

SB 54 Rulemaking Workshop

Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

SB 54 (Allen, Chapter 75, Statutes of 2022)

Department of Resources Recycling and
Recovery (CalRecycle)

May 31, 2023



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Agenda

Opening Remarks

Karen Kayfetz, Branch Chief of the Product Stewardship Branch

Topic 1, Part I: Statutory Overview of Source Reduction

Curie Canuela, Senior Environmental Scientist (Supervisor), Packaging EPR Section

Topic 1, Part II: Non-Regulatory Workshop on Source Reduction Baseline

Laura Moreno, Senior Environmental Scientist (Supervisor), Knowledge Integration Section

Topic 1, Part III: Workshop of Regulation Concepts on Source Reduction

Curie Canuela, Senior Environmental Scientist (Supervisor), Packaging EPR Section

Topic 2: Responsible End Markets – Statutory Overview and Regulation Concepts

Grant S. Hisao, Senior Environmental Scientist (Specialist), Packaging EPR Section

Overview of Topic 1 Presentation

Topic 1: Source Reduction

- **Part I:**
 - Key definitions that will be relevant to today's workshop.
 - Statutory overview of source reduction requirements.
- **Part II:**
 - Discussion on non-regulatory concepts
- **Part III:**
 - Discussion on Regulation Concepts.
 - Topics are specific to “source reduction.”
 - Follow the discussion document provided.

*Follow along using the
Discussion Document*



Overview of Topic 2 Presentation

Topic 2: Responsible End Markets (REM)

- **Part I:**

- Key Definitions
- Statutory Overview of REM

- **Part II:**

- Regulation Concept for REM
- Regulation Concepts for items related to REM

*Follow along using the
Discussion Document*



Following items may be mentioned but will be discussed in more detail at other workshops

Future Topics

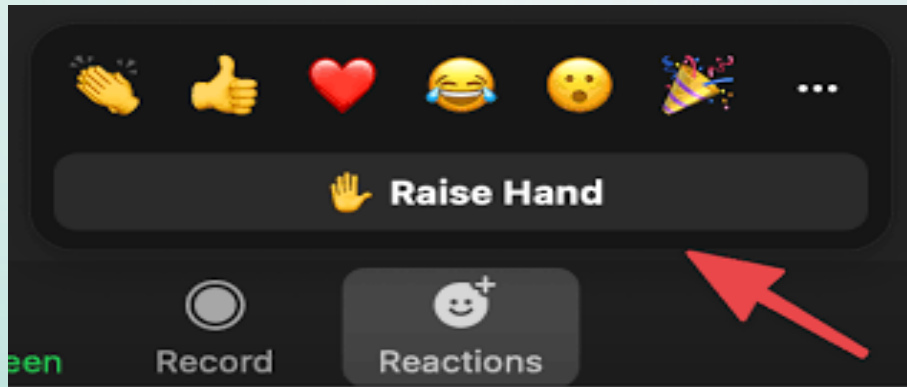
- Needs Assessment
- Recyclability
- Recycling Rates
- Compostability
- Covered Material Category Determination
- Enforcement

Previously Covered

- PRO Plan
- Budgets
- Document submittals
- Annual reports
- Covered Material

Submitting Questions and Feedback

- To make a comment in-person, please line up at the microphone.
- To make an oral comment via Zoom, please raise your hand and the host will unmute you.



- To make a written comment via Zoom, please use the chat box.

Opportunity for Written Feedback

- Written feedback or questions may also be submitted after the workshop to packaging@calrecycle.ca.gov with subject line “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.”
- Please refer to the discussion documents for details on the process for providing written feedback
- We request all written feedback be submitted by **June 14, 2023**.

Part I. Statutory Overview of Source Reduction

Department of Recycling Resources Recycling and Recovery,
Division of Circular Economy/Packaging EPR Section

Curie Canuela

Senior Environmental Scientist (Supervisor)

Summary of CalRecycle's Responsibilities for Source Reduction

- Establish a baseline for the 25 percent source reduction requirement by weight and by number of plastic components of plastic covered material sold, offered for sale, or distributed in the state in the year 2023 – PRC 42057(b)
- Evaluate plastic covered material to determine if actions to secure greater source reductions are necessary – PRC 42057(h)
- Prepare statewide needs assessments, which include evaluation of source reduction topics – PRC 42067

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (1)

Achieving Source Reduction for Plastic Covered Material – PRC 42057

- By January 1, 2027: Source reduce no less than 10 percent of plastic covered material, with no less than 2 percent through shifting to reusable or refillable.
- By January 1, 2030: Source reduce no less than 20 percent of plastic covered material, with no less than 4 percent through shifting to reusable or refillable.
- By January 1, 2032: Source reduce 25 percent by weight and 25 percent by plastic component, with at least 10 percent through shifting to refillable or reusable, or through eliminating a plastic component.
 - No more than 8 percent shall be source reduced through an alternative compliance formula.

