

SB 54 Informal Rulemaking Workshop

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

June 28, 2023

Department of Resources Recycling and Recovery

**SB 54 Regulation Implementation Team, Packaging EPR Section,
Knowledge Integration Section**

Regulations Unit, Legal Affairs Office

Topic: Compostability

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Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop for this topic on [June 28, 2023](#), from 10:00AM to 4:00PM, 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 discussion document is on “Compostability.” The topic is split into 2 parts:

- **Part 1** will be an informational session, providing background information on labeling requirements.
- **Part 2** will discuss several regulation concepts to solicit feedback to help prepare for the draft regulatory text.

The purpose of this document is to provide interested parties with 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 feedback or informational items to share with will be specified in a gray textbox.

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

- Needs Assessment
- Recyclability
- Recycling Rates
- 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

SB 54 requires 100% of covered materials to be recyclable in the state or eligible for being labeled “compostable” by 2032. This section summarizes the statutory requirements pertaining to compostability.

Abbreviations and Acronym List

- CalRecycle: California Department of Resources Recycling and Recovery
- Department: California Department of Resources Recycling and Recovery
- PRO: Producer Responsibility Organization
- Plan: Producer Responsibility Plan
- PRC: Public Resources Code (California Statute)

Relevant Definitions

Listed below are the existing statutory and regulatory definitions relevant to the June 28th, 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.

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.

Overview of Composting/Compostable

Statutory Requirements in SB 54

Pursuant to PRC 42050(b), all covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2023, shall be recyclable in the state or eligible for being labeled “compostable” in accordance with California’s compostable product labeling law (PRC 42355 to PRC 42358.5).

Standards of Compostability Defined in California’s Compostable Product Labeling Law

PRC 42357 allows the labeling of product with the term “compostable” if the product meets the following standards and requirements:

- If product contains plastic, the product shall meet one of the following ASTM standards:
 - The ASTM Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities D6400, as published in 2019 (ASTM D6400-19).
 - The ASTM Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities D6868, as published in 2019 (ASTM D6868-19).
 - Pursuant to PRC 42356.2, if a new standard developed by a standard-setting organization, the department may evaluate the new standard. If the standard is deemed more stringent than the ASTM D6400-19 or ASTM D6868-19, the department may adopt the new standard.
 - If the department approves a third-party certification entity to certify products that meet the standards, producers of compostable products shall be required to obtain third-party certification from the approved entity starting in a year after the third-party certifier is approved by the department.
 - Fiber products that do not incorporate plastics or polymers are not required to meet either ASTM standard.

- After January 1, 2026, the product must be an allowable agricultural organic input under the requirements of USDA's National Organic Program.
- Does not contain >100 ppm of total organic fluorine, unless the department adopts a different standard that it determines would more effectively limit the presence of perfluoroalkyl or polyfluoroalkyl substances.
- The product is labeled in a manner that distinguishes the product from a noncompostable product upon reasonable inspection by consumers and to help enable efficient processing by solid waste processing facilities.
- The product is designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting.

Part II. Workshop of Regulation Concepts Pertaining to Compostable/Composting

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 feedback on regulatory concepts pertaining to compostability. The regulation concepts discussed in this workshop include:

- CD Item 1 – Definition of “Compostable.”
- CD Item 2 – Revised Responsible End Market concept for compostable covered materials.

We welcome written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 12.

CD Item 1: Definition of “Compostable.”

Statute Sections: PRC 42050(b)

PRC 42050(b)

Ensure that all covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable in the state or eligible for being labeled “compostable” in accordance with Chapter 5.7 (commencing with Section 42355).

Regulation Concept:

PRC 42050(b) specifies that by January 1, 2032, all covered materials offered for sale, distributed, or imported in or into the state must be either recyclable or eligible for being labeled “compostable” and references a different portion of statute. To implement this requirement for this program, CalRecycle seeks to provide a definition of “compostable” in regulations.

Proposed definition of “compostable:”

“Compostable” means that the covered material meets all of the following criteria:

- (1) Unless the covered material is fiber-based and does not contain or incorporate plastic or polymers, the covered material shall meet either of the following standards:

- (A) The ASTM Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities D6400, as published in 2019.

(B) The ASTM Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities D6868, as published in 2019.

(2) On or after January 1, 2026, the covered material is an allowable agricultural organic input under the requirements of the United States Department of Agriculture National Organic Program.

(3) The covered material does not have a total organic fluorine concentration of greater than 100 parts per million.

