

SB 54 June 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)

June 29, 2023 (Day 2)



Disclaimer

This communication is neither intended to, nor does it constitute definitive legal counseling, conclusions, or advice in any way. Instead, the contents of this communication and any analysis, guidance, or other information is intended to objectively address the question(s) presented based on the current existing, known facts and legal authority as described to and understood by the author and/or CalRecycle at the time of this communication. Please be advised that any relevant facts or legal authority or authorities that are undisclosed or unknown at the time of this communication may affect or alter any analysis, guidance, or other information herein. Please be further advised that any analysis, guidance, or other information herein may be subject to change and/or correction based on changed facts or legal authority, actual or understood, subsequent to the time of this communication. No analysis, guidance, or other information herein should be construed as a waiver of any rights or remedies available to CalRecycle. Recipients of this communication are encouraged to seek the assistance of legal counsel to comply with applicable state law based on current facts and circumstances.

Agenda

Opening Remarks

Karen Kayfetz, Branch Chief of the Product Stewardship Branch

Topic I: Local Jurisdiction Impacts

Alexandria Tufo, Environmental Scientist in the Packaging EPR Program

Burke Lucy, Environmental Scientist in the Packaging EPR Program

Topic II: Producer Compliance Independent of PRO

Fidan Aghayarova, Environmental Scientist in the Packaging EPR Program

Marcus Santillano, Manager of the Packaging EPR Program

Agenda

Topic III: Exemptions for Small Producers, Small Retailers, and Small Wholesalers

Marcus Santillano, Manager of the Packaging EPR Program

Topic IV: Data Collection for the Standardized Regulatory Impact Assessment

Robert Carlson, Manager of the Product Stewardship Compliance Section

Questions/Discussion

Moderated by Karen Kayfetz

Overview of Presentation

- **Topic I: Local Jurisdictions**

- Part I. Local Jurisdiction Impacts
- Part II. Statutory Overview of Local Jurisdiction impacts
- Part III. Regulatory Concepts for Local Jurisdictions

Local Jurisdiction



- **Topic II: Producer Compliance Independent of PRO**

- Part I. Relevant Definitions
- Part II. Statutory Overview of Independent Producers
- Part III. Regulatory Concepts for Independent Producers

Producer/Small Entities



- **Topic III: Exemptions for Small Producers/Retailers/Small Wholesalers**

- Part I. Regulatory Concepts for Small Producers, Small Retailers and Small Wholesalers

- **Topic IV: SRIA**

- Data Request for SRIA

Follow along using the Discussion Documents

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

Future Topics

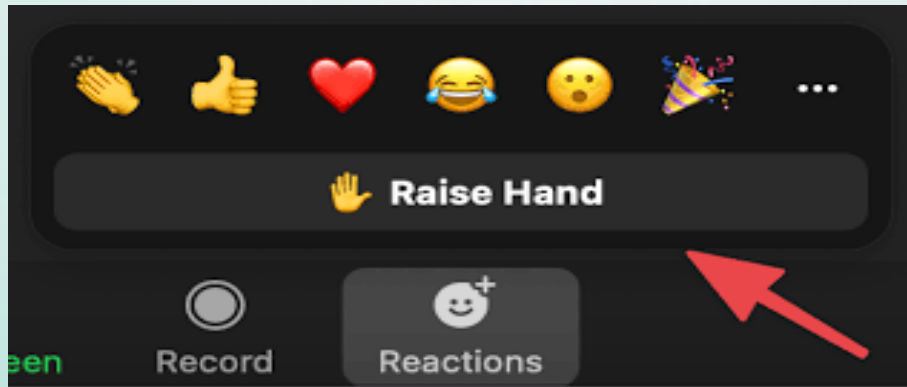
- Needs Assessment
- Recycling Rates
- Enforcement
- Data Reporting

Previously Covered

- PRO Plan
- Budgets
- Document submittals
- Annual reports
- Covered Material definition
- Source Reduction
- Responsible End Markets
- Covered Material Category Determination
- Recyclability
- Compostability

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 **July 18, 2023**.

Topic I.

Local Jurisdiction Impacts

Department of Resources Recycling and Recovery,
Product Stewardship Branch/Packaging EPR Section

Lexi Tufo

Environmental Scientist

Burke Lucy

Environmental Scientist

Overview of Session

Part I

- Background and Informational Items

Part II

- Regulatory Concepts

Definitions

Note: Unless specified, CalRecycle is not currently seeking public feedback on definitions in this section.