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (2)

PRO Plan & Reporting

- Source Reduction Plan required as part of the PRO plan – PRC 42051.1(b)(2)
- PRO may identify material types that face significant recycling or end market challenges by January 1, 2032. Switching an entire covered material category to reusable, refillable, or nonplastic alternative shall be considered source reduction – PRC 42057(f)(3)
- The PRO must establish enforceable agreement with each of its approved plan participants to achieve the source reduction requirements – PRC 42057(a)(1)

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (3)

PRO Plan & Reporting (continued)

- PRC 42057(d) – Producers who are members of the PRO submits individual source reduction plans that include:
 - Initial source reduction plan with amount of covered material, number of plastic components and weight of covered material, source reduced since January 1, 2013.
 - Amount of plastic covered material, number of plastic components and weight of plastic covered material, producer plans to source reduce by January 1, 2027, 2030, and 2032.
 - Describe how much will be source reduced.
 - The amount of postconsumer recycled content used compared to virgin plastic.

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (4)

PRO Plan & Reporting

- Annual Report shall include progress made in meeting source reduction goals – PRC 42051.3(a)(3)(D)(iii)
- PRC 42057(c) – As part of any PRO plan, plan update, or annual report, the PRO shall report data on:
 - The amount of plastic covered material and products sold in plastic covered material, including the number of plastic components and weight of plastic covered material, sold, offered for sale, or distributed in the state.
 - The number of plastic components and the weight of plastic covered material shifted to a refillable or reusable.
 - The number of plastic components and the weight of plastic covered material eliminated.
 - The number of plastic components and the weight of plastic covered material shifted from a plastic covered material to a nonplastic covered material.
 - The number of plastic components and the weight of plastic covered material reduced through concentration, right-sizing, and shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers.
 - The amount of postconsumer recycled content used compared to virgin plastic in covered material.

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (5)

Budget & Fee Structure

- PRO plan shall include a budget, which includes actions and investments necessary to achieve source reduction requirements – PRC 42051.1(j)(1)
- PRO shall structure the fee schedule to include costs necessary to achieve source reduction requirements and costs incurred by the PRO to assist producers to meet the source reduction requirements – PRC 42053(d)

Summary of Producer & Producer Responsibility Organization's Responsibilities for Source Reduction (6)

Budget & Fee Structure (continued)

- PRC 42053(e) – Fees shall be adjusted using malus fees or credits for participant producers, based on:
 - Source reduction related to right-sizing, optimization, and bulking of packaging, or concentrating the product packaged to reduce packaging.
 - Actions taken by the producer to accelerate source reduction and to invest in sustained and robust reuse and refill systems. The PRO may create a mechanism to allow producers to receive a credit for achieving source reduction beyond what producers of similar covered material are achieving. The revenue for that credit shall be paid for by charging producers not achieving source reduction for similar products a malus fee.
- Producers with a covered material new to the producer are required to optimize packaging and not include unnecessary covered material. The PRO must assess a malus fee on any producer with a new covered material that is optimized - PRC 42057(g)

Definitions

Note: Unless specified, CalRecycle is not currently seeking stakeholder feedback on definitions.

Bulk or Large Format Packaging – PRC 42041(b)

“Bulk or large format packaging” means packaging for a large amount of a product in a large packaging, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

Concentrate, Concentration – PRC 42041(d)

“Concentrate” or “concentration” means reducing the amount of packaging needed for a product by reformulating the product to allow for smaller quantities of the product to be used for the same purpose as the previous, larger quantity.

Covered Material – PRC 42041(e)

"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 establishment.

Eliminate, Elimination – PRC 42041(j)

“Eliminate” or “elimination,” with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

Lightweighting – PRC 42041(m)

“Lightweighting” means reducing the weight or amount of material used in a specific packaging or food service ware without functionally changing the packaging or food service ware. “Lightweighting” does not include changes that result in a recyclable or compostable covered material becoming nonrecyclable or noncompostable or less likely to be recycled or composted.