(4) The covered material is designed to be collected for recovery with organic waste, such as food scraps and yard trimmings.

Request:

CalRecycle is seeking feedback on the proposed definition of “compostable.”

CD Item 2: Revised Responsible End Market concept for compostable covered materials.

At CalRecycle’s May 31, 2023 SB 54 Workshop, CalRecycle presented and solicited feedback on the proposed regulatory concept for “responsible end markets” (REM). The proposed concept is detailed in this [linked discussion document](#).

As part of the concept, CalRecycle proposed to require an end market to meet the following criteria in order to be deemed responsible:

- a. Entity shall be compliant, meaning:
 - (1) The entity is compliant with all local, state, and federal laws as well as treaty obligations, including relevant environmental, labor, and public health laws.
 - (2) The entity operates with all required permits, licenses, or other clearances that may be required by local, state, or federal regulatory agencies including, but not limited to, local health and local land use authorities.
- b. Entity shall be transparent, which means:
 - (1) The entity documents the chain of custody of materials transported from origination within California to the end market.
 - (2) The entity maintains relevant records pertaining to the chain of custody.
 - (3) The entity properly documents any penalties and violations.
 - (4) The entity is willing to be named and audited.
- c. Entity shall maximize benefits to the environment and minimize risks to public health and safety, which means:
 - (1) The entity abides by all air and water quality, land emissions, and disposal laws.
 - (2) The entity stores and manages waste and recyclables in a way that avoids release into the environment.

- (3) The entity manages inputs sustainably.
- (4) The entity has an adequate emergency response plan in place.
- d. Entity shall achieve yields of recycling and/or composting of at least 60%. Yield is to be calculated by the following formula: Amount of Material that is successfully processed or remanufactured divided by the amount of material that entered the recycling supply chain initially.

During the [May 31 workshop](#), CalRecycle received numerous comments suggesting that a 60% yield for composting did not make logical sense. Further, the department also received comments that expressed concern about the challenge composting facilities have in processing compostable plastics.

To address the comments and concerns expressed at the May 31 workshop, CalRecycle is revising the yield requirement for compostable covered materials.

Regulation Concept:

CalRecycle intends to replace the yield requirement for compostable covered materials with a requirement for end markets to achieve adequate biodegradation within a reasonable timeframe. This concept is modeled off of the requirements for compostable food service packaging that were developed in the regulations developed as part of SB 1335 (Allen, Chapter 610, Statutes of 2018) implementation. The requirements may be found in 14 [CCR, Section 17989.5](#).

The entity shall achieve adequate biodegradation for compostable covered materials as specified:

Adequate biodegradation for compostable material means:

- (i) Compostable covered materials achieve 90% biodegradation within a timeframe required by the end market. If the end market does not allow for 90% biodegradation and subsequently disposes the unconverted portion as residual material, the end market shall not be deemed responsible.
- (ii) If the end market disposes compostable covered materials, the end market shall not be deemed a responsible end market for the purposes of this chapter.
- (iii) If an end market chooses not to accept compostable covered materials, the end market shall notify the department, the PRO, and any independent producers of such actions in writing and include the following information:
 - (I) The type of covered material or covered material category that the entity will not accept.
 - (II) The reason for not accepting the covered material or covered material category.

(iv) If a compostable covered material or compostable covered material category is not accepted by at least 50 percent of organic waste recycling programs statewide and not processed by at least 50 percent of mixed material composting facilities or anaerobic digestion facilities statewide, the PRO or independent producer shall take the following actions:

- (I) Develop an alternative collection program statewide for compostable covered materials and transport the collected covered materials to a responsible end market.
- (II) Increase investments to develop responsible end markets for compostable covered materials statewide.

Request:

CalRecycle is seeking feedback on the proposed modification to the standards of “responsible” in the Responsible End Markets concept that was presented on May 31, 2023.

Process for Submitting Written Feedback

CalRecycle has developed a process for requesting written feedback or questions from interested parties. 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 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 June 28, 2023 Workshop is submitted no later than **July 13, 2023**. Preferred formats include e-mail, .docx and PDF.

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., CD Item 1, CD Item 2], including the specific title, (2) feedback or questions related to that regulation concept. For example, when providing feedback on CD Item 1 – Definition of “Compostable,” the preferred format would be:

CD Item 1 – Definition of “Compostable”: Specific feedback related to this item...

This process can be repeated for each regulation concept an interested party 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 an interested party 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*

Question 2: *General question on this discussion document*

Comment 1: *General comment on this discussion document*