Definitions

- Curbside Collection – PRC 42041(g)
- Disadvantaged Community – PRC 42041(i)
- Local Jurisdiction – PRC 42041(l)
- Low-Income Community – PRC 42041(n)
- Processing – PRC 42041(v)
- Recycling Service Provider – PRC 42041(ac)
- Rural Area – PRC 42041(ah)

Curbside Collection – PRC 42041(g)

“Curbside collection” means a program that includes the collection of material, including, but not limited to, covered materials, by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction.

Disadvantaged Community – PRC 42041(i)

“Disadvantaged community” means an area identified by the [California Environmental Protection Agency](#) pursuant to Section [39711](#) of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section [65302.10](#) of the Government Code.

Local Jurisdiction – PRC 42041(I)

“Local jurisdiction” means a city, county, city and county, regional agency formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code or Article 3 (commencing with Section 40970) of Chapter 1 of Part 2, or special district that provides solid waste collection services.

Low-Income Community – PRC 42041(n)

“Low-income community” means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section [50093](#) of the Health and Safety Code.

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.

Recycling Service Provider – PRC 42041(ac)

“Recycling service provider” means a solid waste enterprise that provides solid waste handling services on behalf of a local jurisdiction.

Rural Area – PRC 42041(ah)

“Rural area” has the same meaning as defined in Section [50101](#) of the Health and Safety Code.

Overview of SB 54 Impacts on Local Jurisdictions

PRO Plan Impacts on Local Jurisdictions

- A process for notifying local jurisdictions of the PRO's dissolution and ensure there are sufficient reserve funds to satisfy all obligations. – PRC 42051.1(f)
- Ensuring the plan avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas and vulnerable communities outside the state. – PRC 42051.1(n)

PRO Plan Impacts: Budget and Costs

- A process for determining and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter. Payment of these costs shall be reflected in the budget pursuant to subdivision (j) - PRC 42051.1 (g) (1)
- A process to resolve disputes for determining and paying the reasonable costs pursuant to paragraph (1) that arise between the PRO and a local jurisdiction or a recycling service provider. This process shall be reviewed by the advisory board to ensure the PRO covers costs related to this chapter and shall become effective upon plan approval by the department - PRC 42051.1 (g) (2)
- A budget designed to fully fund those costs. PRC 42051.1 (j) (1) (B)

PRO Plan Impacts: Budget and Costs

- Consideration of the needs assessment and any recommended investments to meet the needs identified in the needs assessment and inform the budget; including the 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 42051.1(i)(2)(F)
- Curbside recycling and composting collection for covered materials if the recycling facility and local jurisdiction ensure the material can be collected curbside and effectively sorted by facilities, and agree on the category of covered materials and costs of the arrangement. – PRC 42051.1(l)(1)
 - If a MRF [materials recovery facility] chooses to send material to another sorting facility for additional sorting and recycling, the PRO shall provide the initial MRF a rebate based on criteria the PRO shall develop to cover transportation costs of the covered materials provided the covered material is free of toxic or hazardous materials – PRC 42051.1(l)(2)

PRO Plan Impacts: Fee Schedule

- Costs incurred by local jurisdictions or recycling service providers in order to process and transport covered materials, including costs to reduce contamination. These costs may vary by local jurisdictions. – PRC 42053(d)(1)(C)
- Costs to ensure that plan implementation avoids and minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas. – PRC 42053(d)(1)(D)
- Costs incurred by local jurisdictions or recycling service providers for sampling and reporting, and any costs to educate ratepayers to improve the preparation and sorting of covered material. – PRC 42053(d)(1)(E)

CalRecycle's Responsibilities to Local Jurisdictions

- Ensure the PRO's budget includes costs incurred by local jurisdictions or a local jurisdiction's recycling service provider, which includes the costs of consumer education, containers, processing, storage and transportation of covered materials. – PRC 42060(a)(1)
- Minimize the burden of reporting and recordkeeping by using records and information that the local jurisdictions already maintain, to the maximum extent feasible, and data requests will be consistent with the covered material categories established by CalRecycle. – PRC 42060(a)(2)(C)
- Avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas. – PRC 42060(d)

CalRecycle's Responsibilities Cont.

- Grant extensions of or exemptions from collecting covered materials. Exemptions are reviewed every two years and may extend the exemption. – PRC 42060.5(b)
- Collect data voluntarily provided by local jurisdictions to determine recycling rate. – PRC 42061(b)(2)(G)
- Consult with the local jurisdictions when developing the needs assessment – PRC 42067(a)
- Ensure participation of a broad diversity of local jurisdictions, recycling service providers, and processors that reflect different needs and challenges in the development of the needs assessment. – PRC 42067(d)

CalRecycle's Responsibilities Cont.