Malus Fee – PRC 42041(o)

“Malus fee” means a charge imposed by a PRO on a participant producer for a covered material due to the adverse environmental or public health impacts of the covered material.

Optimize, Optimization – PRC 42041(r)

“Optimize” or “optimization” means limiting the amount of covered material used in packaging by meeting product or packaging needs with minimal material. This includes, but is not limited to, eliminating unnecessary components, right-sizing, concentrating, and using bulk or large format packaging.

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.

Plastic component – PRC 42041(u)

“Plastic component” means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

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.

Right-size, Right Sizing – PRC 42041(ag)

“Right-size” or “right-sizing” means reducing the amount of material used to package an item by reducing unnecessary space or eliminating unnecessary components of the packaging.

Source Reduction – PRC 42041(aj)

“Source reduction” means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. “Source reduction” does not include either of the following:

- (1) Replacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted.
- (2) Switching from virgin covered material to postconsumer recycled content.

Source Reduction Plan – PRC 42041(ak)

“Source reduction plan” means the plan prepared as part of the PRO plan in accordance with Section 42057.

Part II. Non-Regulatory Workshop on Source Reduction Baseline

Department of Recycling Resources Recycling and Recovery,
Knowledge Integration Section

Laura Moreno

Senior Environmental Scientist (Supervisor)

SR Item 1: Composition of Source Reduction Baseline (1)

PRC 42057(a)(1)

By January 1, 2032, a PRO acting on behalf of participants of the PRO's approved plan shall develop and implement a plan to achieve the 25-percent reduction by weight and 25 percent by plastic component source reduction requirement for covered material sold, offered for sale, or distributed in the state. The PRO shall establish enforceable agreements with each of its approved plan participants to implement this section.

PRC 42057(b)

By January 1, 2025, the department shall establish a baseline for the 25-percent reduction required in subdivision (a) based on the amount of plastic covered material, including the number of products packaged in covered material, that was sold, offered for sale, or distributed in the state in the 2023 calendar year.

SR Item 1: Composition of Source Reduction Baseline (2)

The baseline will be comprised of two numbers for baseline year 2023:

(1) Total weight (tons) of plastic covered material.

(2) Total number of plastic components of plastic covered material.

Informational Item for Interested Parties:

CalRecycle is required to establish a baseline for plastic covered material that must be source reduced pursuant to PRC 42057. CalRecycle intends to estimate the metrics above for the source reduction baseline.

SR Item 2: Request for Feedback on Data Sources to Inform the Source Reduction Baseline (1)

PRC 42057(b)

By January 1, 2025, the department shall establish a baseline for the 25-percent reduction required in subdivision (a) based on the amount of plastic covered material, including the number of products packaged in covered material, that was sold, offered for sale, or distributed in the state in the 2023 calendar year.

PRC 42041(aj)

“Source reduction” means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. “Source reduction” does not include either of the following:

- (1) Replacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted.
- (2) Switching from virgin covered material to postconsumer recycled content.

Establishing the Source Reduction Baseline

- Data from Producers?
 - CalRecycle interprets that there is no requirement in statute for a PRO or producer to report data specifically for the baseline year of 2023.
 - It is not feasible to require the PRO to report the needed data through rulemaking, given the timelines required for establishing the baseline and completing the rulemaking process.
- Data from Other Existing Sources?
 - CalRecycle is not aware of existing accessible data that could provide the exact weight and number of plastic components of plastic covered material sold, offered for sale, or distributed in California.
- Estimating the Baseline
 - CalRecycle is currently gathering information to inform the methodology to estimate the source reduction baseline for calendar year 2023.
 - CalRecycle has identified multiple approaches, that could be used independently or in tandem, to estimate the baseline.

Potential Approaches to Estimate the Source Reduction Baseline (1)

Approach 1 – Use Existing Production Data

- Use available production data, from national level industry and market research reports to estimate California's plastic covered material.
- This will require assumptions to estimate the proportion of the national production that can be attributed to California, potentially using population, sales, or other factors.
- Some potential data sources that have been identified by CalRecycle include, but are not limited to:
 - American Chemistry Council (ACC) Resin Reports
 - National Association of PET Container Resources (NAPCOR) Industry Reports
 - Flexible Packaging Association (FPA) Industry Reports
 - Allied Market Research
 - Savvy Pack

Potential Approaches to Estimate the Source Reduction Baseline (2)

Approach 2 – Use Newly-Collected Production Data

- Through a contracted study, collect information directly from producers on the amounts of covered material they sold or distributed into the state in 2023.
- This approach will require collected data to be extrapolated statewide to establish the baseline and participation from producers would be voluntary.

