

# **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: Recyclability**

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## Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop 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 will be on “Recyclability.” This topic will be split into 3 parts:

- **Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **Part 2** will be an informational session on established recycling criteria.
- **Part 3** 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\*
- Recycling Rate
- Responsible End Markets
- Compostability
- Covered Material Category List
- 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 or compostable” by 2032. Broadly, recyclable means that the material meets statutory requirements for being labelled and marketed as recyclable established by SB 343 (Allen, Chapter 507, Statutes of 2021) as well as regulatory requirements established pursuant to SB 1335 (Allen, Chapter 610, Statutes of 2018). This section summarizes the statutory and regulatory requirements pertaining to recyclability.

### **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)
- CCR: California Code of Regulations (California Regulations)

### **Relevant Definitions**

Listed below are the existing statutory definitions relevant to the June 28, 2023 rulemaking workshop. CalRecycle may further refine these definitions in regulations.

#### Recycle – 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.

#### Responsible End Market – 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 Recyclable 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, 2032 is required to be recyclable in the state or eligible for being labeled “compostable.”

Some of the requirements for CalRecycle are identified below:

- PRC 42061(a)(3)(B) – By January 1, 2024, CalRecycle is required to submit a report to the legislature summarizing the status of material types relative to SB 343 (Allen, Chapter 507, Statutes of 2021).
- PRC 42061(c) - By January 1, 2024, CalRecycle is mandated to publish a list of covered material categories that are deemed recyclable. Covered material is recyclable if it meets the criteria specified in Section 17989.2 of Title 14 of the CCR and Section 42355.51 of the PRC.

- PRC 42061(e) - CalRecycle is required to update the list of covered material categories deemed recyclable at least annually until January 1, 2032. -After January 1, 2032, the list will be updated no less than once every two years.

Some of the requirements for producers:

- 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.

Please note that the recyclability list and status submittals required by the department by PRC 42061 do not constitute a determination of whether a product may be labeled or marketed as recyclable pursuant to SB 343 (Allen, Chapter 507, Statutes of 2021).

## **Part II. Informational Session on established Recyclability Criteria**

### **Overview of SB 343 – Accurate Recycling Labels**

SB 343, which is sometimes referred to by interested parties as the “Truth in Recycling” or “Truth in Labeling” law prohibits the use of the chasing arrows or any other indicator of recyclability on products and packaging unless certain criteria are met.

### **Standards for Recyclability, pursuant to SB 343 (Allen, Chapter 507, 2021)**

Relevant Statute: PRC 42355.51(d)(2), PRC 42355.51(d)(3), PRC 42355.51(d)(4), PRC 42355.51(d)(5), PRC 42355.51(d)(6)

#### **PRC 42355.51(d)(2)**

Subject to paragraph (3), a product or packaging is considered recyclable in the state if, based on information published by the department pursuant to subparagraph (B) of paragraph (1), the product or packaging is of a material type and form that meets both of the following requirements:

- (A) The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state.
- (B)
  - (i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.
  - (ii) The department may adopt regulations modifying this requirement to encompass transfer or processing facilities other than large volume transfer or processing facilities, as the department deems appropriate for achieving the purposes of this section.

#### **PRC 42355.51(d)(3)**

In order for a product or packaging to be deemed recyclable in the state, it must satisfy all of the applicable criteria outlined below.

(A) For plastic packaging, the plastic packaging is designed to not include any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers.

(B) For plastic products and non-plastic products and packaging, the product or packaging is designed to ensure recyclability and does not include any components, inks, adhesives, or labels that prevent the recyclability of the product or packaging.

(C) The product or packaging does not contain an intentionally added chemical identified pursuant to the regulations implementing subparagraph (4) of subdivision (g) of Section 42370.2.

(D) The product or packaging is not made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances or PFAS that meets either of the following criteria:

- (i) PFAS that a manufacturer has intentionally added to a product or packaging and that have a functional or technical effect in the product or packaging, including the PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product.
- (ii) The presence of PFAS in a product or product component or packaging or packaging component at or above 100 parts per million, as measured in total organic fluorine.

PRC 42355.51(d)(4)

(4) Notwithstanding paragraphs (2) and (3), a product or packaging is recyclable in the state if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.

PRC 42355.51(d)(5)

Before January 1, 2030, a product or packaging can be considered recyclable in the state if it is not collected through curbside collection but is part of a non-curbside collection program that recovers at least 60 percent of the material and has commercial value for recycling. After January 1, 2030, the requirement increases to a minimum recovery rate of 75 percent for non-curbside collection programs. The material must still have commercial value and be transported to a facility for sorting and aggregation by material type and form at the end of its useful life.

PRC 42355.51(d)(6)

To be deemed recyclable in the state, a product or packaging must be included in a program established on or after January 1, 2022, in accordance with state or federal law. The program must specifically address the recyclability or disposal of said product or packaging, as long as the director determines that it does not contribute to increased contamination of curbside recycling or mislead consumers about its recyclability.

## **Overview of Recyclability in Section 17989.2 of Title 14 of the CCR**

Section 17989.2 establishes product specific criteria for food service packaging to be considered recyclable.