- Establish a 16-member PRO advisory board with three members who
 - Represent a disadvantaged or low-income community or rural area,
 - Represent environmental justice, and
 - Is nominated by a statewide rural county association. – PRC 42070(a)
- Advisory board will provide recommendations on how a PRO will cover the costs incurred by local jurisdictions and local jurisdictions' recycling service providers associated with implementing SB 54 and managing covered materials.
– PRC 42070(e)(1)(E)

Responsibilities of Local Jurisdictions

- Include covered materials in their collection and recycling programs. – PRC 42060.5(a)
 - The PRO is responsible for arranging alternative means for the collection, processing, storage, and transportation of covered materials when the PRO objects to a department exemption – PRC 42060.5(b)
 - A rural county or rural jurisdiction may adopt a resolution to exempt itself from the collection and recycling of covered materials – PRC 42060.5(c)
 - Collection and recycling of covered materials are not required if the recycling facility and local jurisdiction is unable to agree on the category of covered materials that can be collected curbside, effectively sorted by facilities, and the cost of the arrangement. – PRC 42060.5(d)
 - A local jurisdiction is not required to collect a material category if it is subject to an ordinance passed by the local jurisdiction prohibiting the sale or distribution of that covered material before the publication of the lists of recyclable or compostable material. – PRC 42060.5(e)

Responsibilities of Local Jurisdictions Cont.

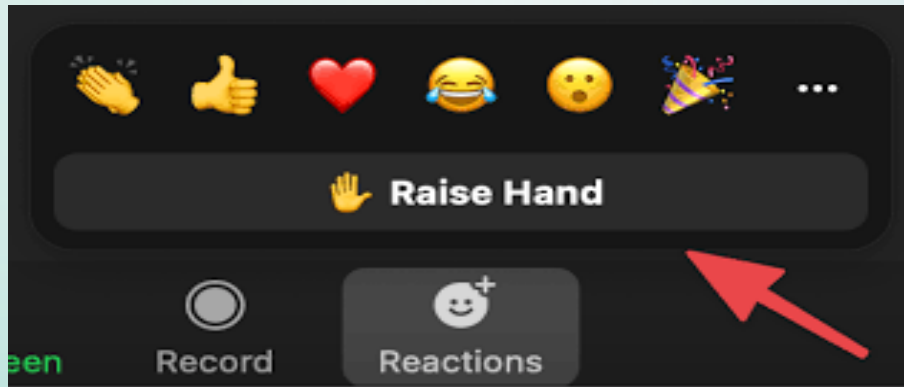
- Voluntarily provide data to assist the department in determining the recycling rate. – PRC 42061(b)(2)(G)

Support Allotted to Local Jurisdictions

- Forty percent of the moneys in the California Plastic Pollution Mitigation Fund shall be expended to various state agencies to monitor and reduce the environmental impacts of plastics, including to restore, recover and protect the natural environment. – PRC 42064(j)(1)
 - At least 50 percent of this will provide benefits to residents living in a disadvantage or low-income community or rural area. – PRC 42064(j)(2)
 - Moneys may be used to support grants for various entities, including local jurisdictions. – PRC 42064(j)(3)
- Be consulted when CalRecycle or a third-party contractor develops the needs assessment – PRC 42067(a)

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

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 – Clarifying transportation costs include staffing
- Item 2 – Clarifying costs include equipment, signage, etc.
- Item 3 – Defining the term “processor”
- Item 4 – Defining the term “ratepayer”
- Item 5 – Clarifying the exemption process

Item 1 – Clarifying transportation costs include staffing (1)

Regulations – PRC 42060(a)(1):

(a) **By January 1, 2025, the department shall adopt regulations** necessary to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met. **The regulations shall include**, but not be limited to, all of the following:

(1) Any regulations necessary to ensure the PRO fully funds plan implementation, including fully funding the budget. This shall include **the costs incurred by a local jurisdiction or a local jurisdiction’s recycling service providers** to implement this chapter, **including**, but not limited to, **the cost of consumer education and of collection, including the cost of containers where relevant, as well as the processing, storage, and transportation of covered materials**. Costs may vary based on population density or other relevant factors and shall allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered material.

Item 1 – Clarifying transportation costs include staffing (2)

Oregon DEQ proposed regulations:

Transportation costs include administrative costs related to the activities described in ORS 459A.890(2). Administrative costs include, but are not limited to, costs related to staffing and the hiring and managing of staff.