Approach 3 – Use Existing Sales Data

- Use available sales data from the retail sector to estimate plastic covered material associated with products sold or distributed into California.
- This approach would require assumptions for primary, secondary, and tertiary packaging types used for various product types.
- Examples include, but are not limited to:
 - Nielsen Retail Scanner and Consumer Panel Data

SR Item 2: Request for Feedback on Data Sources to Inform the Source Reduction Baseline (2)

Request for Feedback:

CalRecycle is seeking feedback on the approaches to establish the source reduction baseline pursuant to PRC 42057(b).

CalRecycle is also soliciting information on alternative approaches, not proposed in the Discussion Document, for estimating the amount of plastic covered material being sold, offered for sale, or distributed in California.

CalRecycle recognizes that there may be other information or data sources that exist.

CalRecycle is seeking information on data sources, other than those mentioned, that could be used to meet the requirements specified in PRC 42057(b), including the name and availability of existing data sources, and any other supporting documentation about the data sources.

Part III. Workshop of Regulation Concepts on Source Reduction

**Department of Recycling Resources Recycling and Recovery,
Division of Circular Economy/Packaging EPR Section**

Curie Canuela

Senior Environmental Scientist (Supervisor)

Rulemaking Process

- 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.

Regulation Concept Discussion Items

- Item 1 – Clarification of the term “plastic component.”
- Item 2 – Defining the term “nonplastic” and “nonplastic component.”

Item 1 – Clarification of the term "plastic component" (1)

Plastic Component – PRC 42041(u):

“Plastic component” means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

Eliminate – PRC 42041(j):

“Eliminate” or “elimination,” with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

Item 1 – Clarification of the term "plastic component" (2)

Packaging – PRC 42041(s)(4)(A):

“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.

Item 1 – Clarification of the term "plastic component" (3)

- Plastic - PRC 42041(t)

A synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shared into various rigid and flexible forms, and includes coating 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 biopolymers, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches.

- Proposed definition for "separable" from April 25, 2023 workshop

Any covered material designed by the producer to be detachable upon use.

- Building on the April 25, 2023 workshop definition of separable and further defining plastic component by adding a list of types, which will not be definitive.

Item 1 – Clarification of the term "plastic component" (4)

Proposed Definition

- Plastic Component means any single piece of covered material made partially or entirely of plastic as defined in PRC 42041(t). A plastic component may constitute the entirety of the covered material or a covered material that is separate or separable as defined in Section X (i.e., definition of separable).
 - Entire plastic components include, but are not limited to, straws, utensils, air, or cushioning pillows with or without perforations, hinged caps or lids, and package handles.
 - Separate or separable plastic components include, but are not limited to, lids, caps, bags, bottles, cans, cartons, jars, jugs, labels, retail clothing hangers, film or shrink film.

Item 1 – Clarification of the term "plastic component" (5)

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to clarify the definition of plastic component and types of plastic components by developing a definition for *separable* (as done previously in the April 25, 2023 workshop) and further defining *plastic component* by adding a list of types.

Item 2 – Defining the term "nonplastic" and "nonplastic component" (1)

- Nonplastic is used in the definition of Eliminate – PRC 42041(j)
- It is a data point for the PRO's annual report and plan for source reduction of covered materials.
- Not defined in SB 54

Item 2 – Defining the term "nonplastic" and "nonplastic component" (2)

Proposed Definitions

- *Nonplastic* means any material that does not contain any plastic as defined in PRC Section 42041(t)
- *Nonplastic component* means any single piece of covered material that does not contain any amount of plastic as defined in PRC Section 42041(t). A nonplastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

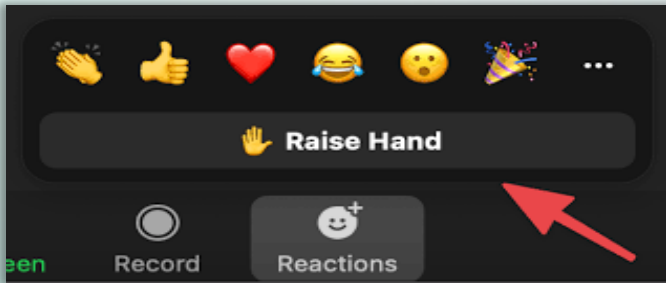
Item 2 – Defining the term "nonplastic" and "nonplastic component" (3)

Request for Feedback:

CalRecycle is seeking feedback on the proposed definitions for nonplastic and nonplastic component

Questions and Comments

- To make a comment in-person, please line up at the microphone.
- To make an oral comment via Zoom, please raise your hand and the host will unmute you.