### **Standards for Recyclability, pursuant to Section 17989.2 of Title 14 of the CCR**

Relevant Regulation: Section 17989.2 of Title 14 of the CCR

#### **CCR 17989.2(a)**

Food service packaging items included on the List shall satisfy all the following criteria to minimize public health and litter impacts:

(1) A food service packaging item that is subject to the Toxics in Packaging Prevention Act (Health and Safety Code Sections 25214.11 through 25214.26) shall not contain lead, mercury, cadmium, or hexavalent chromium, or any "regulated metal" as described in subsection 17989.1(f) in an amount that exceeds 100 parts per million by weight, as measured by the sum of the total concentration levels of all such metals.

(2) The names of all chemicals included on the Proposition 65 list that are used in the manufacturing of the food service packaging item shall be disclosed to the department by the manufacturer seeking to add the item to the List.

(3) A food service packaging item made from plastic or fiber and that is recyclable or compostable shall not contain PFASs. A food service packaging item shall be deemed not to contain PFASs if its total fluorine concentration is not more than 100 parts per million, as determined by combustion ion chromatography, particle-induced gamma-ray emission spectroscopy, instrumental neutron activation analysis, or other technique utilized by an ISO/IEC 17025:2017 accredited laboratory.

### **RD Item 1: Recyclability Standards by Covered Material Category and Product**

Recyclability standards include criteria that can be evaluated and characterized at a Covered Material Category level, and other criteria that are product-specific.

CalRecycle will not be providing product-specific determinations of recyclability, but instead will establish a list of the Covered Material Categories that are *potentially* recyclable so long as the individual product also meets applicable product-specific criteria. The list of covered material categories deemed *potentially* recyclable will be based on information collected pursuant to the implementation of SB 343 and other information made available to the department and will be published by January 1, 2024.

For compliance with PRC 42050(b), producers are responsible for ensuring that covered material meet the requirements established for Product-specific criteria for recyclability. Additionally, producers must meet both of the covered material category-level criteria or meet the criteria for one of product-specific exceptions to covered material category-level criteria

#### **Product-Specific Criteria (all covered material must meet these criteria to be recyclable)**

- PRC 42355.51(d)(3)
- CCR Title 14, Section 17989.2(a)

#### **Covered Material Category-Level Criteria (covered material categories must meet these criteria to be considered *potentially* recyclable)**

- PRC 42355.51(d)(2)(A)



- PRC 42355.51(d)(2)(B)(i)

Product-Specific Exceptions to Covered Material Category-Level Criteria (instead of meeting the covered material category-level criteria, a product can meet the criteria of one of the product-specific exceptions)

- PRC 42355.51(d)(4)
- PRC 42355.51(d)(5)
- PRC 42355.51(d)(6)

**Informational Item for Interested Parties:**

The summary of criteria, by covered material category and product, is provided for informational purposes. The criteria relevant to the level of covered material category will be used by CalRecycle in making the determination of whether each category is considered *potentially* recyclable.

## **Part III. Workshop of Regulation Concepts Pertaining to Recyclability**

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

- RD Item 1 – Definition of “Recycling Program.”
- RD Item 2 – Definition of “Defined Stream.”
- RD Item 3 – Definition of “Reclaimed”

We welcome written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 10.

### **RD Item 1: Definition of “Recycling Program”**

Statute Sections: 42355.51(d)(2)(A)

PRC 42355.51(d)(2)(A)

The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state.

Regulation Concept:

CalRecycle will promulgate regulations to define “recycling program” using the proposed definition below:

“Recycling program” means a program that provides or facilitates collection of materials for the purpose of recycling those materials. “Recycling program” includes, but is not limited to, services provided by a hauler that is authorized by a State or local government entity pursuant to a contract, agreement, permit, or other authorization to regularly collect materials within the government entity's jurisdiction for recycling.

**Request for Feedback:**

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

**RD Item 2: Definition of “Defined Stream”**

Statute Sections: PRC 42355.51(d)(2)(B)(i)

**PRC 42355.51(d)(2)(B)(i)**

The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

**Regulation Concept:**

CalRecycle will promulgate regulations to define “defined stream” using the proposed definition below:

“Defined stream” means that the subject material is separate from solid waste, sorted, aggregated, and sent to further recycling or an end market. “Defined stream” may include subject materials that were not discarded or mixed with solid waste.

**Request for Feedback:**

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

**RD Item 3: Definition of “Reclaimed”**

Statute Sections: PRC 42355.51(d)(2)(B)(i)

**PRC 42355.51(d)(2)(B)**

The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

**Regulation Concept:**

CalRecycle will promulgate regulations to define “reclaimed” using the proposed definition below:

“Reclaimed” means that the defined stream is sent to and accepted by a “responsible end market”, as defined in these regulations.

**Request for Feedback:**

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

## **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 June 28, 2023 Workshop is submitted no later than **July 13, 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 *RD Item 1 – Definition of “Recycling Program”*, the preferred format would be:

RD Item 1 – Definition of “Recycling Program  
*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.