CalRecycle Proposed regulations

Transportation administrative costs include, but are not limited to, costs related to staffing and the hiring and managing of staff for the company transporting covered material to a materials recovery facility, broker, or viable responsible end market.

Item 1 – Clarifying transportation costs include staffing (3)

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept for local jurisdiction or recycling service provider costs by adding transportation administrative costs related to staffing and the hiring and managing of staff.

Item 2 – Clarifying costs include equipment, signage, etc. (1)

Plan budget – PRC 42051.1(j)(1)(B):

(j)(1) **The plan shall include a budget** designed to fully fund the costs necessary to implement this chapter. **The budget shall include**, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:

(A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.

(B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; **and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates**. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

Item 2 – Clarifying costs include equipment, signage, etc. (2)

Oregon DEQ proposed regulations:

Costs to receive, consolidate, load and transport covered products include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the recycling depot or recycling reload facility not already covered under other sections of ORS 459A.860 through ORS 459A.975.

Item 2 – Clarifying costs include equipment, signage, etc. (3)

CalRecycle proposed regulations – PRC 42051.1(j)(1)(B):

(j)(1) **The plan shall include a budget** designed to fully fund the costs necessary to implement this chapter. **The budget shall include**, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:

(A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.

(B) **Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs**, and costs related to consumer outreach and education; the costs to receive, consolidate, load, and transport covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials including, but not limited to, purchasing and maintaining equipment, signage, and other similar costs as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; **and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates**. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

Item 2 – Clarifying costs include equipment, signage, etc. (4)

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept for local jurisdiction, recycling service provider, or other collection program costs by adding:

Costs to receive, consolidate, load, and transport covered products, which include, but are not limited to, purchasing and maintaining equipment, signage, and other similar costs of operating the materials recovery facility, broker, or viable responsible end market.

Item 3 – Definition of Processor (1)

“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.

Processors or recyclers PRC 42051.1(c)(6)

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

(6) Arrangements with processors or recyclers 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 investment that will be made to cover the cost of the covered material being processed or recycled by processors or recyclers.

Needs assessment PRC 42067

(d) The department shall guide development of a needs assessment, which shall be developed in collaboration with the PRO and a broad diversity of local jurisdictions, recycling service providers, and processors that reflect the different needs and challenges faced by urban, suburban, and rural communities and a variety of different population densities and socioeconomic perspectives and that choose to participate in the development of a needs assessment.

Item 3 – Definition of Processor (2)

“Processor” in California’s carpet EPR program – PRC 42971(I):

“Processor” means a company that uses a process, including, but not limited to, shredding, grinding, sheering, or depolymerization, to convert discarded whole carpet into finished recycled output that is ready to be utilized as an input material for manufacturing products.

Item 3 – Definition of Processor (3)

CalRecycle proposed regulations:

“Processor” means an entity that will process, or is processing as defined in PRC 42041(v), covered material, that is ready to be used as an input material for manufacturing products or processing of organic materials for methods including but not limited to recycling, composting, or source separation.

Item 3 – Definition of Processor (4)

Request for Feedback:

CalRecycle is seeking feedback on the proposed definition of *processor*.

Item 4 – Definition of Ratepayer (1)

PRC 42051.1(j)(1)(B)

(j)(1) **The plan shall include a budget** designed to fully fund the costs necessary to implement this chapter. **The budget shall include**, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:

(A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.

(B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; **costs incurred to educate ratepayers to improve the preparation and sorting of covered material**; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

Item 4 – Definition of Ratepayer (2)

CalRecycle proposed regulations

“Ratepayer” means a member of the public or business whose method of paying includes, but is not limited to:

- (1) User fees or rates
- (2) Franchise fees on solid waste service providers
- (3) Solid waste facility gate or tipping fees
- (4) Mitigation or host fees on disposal facilities
- (5) Excise tax, parcel tax, property tax, or respective fee
- (6) Voter-approved surcharge or fee

Item 4 – Definition of Ratepayer (3)

Request for Feedback:

CalRecycle is seeking feedback on the proposed definition of “ratepayer,” which includes the variety of methods a member of the public or a business may pay to prepare and sort covered material.