- To make a written comment via Zoom, please use the chat box.

Responsible End Markets

Statutory Overview and Regulation Concepts

**Department of Recycling Resources Recycling and Recovery,
Division of Circular Economy/Packaging EPR Section**

Grant S. Hisao

Senior Environmental Scientist (Specialist)

Overview of Responsible End Markets Presentation

- **Part I:**

- Key Definitions
- Statutory Overview of Responsible End Market

- **Part II:**

- Regulation Concept for Responsible End Markets (REM)
- Regulation Concepts for items related to REM

Follow along using the Discussion Document



Definitions (REM)

Note: Unless specified, CalRecycle is not currently seeking stakeholder feedback on definitions.

Definition of “Responsible End Market” – PRC 42041(ad)

“Responsible end market” means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety.

Clarification of this definition is required for implementation of the law and is the topic of this workshop.

Definition of “Processing” – PRC 42041(v)

“Processing” means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market.

Definition of “Recycling” – PRC 42041(aa)

- (1) “Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.
- (2) “Recycle” or “recycling” does not include any of the following:
 - (A) Combustion.
 - (B) Incineration.
 - (C) Energy generation.
 - (D) Fuel production, except for anaerobic digestion of source separated organic materials.
 - (E) Other forms of disposal.
- (3) To be considered recycled, covered material shall be sent to a responsible end market.**
- (4) (A) The department may adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements, and contamination standards, or to otherwise implement this paragraph.
(B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:
 - (i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.
 - (ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.
(C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.
(D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.
- (5) The department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

Statutory Overview

Brief review of terminology

- **Producer Responsibility Organization (PRO)**
 - 501(c)(3) nonprofit organization.
 - Industry organization that implements the requirements of the program.
 - Producers are required to be participants of the PRO's plan.
- **Producer Responsibility Plan (Plan)**
 - Enforceable document that is developed by the PRO to implement the program.
 - Document is approved by the department.
- **Advisory Board**
 - Independent 16-member board which advises the PRO, the department, and others on the implementation of the program.
 - Made of representatives from local jurisdictions, advocacy organizations, waste management industry, grocery/retail industry, and manufacturing industry.
- **PRO Budget**
 - Component of the PRO plan.
 - Budget shall cover the costs of the program, including administrative costs, investments, and reimbursements.
- **Fees**
 - Assessed by the PRO to participating producers.
 - Fees must cover the costs of the budget.
- **Needs Assessment**
 - Statewide study that seeks to determine the necessary steps and investments needed to achieve the requirements of the act.

Usage of “responsible end market(s)” in statute.

- “Responsible end market(s)” is used 32 times in the statute.
- Of the 32 times, 23 of the them are used in the phrase “viable responsible end market(s).”
- Critical term as many aspects of implementation rely on this term.
- Term is used in:
 - Definition of “processing” and “recycling” (previous slides).
 - Sections pertaining to the PRO’s plan, including the budget and fees.
 - Sections pertaining to Needs Assessment.
 - One (1) reference regarding a legislative report.
 - One (1) reference in the Advisory Board section.

Pertaining to the PRO Plan (PRC 42051.1)

- PRC 42051.1(c)(1)
Plan shall include a description of how the PRO intends to provide, in an economically efficient and practical manner, necessary infrastructure and viable responsible end markets to ensure covered material will meet the source reduction and recycling goals.
- PRC 42051.1(c)(2)
Plan shall include a description on how it will support, achieve, and fund the development of viable responsible end markets.
- PRC 42051.1(c)(5)
Plan shall include a description of how it will ensure covered material is transferred to a viable responsible end market for processing into new packaging or products and how the plan will enhance or expand viable responsible end markets in California including manufacturing.
- PRC 42051.1(c)(6)
Plan shall include a description of any arrangements the PRO makes with processors or recycler to ensure that covered materials that are not collected through a curbside collection program are collected and recycled at a viable responsible end market, including any investments that will be made to cover the cost of the covered material being processed or recycled by the processors or recyclers.

