*Plastic single-use food ware*: “Single-use food service ware” includes food service ware as defined in Section X (i.e., definition of *food service ware* in Part 3, Item 3) that meets the definition of single use as defined in PRC 42041(ai) and is made partially or entirely of plastic as defined in PRC 42041(t).

*Plastic covered material*: “Plastic covered material” includes but is not limited to plastic single-use packaging as defined in Section X (definition of *plastic covered material* above) and plastic single-use food ware as defined in Section Y (i.e., definition as *plastic single-use food ware* above).

### **Informational Item for Stakeholders:**

SB 54 implies the definition of “plastic covered material” based on the definitions of “plastic” and “covered material.” CalRecycle intends to codify the definition in regulations.

**Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept to add new terms pertaining to “plastic covered material” to the list of definitions (plastic covered material, plastic single-use packaging, plastic single-use food ware).

**Item 6: Clarification of the “long-term protection or storage of a product that has a lifespan of not less than five years” exemption from covered materials.**

Statute Sections: PRC 42041(e)(2)(F)

*PRC 42041(e)(2)(F)*

(2) Notwithstanding paragraph (1), “covered material” does not include any of the following:

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

**Regulation Concept:**

CalRecycle is proposing to clarify this exemption by requiring the packaging meet all of the following criteria:

- The packaging is designed for ongoing protection, transportation, or storage of a product throughout the product’s useful life.
- The packaging is designed to remain with the product throughout the product’s useful life.
- The packaging and/or product must have a useful life of at least 5 years or must be covered under warranty for a 5-year period.
- This exemption does not include single use items.

Furthermore, CalRecycle is seeking to define “useful life” to mean the amount of time during which a product is in good enough condition to be used for its original intent.

**Request from Stakeholders:**

CalRecycle is soliciting feedback on the proposed concept to provide additional criteria for long-term protection or storage of products in order to meet exemption from covered material and defining the new term “useful life.”

**Item 7: Covered material exemption demonstrated by producer.**

Statute Sections: PRC 42041(e)(2)(H)

*PRC 42041(e)(2)(H)*

(2) Notwithstanding paragraph (1), “covered material” does not include any of the following:

(H) (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

**Regulation Concept:**

CalRecycle intends to develop an application process for producers to seek product-specific exemptions from SB 54. CalRecycle intends to model this process off online application systems that CalRecycle has developed for other programs, such as the [Reusable Grocery Bag Reporting System](#) (RGBRS).

**Adopting a similar model for SB 54**

CalRecycle is seeking to adopt a similar application system for producers of products seeking an exemption under PRC 42041(e)(2)(H). The application will be adapted with questions that verify whether or not the product meets the requirements listed in PRC 42041(e)(2)(H)(i).

For any producers who are participating in the PRO’s plan, the PRO may submit the application on the producer’s behalf. Furthermore, the biannual reports to the department pertaining to the recycling rate of the product may be submitted as part of the PRO’s annual report.

For any independent producers seeking this exemption, the producer is solely required to apply for this exemption and to submit the biannual report of the recycling rate.

For any producer seeking this exemption to avoid participating in the PRO’s plan, the producer is required to apply for this exemption. If the exemption is denied, the producer

will be required to participate in the PRO's plan or submit their individual plan pursuant to PRC 42051(b)(2).

**Request from Stakeholders:**

CalRecycle is seeking feedback on the proposed concept of establishing a process for producers to demonstrate to the department whether their product can be exempt from the program or not. CalRecycle is basing this process upon other online systems developed from other implementation programs (i.e., RGBRS).

## **Process for Submitting Written Feedback**

CalRecycle has developed a process for requesting written feedback or questions from interested stakeholders. While this process is not a specific requirement, CalRecycle requests all written feedback and questions to be submitted using the specified format below, for the purposes of maintaining consistency in the way in which the information is received, and to aid with expedited review and processing. All written feedback can be submitted to [packaging@calrecycle.ca.gov](mailto:packaging@calrecycle.ca.gov) with the subject line: *SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations*. Written feedback can be provided prior to the workshop and after. CalRecycle requests all feedback specific to the April 25, 2023 Workshop is submitted no later than **May 09, 2023**. Preferred formats include e-mail, .docx and PDF.

### **Requested Feedback on Non-regulatory concepts (Part II):**

When providing feedback or asking questions on the non-regulatory concept discussed in Part II, please specify *Part II – Non-regulatory Concept*.

### **Requested Feedback on Specific Regulation Concepts:**

When providing feedback or asking questions on a specific regulation concept, please include (1) the Item Number [e.g., Item 1, Item 2], including the specific title, (2) feedback or questions related to that regulation concept. For example, when providing feedback on *Item 1 – Recycling Technologies*, the preferred format would be:

Item 1 – Recycling Technologies:  
*Specific feedback related to this item...*

This process can be repeated for each regulation concept a stakeholder wants to address. All feedback and questions can be included in the same email or document.

### **Questions or Feedback for Specific Public Resources Code (PRC) Sections:**

When providing feedback or asking questions on a specific section in the statute, please include (1) the full section number, including any subsections associated with it, (2) feedback or questions related to that section. For example:

PRC 42051.1(b)(3)  
*Specific feedback or question related to this section...*

This process can be repeated for each section a stakeholder wants to address. All feedback and questions can be included in the same email or document.

### **General Questions or Comments:**

When asking general questions or providing general comments on topics related to this workshop that do not focus on a specific regulation concept or specific PRC section, please list each question and comment in numerical order:

Question 1: *General question on this discussion document*  
Comment 1: *General comment on this discussion document*