Item 5 – Exemption Process (1)

PRC 42060.5(b)

(b) The department shall grant an extension of, or exemption from, a requirement of subdivision (a) upon a written showing by the local jurisdiction or recycling service provider that compliance with the requirement is not practicable for a specific identified covered material because of specific local conditions, circumstances, or challenges. If the PRO objects to the extension or exemption, the PRO shall be responsible for arranging alternative means for the collection, processing, storage, and transportation of covered materials resulting from implementing this chapter. The department shall review a granted extension or exemption every two years and may renew the extension or exemption after that review. An exemption or extension for a local jurisdiction or recycling service provider does not in any way relieve a producer or PRO from meeting the requirements of this chapter.

Item 5 – Exemption Process (2)

CalRecycle proposed regulations

(a) **To claim an extension or exemption** pursuant to Public Resources Code section 42060.5(b), **a representative** of a local jurisdiction or designated recycling service provider **shall submit** to the department in writing, per (d) of this section, the following information:

- (1) **The specific identified covered material(s);**
- (2) **What local conditions, circumstances, or challenges make it impracticable** for the local jurisdiction or recycling service provider to include in their collection and recycling programs the specific identified covered material on the lists published pursuant to this chapter.
- (3) **Any available supporting documentation** to validate the exemption claim.
- (4) **Whether the local jurisdiction or designated recycling service provider is requesting an extension and the time period requested that is less than two years.**
- (5) **The contact information for the person(s)** who represent the local jurisdiction and recycling service provider, if designated by the local jurisdiction, to whom the department shall direct future communication relating to the extension or exemption, shall include but not be limited to the following:
 - (A) Name
 - (B) Title
 - (C) Name of entity or entities represented
 - (D) Mailing address
 - (E) Email address
 - (F) Telephone number

Item 5 – Exemption Process (3)

CalRecycle proposed regulations, continued

- (b) A claim request pursuant to (a) of this section shall be submitted to the department in a format prescribed by the department.**
- (c) The department will review a complete extension or exemption claim request and approve or disapprove it within 90 calendar days of receipt.**
- (d) If the department receives an extension or exemption claim request that, upon review does not include all of the information required by this Article, the department will notify the local jurisdiction or recycling service provider and state what additional information or documentation is required. The local jurisdiction or recycling service provider will then have 30 calendar days after receipt of the notice to provide the required information or documentation.**
- (e) If the local jurisdiction or recycling provider does not provide the required information or documentation prior to the 30-calendar-day deadline, the extension or exemption request will not be approved on grounds of an incomplete request.**
- (f) If the department disapproves the claim request pursuant to (e), the local jurisdiction or recycling provider may resubmit a final revised claim request within 30 calendar days. The department will review the extension or exemption claim request and provide the final approval or disapproval within 90 calendar days of receipt.**

Item 5 – Exemption Process (4)

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept describing the process for a local jurisdiction or recycling service provider to request an extension or exemption.

Topic II.

Producer Compliance Independent of PRO

Department of Resources Recycling and Recovery,
Product Stewardship Branch/Packaging EPR Section

Fidan Aghayarova
Environmental Scientist

Marcus Santillano
Environmental Program Manager

Overview of Session

Part I: Relevant Definitions

- Relevant Definitions in the statute related to Independent Producer, Small Producer/Retailer/Wholesaler

Part II: Statutory Overview

- Statutory Overview of Independent Producer, Small Producer/Retailer/Wholesaler

Part III: Regulatory Concepts

- Regulatory Concepts for Independent Producer

Definitions

Note: Unless specified, CalRecycle is not currently seeking public feedback on definitions in this section.

Definitions

- Producer – PRC 42041(w)
- Producer Responsibility Organization or PRO - PRC 42041(x)
- Producer Responsibility Plan or Plan - PRC 42041(y)
- Retailer or Wholesaler – PRC 42041(ae)

Producer – PRC 42041(w)

- "Producer" means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.
- If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.
- If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into the state.
- "Producer" does not include a person who produces, harvests, and packages an agricultural commodity on the site where the agricultural commodity was grown or raised.
- For purposes of this chapter, the sale of covered materials shall be deemed to occur in the state if the covered materials are delivered to the purchaser in the state.

Producer Responsibility Organization or PRO PRC 42041(x)

"Producer responsibility organization" or "PRO" means an organization that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and is formed for the purpose of implementing a plan to meet the requirements of this chapter.

Producer Responsibility Plan or Plan PRC 42041(y)

"Producer responsibility plan" or "plan," unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1.