Pertaining to the PRO Budget [PRC 42051.1(j)]

- PRC 42051.1(i)(3)(F)

Budget shall include an element that will fund, provide, or facilitate the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.
- PRC 42051.1(i)(3)(G)

Budget shall include an element that will enhance existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.
- PRC 42051.1(j)(1)(B)

Budget shall cover the costs incurred by local jurisdictions, recycling service providers, and other collection programs associated with:

 - Transportation of covered material to viable responsible end markets.
 - Cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market.
- PRC 42051.1(j)(1)(B)

Budget shall cover the costs of investments to develop and sustain viable responsible end markets for each covered material category.

Pertaining to Fees (PRC 42053)

- Fees are set by the PRO for participant producers.
- PRO is required to assess fees high enough to cover costs of the program.
- Pertaining to responsible end markets, costs include:
 - PRC 42053(d)(1)(A)
Cost to develop and sustain viable responsible end markets for each covered material category.
 - PRC 42053(d)(1)(B)
Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material either through curbside collection or other means.
 - PRC 42053(d)(1)(C)
Costs incurred by local jurisdictions or recycling service providers to process and transport covered materials in a manner and quality sufficient for acceptance by viable responsible end markets. This includes costs incurred by local jurisdictions or recycling service providers to reduce or mitigate the rate of inbound contamination by noncertified compostable products at composting facilities.

Pertaining to the Needs Assessment - 1

Pursuant to PRC 42067(e)(2), the Needs Assessment shall include, pertaining to covered material and covered material categories, evaluations of:

- PRC 42067(e)(2)(E)
Current market conditions and the need to create viable responsible end markets in the state and regionally.
- PRC 42067(e)(2)(H)
Actions and investments necessary to provide sufficient access to collection, recycling, composting, processing, and transportation to viable responsible end markets.
- PRC 42067(e)(2)(I)
Availability or lack of availability of markets for recycled covered material, the need to incentivize recycled or composted material market development, and the associated investments and actions needed to ensure that the covered materials are recycled or composted and have viable and sufficient responsible end markets to meet the requirements of Section 42050.
- PRC 42067(e)(2)(K)
Availability of responsible end markets and mechanisms to identify and expand responsible end markets. The evaluation shall include identification of measures to avoid and minimize environmental and public health impacts on communities where recycling occurs.

Pertaining to the Needs Assessment - 2

Pursuant to PRC 42067(e)(3), the Needs Assessment shall include evaluation of the needs associated with shifting packaging or food service ware from a covered material category that is unlikely to develop sustained viable responsible end markets to a covered material category that either has a viable responsible end market or is likely to develop a sustained viable responsible end market.

Pertaining to the Needs Assessment - 3

Pursuant to PRC 42057(e)(5), the Needs Assessment may include items such as:

- PRC 42067(e)(5)(G)
Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.
- PRC 42067(e)(5)(H)
Enhancing existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.

Two (2) Additional References

Legislative Report [PRC 42061(a)(3)(B)]

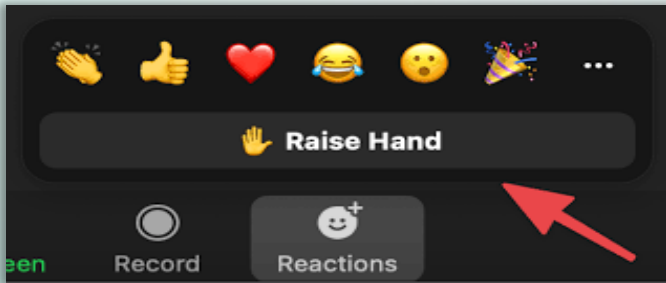
- As part of SB 343 (Allen, Chapter 507, Statutes of 2021) implementation, the department is required to submit a report to the Legislature.
- The report may include information pertaining to potential disruption of a viable responsible end market due to the loss of a recyclable designation.

Advisory Board [PRC 42070(e)(1)(A)]

The advisory board shall provide the PRO, the department, and a third party conducting or updating a needs assessment with initial recommendations on key barriers and possible solutions to advance the objectives of increasing recovery of covered material and decreasing the leakage of plastic into the environment. These recommendations shall include key barriers and possible solutions related to available and viable responsible end markets and market development for covered materials.

Questions and Comments

- To make a comment in-person, please line up at the microphone.
- To make an oral comment via Zoom, please raise your hand and the host will unmute you.



- To make a written comment via Zoom, please use the chat box.

Regulatory Concepts

Regulation Concept Items

Item 1: Proposed definition of “responsible end market.”

- Multiple parts to this concept.
- We will take public comment at the end of the entire concept.

Item 2: Clarification of the term “viable.”

Item 3: Clarification of the term “economically efficient and practical.”

Item 1: Proposed definition of “responsible end market” (REM).

PRC 42041(ad)

“Responsible end market” means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety.

- CalRecycle is seeking to further define what “responsible end market” (REM) means.
- The statutory definition is similar to the definition of REM in Oregon’s Recycling Modernization Act
Bolded section above is the same as the definition of “responsible end market” in Oregon’s SB 582.

Oregon's Definition of REM

- CalRecycle is aware that the Oregon Department of Environmental Quality (DEQ) has developed draft regulatory language pertaining to REM.
- CalRecycle has received, in our March 29, 2023 workshop, a request from an interested party to develop a definition of REM based on the work done by DEQ.
- CalRecycle has reviewed OR DEQ's draft regulations.
 - CalRecycle has consulted with DEQ.
 - While SB 54 has different provisions than Oregon's law, CalRecycle believes the concepts developed by DEQ with respect to REM are applicable to SB 54.
- CalRecycle is modeling our proposed draft regulations off of the DEQ definition.
 - Our proposal has a similar structure.
 - Broken into 5 parts.

Part I – Definition of “end market” (1/2)

Definition of “end market” for Glass:

For glass, the end market is the entity that first uses the glass in lieu of a virgin material downstream of the beneficiation plant, including a bottle manufacturer, a fiberglass manufacturer, or a pozzolan producer.

Definition of “end market” for Metal:

For metal, the end market is the entity that smelts the recycled material and produces ingots, sheet, coil, or other materials that are subsequently refabricated into packaging or product.

Definition of “end market” for Paper:

For paper, the end market is the entity that re-pulps the recycled material either into a pulp product that is sold to paper manufacturers or used to produce paper or paperboard products. If paper is recycled in a manner that does not involve repulping, the end market is the entity that uses the beneficiation waste paper to produce a product that is sold without further processing or manufacturing.

Part I – Definition of “end market” (2/2)

Definition of “end market” for Plastic used in food/beverage or children’s product applications:

For plastic that is recycled to be used for food and beverage applications or used for production of children’s products, the end market is the entity that places it into a mold for the manufacturer of such product.

Definition of “end market” for Plastics (general):

For all other plastic, the end market is the entity that last handles flake or pellet containing recycled plastic prior to sale or transfer to another entity that creates a new product either by placing it into a mold or through extrusion or thermoforming.

Definition of “end market” for Compostable Materials:

For compostable materials, the end market is the entity that converts the covered material into a recycled organic waste product through composting or anaerobic digestion.

Part II – Standards of responsible (1/2)

Criterion 1: Entity shall be compliant.

- Compliant with all local, state, and federal laws and treaty obligation, incl. environmental, labor, and public health laws.
- Operates with all required permits, licenses, and/or clearances.

Criterion 2: Entity shall be transparent.

- Documents chain of custody of materials transported from origination to end market.
- Maintains relevant records pertaining to chain of custody, penalties, and violations.
- Willing to be named and audited.

Criterion 3: Entity shall maximize benefits to the environment and minimize risks to public health and safety.

- Abides by all air and water quality, land emission, and disposal laws.
- Manages and stores waste and recyclables in a way that avoids release into the environment.
- Manages inputs sustainably.
- Has an adequate emergency response plan.

Part II – Standards of responsible (2/2)

Criterion 4: Entity shall achieve yields of recycling and/or composting of at least 60%.

$$\text{Yield} = \frac{\text{Amount of Material Successfully Processed or Remanufactured}}{\text{Amount of Material that Enters Recycling Supply Chain}}$$

CalRecycle is continuing to refine this definition.

Part III – Definition of “responsible end market(s)”

To be deemed a “responsible end market,” the end market along with all entities within the supply chain leading to the end market (referred to as “intermediate supply chain entities”) must meet the standards of responsible.

Part IV – Verification of Responsible End Markets (1/2)

The PRO will be required to verify and demonstrate to CalRecycle that all covered materials are collected and are sent to a responsible end market.

Verification Process:

- PRO conducts an initial screening of each end market and intermediate supply chain entity.
- Information from the screening is included in the PRO's plan.
- PRO will have to annually verify if end markets meet the responsible standard and include the results of the verification in the annual report.