Retailer or Wholesaler – PRC 42041(ae)

- (1) "Retailer" or "wholesaler" means the person or entity who sells covered material in the state to purchasers or offers to purchasers the covered material in the state through any means, including, but not limited to, any of the following:
- Remote offering, including sales outlets or catalogs.
 - Electronically through the internet.
 - Telephone.
 - Mail.
 - Direct sales.
- (2) A person who sells covered material as a third-party seller using an online marketplace as described in paragraph (3) shall be considered the retailer or wholesaler for purposes of such transactions. The owner or operator of the online marketplace shall not be considered the retailer or wholesaler for such sales.

Retailer or Wholesaler – PRC 42041(ae)

3) For purposes of this subdivision, "online marketplace" means a consumer-directed, electronically accessed platform in which all of the following are true:

- The platform includes features that enable third-party sellers to sell consumer products directly to consumers in the state without the owner or operator of the platform involved in the transaction other than by providing order processing, payment, storage, shipping, or delivery services.
- Third-party sellers use the features described in subparagraph (A) to sell directly to consumers in the state, with title to the consumer product passing from the third-party sellers directly to consumers and not being held by the owner or operator of the online marketplace at any point during the transaction, including upon receipt of the order and throughout the order fulfillment process.
- Except as provided by subparagraph (E), the owner or operator of the platform does not directly or indirectly control the covered material used in packaging and shipping of a consumer product in this state.
- The person or entity operating the platform has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.
- Third-party sellers agree, pursuant to the platform's terms and conditions or other enforceable agreement, that they will not use the platform to offer for sale, sell, or distribute into the state covered material that does not meet the requirements of this chapter.

Overview of SB 54 Impacts on Independent Producer, Small Producer/Retailer/Wholesaler

Overview of Independent Producers

Pursuant to PRC 42051(b)(2), a producer is not required to participate in a PRO and the PRO's plan if the producer is able to demonstrate to CalRecycle several criteria, such as demonstrating reaching specific recycling rates and source reduction goals. In addition to the recycling rate and source reduction goals, an independent product must also:

- Develop and implement a producer responsibility plan that meets all applicable requirements, including a source reduction plan that meets all of the applicable requirements of a PRO source reduction plan.
- Fully cover costs based on the producer's share of covered material.
- Annually report sales, recycling, composting and source reduction data to CalRecycle.

Overview of Small Producers, Retailers, and Wholesalers

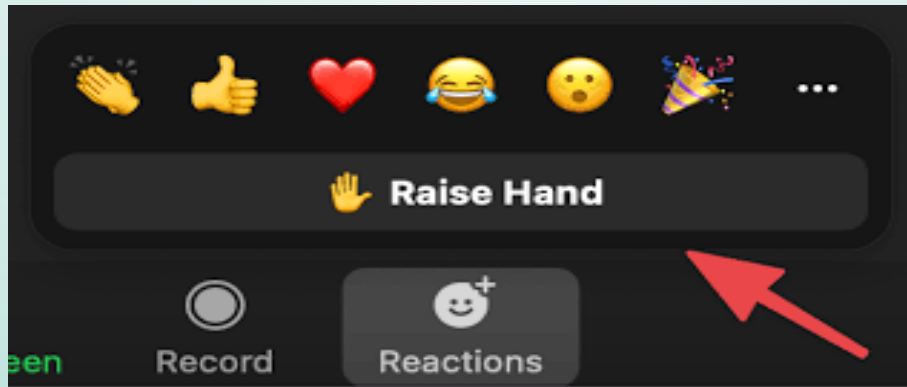
The term small producer, small retailers, and small wholesalers is introduced in PRC Section 42060(a)(5), which requires CalRecycle to develop a process to exempt these entities based on size, revenue, number of retail locations, and market shares. Producers shall comply with the requirements of SB 54, either by joining with a PRO or comply individually. Retailers and wholesalers who are not by definition, producers, will be required to register with the department and meet reporting requirements pursuant to 42060(a)(2).

Overview of Small Producers, Retailers, and Wholesalers

PRC Section 42060(a)(5)(B) states that CalRecycle shall exempt producers, retailers, or wholesalers with gross sales of less than \$1,000,000 in the state, in the most recent calendar year. However, if an exemption on a small producer, small retailer, or small wholesale hinders the ability of a type of covered material or covered material category from complying with SB 54, then CalRecycle may determine that an exemption will not be granted.

Questions and Comments

- To make a comment in-person, please line up at the microphone.
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Regulation Concepts

Regulatory Concepts

Item 1: Definition of Independent Producer

Item 2: Application for Individual Compliance

Item 1: Definition of Independent Producer

- Producers that choose to comply individually with SB 54 requirements are not specifically defined.
- CalRecycle seeking to define these entities in order to establish specific requirements for demonstrating compliance.
- CalRecycle proposes to call these entities *Independent Producers*

Item 1: Definition of Independent Producer

The proposed definition includes:

“Independent Producer” means a producer as defined in PRC Section 42041(w) that chooses to comply with the requirements of this chapter independently from an approved Producer Responsibility Organization.

Item 1: Definition of Independent Producer

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to call these entities an *Independent Producer* and define them using the proposed definition.

Item 2: Application for Individual Compliance

- CalRecycle proposes promulgating regulations to require an independent producer to apply for individual compliance through an application process in order to demonstrate how it meets those requirements of PRC Section 42051(b)(2) and provide additional information, such as financial assurance information (at minimum).

Item 2: Application for Individual Compliance

- At the minimum, the application shall include the following:
 - Producer information (name, address, types of covered materials represented, etc.)
 - Financial Assurance Information (demonstration of adequate financial responsibility and financial controls in place, etc.)

Item 2: Application for Individual Compliance

- Requirements specified in PRC 42051(b):
 - A. How the independent producer, prior to January 1, 2027, can demonstrate a recycling rate of 65 percent for three consecutive years.
 - B. How the independent producer, on or after January 1, 2027, can demonstrate a recycling rate of 70 percent annually.
 - C. How the independent producer, from the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 5 percent or greater source reduction of its covered materials through shifting to refill, reuse, or elimination.
 - D. How the independent producer, from the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 8 percent or greater source reduction of its covered materials through optimization, concentration, right-sizing, bulking, shifting to a nonplastic packaging, or lightweighting, or increasing the number of consumer uses.
 - E. How the independent producer demonstrates seventy-five percent of the producer's covered material sold, offered for sale, distributed, or imported into the state is in a covered material category that meets a 30-percent recycling rate as of January 1, 2023

Item 2: Application for Individual Compliance

- An independent producer whose application is accepted or approved will be regulated separately from the PRO for compliance with this chapter.
- An independent producer whose application is rejected will be considered out of compliance with the requirements of this chapter unless it joins the approved PRO.

Item 2: Application for Individual Compliance

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to develop an application for individual compliance along with the required information.

Topic III.

Exemptions for Small Producers, Small Retailers and Small Wholesalers

**Department of Resources Recycling and Recovery,
Product Stewardship Branch/Packaging EPR Section**

Marcus Santillano
Environmental Program Manager

Regulation Concepts

Regulatory Concepts

Item 1: Definition of Small Producer/Retailer/Wholesaler

Item 2: Exemption for Small Producer/Retailer/Wholesaler

Item 1: Definition of Small Producer/Retailer/Wholesaler

SB 54 makes reference to small producers, retailers and wholesalers but does not specifically define these entities. CalRecycle proposes to promulgate regulations to define these terms in order to develop specific requirements for compliance to regulate these entities [pursuant to PRC Section 42050(b)] and potentially exempt them from the rest of the requirements of this chapter.

Item 1: Definition of Small Producer/Retailer/Wholesaler

CalRecycle proposes the following definitions:

- 1) Small Producer: “Small producer” means a producer as defined in PRC Section 42041(w) that in the most recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state.
- 2) Small Retailer: “Small retailer” means a retailer as defined in PRC Section 42041(ae) that in the most recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state.
- 3) Small Wholesaler: “Small wholesaler” means a wholesaler as defined in PRC Section 42041(ae) that in the most recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state.

Item 1: Definition of Small Producer/Retailer/Wholesaler

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to define the terms small producer, small retailer and small wholesaler.

Item 2: Exemption for Small Producer/Retailer/Wholesaler

- PRC Section 42060 requires CalRecycle to establish a process to exempt these entities from the requirements of this chapter based on size, revenue, number of retail locations, and market share.
- CalRecycle will promulgate regulations to develop a process for these entities to apply for an exemption from SB 54 requirements [except from PRC Section 42050(b)].

Item 2: Exemption for Small Producer/Retailer/Wholesaler

The exemption process includes the following:

- The entity applying for a specific exemption based will require the specific entity applying for the exemption to demonstrate the following:
 - 1) The small producer, small retailer, or small wholesaler meets the definition of small producer, small retailer, or small wholesaler based on the proposed definitions specified in Item 3.
 - 2) The small producer, small retailer or small wholesaler shall demonstrate that in the recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state. The small retailer shall meet this requirement by providing documentation including but not limited to, financial records, or any additional documentation requested by the Department.