Part IV – Verification of Responsible End Markets (2/2)

Initial verification in plan must include:

- Name and contact information of each entity.
- Classification of entity (e.g., transporter, brokers, haulers, etc.)
- List of local, state, and federal laws and international treaties that apply to each entity.
- Description of how each entity meets the standards of responsible, including any supporting information.

Annual reports must, in addition to updates to initial verification, include:

- Records of noncompliance by an end market or intermediate supply chain entity.
- Description of corrective actions taken to ensure a noncompliant entity becomes compliant.
- Description of instances where materials are no longer sent to due to an entity's noncompliance.
- Copies of audits conducted by the PRO.

Part V – Auditing and Reporting Requirements

- The PRO shall conduct audits of records pertaining to material tracking.
 - Audits may include random bale tracking to verify chain of custody of materials.
 - Audits shall demonstrate and certify that the end markets meet the standards of responsible.
- Results of an audit shall be included in the PRO's annual report.
- PRO is also responsible for indicating what information must be deemed confidential.

Item 1: Responsible End Markets

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to clarify the term “responsible end market.” Feedback is appreciated on each individual portion of the concept.

Feedback will be taken in the following order:

- Part I: Definition of “End Market”
- Part II: Standards of Responsible
- Part III: Definition of “Responsible End Market”
- Part IV: Verification of Responsible End Markets
- Part V: Auditing and Reporting Requirements
- Overall feedback on the REM concept

Item 2: Definition of “viable responsible end market.” (1/2)

- “Viable responsible end market” is used throughout the statute.
- Proposed definition is:
“Viable responsible end market” means a responsible end market that is feasible and capable of being economically successful.
- CalRecycle will also require the PRO to take actions to ensure viability, such as:
 - Providing financial support to help an existing end market that does not meet the standards of responsible become responsible.
 - Providing financial support to help divert materials from an end market that does not meet the standard of responsible to an end market that does meet the standards of responsible.
 - Developing new responsible end markets for covered materials.
 - Explore alternatives for covered materials that don’t have a responsible end market.

Item 2: Definition of “viable responsible end market.” (2/2)

Request for Feedback:

CalRecycle is seeking feedback on the clarification of the term “viable responsible end market.”

Item 3: Clarification in PRC 42051.1(c)(1) (1/3)

PRC 42051.1(c)(1)

(c) The plan shall include objective and measurable criteria whenever possible, and describe all of the following:

(1) How the PRO will meet the requirements of this chapter, including, but not limited to, how it will, in an **economically efficient and practical** manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050 based on the needs assessments.

- PRC 42051.1(c)(1) pertains to the PRO plan.
- CalRecycle is seeking to clarify the phrase “economically efficient and practical.”

Item 3: Clarification in PRC 42051.1(c)(1) (2/3)

- CalRecycle is seeking to clarify in regulations that increased costs alone does **not** qualify an action as being **not** “economically efficient and practical.”
- This is a recognition that:
 - Certain actions taken by the PRO to ensure viable responsible end markets may increase costs.
 - CalRecycle believes that the PRO may find that increased costs are justified as “economically efficient and practical” if an action yields viable responsible end markets and ultimately yields environmental and societal benefits.
- Environmental and societal benefits may include:
 - Improved access to collection systems of covered materials for recycling and composting, especially in disadvantaged, environmental justice, and rural communities.
 - Better environmental and economic conditions near waste management/processing facilities, especially in environmental justice and disadvantaged communities.
 - Improved economic opportunities, especially in disadvantaged communities.

Item 3: Clarification in PRC 42051.1(c)(1) (3/3)

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to clarify the phrase “economically efficient and practical.”

Opportunity for Written Feedback

- Written feedback or questions may be submitted after the workshop to packaging@calrecycle.ca.gov with subject line “SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations”.
- Please refer to the discussion documents for details on the process for providing written feedback

Source Reduction



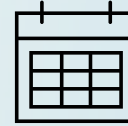
Responsible End Markets



- We request all written feedback be submitted by **June 14, 2023**.



[Sign-up for our SB 54 Listserv](#)



June SB 54 Informational Session and Informal Rulemaking Workshop:

- June 28th & 29th at 10:00 AM
- Located in the Byron Sher Auditorium(CalEPA HQ)
- Hybrid (Zoom/Webcast)



More information forthcoming; will be distributed through our [listserv](#) and available on the [SB 54 Webpage](#).

Email: Packaging@CalRecycle.ca.gov