Item 2: Exemption for Small Producer/Retailer/Wholesaler

- An exemption implemented pursuant to this subdivision shall be valid up to one year after the Department makes a determination.
- An exemption may be extended for an additional year, provided the exempt entity demonstrates to the Department that the requirements are still being met.
- An exempt entity that no longer meets the requirements to be considered exempt shall meet the requirements of SB 54.
- Pursuant to PRC Section 42060(a)(5)(B), CalRecycle may deny an application for an exemption if exempting a particular small producer, small retailer, or small wholesaler pursuant to subparagraph (A) would hinder the ability of a type of covered material or covered material category from complying with the requirements of this chapter.

Item 2: Exemption for Small Producer/Retailer/Wholesaler

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept that develops an application process for small producers/retailers/wholesalers to be exempt from SB 54 requirements along with the specific criteria for meeting this exemption.

Recap: Topics Covered in this Workshop

- **Topic I: Local Jurisdictions**

- Part I. Local Jurisdiction Impacts
- Part II. Statutory Overview of Local Jurisdiction impacts
- Part III. Regulatory Concepts for Local Jurisdictions

- **Topic II: Producer Compliance Independent of PRO**

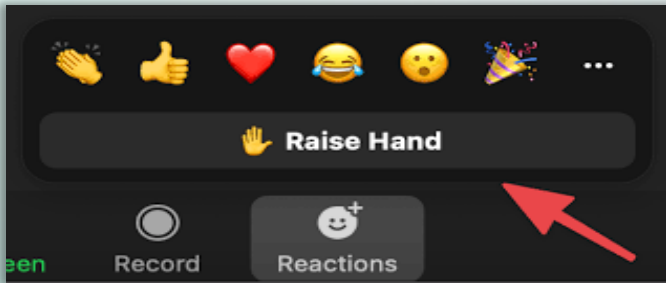
- Part I. Relevant Definitions
- Part II. Statutory Overview of Independent Producers
- Part III. Regulatory Concepts for Independent Producers

- **Topic III: Exemptions for Small Producers/Retailers/Small Wholesalers**

- Part I. Regulatory Concepts for Small Producers, Small Retailers and Small Wholesalers

Questions and Comments

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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”.
- We have developed a process for providing written feedback (see *Discussion Documents*)
- We request all written feedback be submitted by **July 18, 2023**.

Topic IV.

Data Collection for the Standardized Regulatory Impact Assessment

**Department of Resources Recycling and Recovery,
Product Stewardship Compliance Branch**

Robert Carlson

Environmental Program Manager

SRIA Data Needs

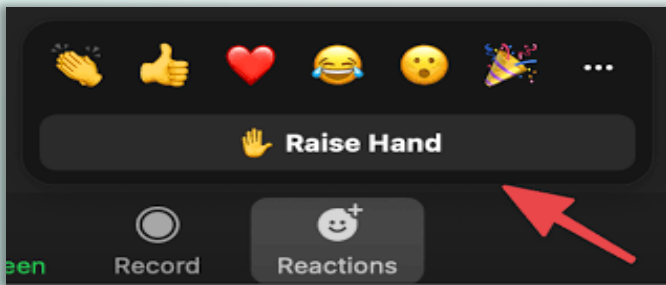
- **Producer Data**
 - Number of producers (by material type, producer type, or industry sector if available)
- **Package Data**
 - Number of covered packaging configurations
 - Number (and weight) of packaging (by material type or industry sector if available) sold or made available (annually)
- **Manufacturing Data**
 - Cost to redesign packaging to utilize different material
 - Cost to redesign packaging to meet reusability/refillability standards
 - Cost to redesign packaging to reduce plastic components

SRIA Data Needs

- Recycling Infrastructure Data
 - Location and capacity for recycling facilities, including end markets (by material type if available)
 - Relevant sorting/handling/processing technology/equipment (including costs)
 - Costs to expand existing or construct new facilities
- Composting Infrastructure Data
 - Location and capacity for composting facilities
 - Costs to expand existing or construct new facilities
- Other Data
 - Raw material costs (virgin and recycled content)
 - Reuse/refill capacity (including costs to expand)
 - Packaging collection and processing rates through non-municipal routes
 - Costs to operate such collection systems

Questions and Comments

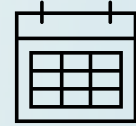
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Sign-up for our SB 54 Listserv



July SB 54 Informational Session and Informal Rulemaking Workshop:

- July 24, 2023 at 10:00 AM
- July 25, 2023 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

Break

**Please return by:
1:00 PM**