

SB 54 Informal Rulemaking Workshop

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

July 25, 2023

Department of Resources Recycling and Recovery

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

Regulations Unit, Legal Affairs Office

Topic: Advisory Board

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Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop on [July 25, 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 parties to solicit feedback on some of the requirements outlined in [SB 54 \(Allen, Chapter 75, Statutes of 2022\)](#).

One of the topics of these workshops is the *Advisory Board*. This workshop is split into two parts:

- **AB Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **AB Part 2** will discuss non-regulatory concepts to solicit feedback.

The purpose of this document is to provide public participants 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 are specified in a gray textbox.

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

- Recyclability (6/28/2023 workshop)
- Compostability (6/28/2023 workshop)
- Responsible End Markets (5/31/2023 workshop)
- Covered Material Category Determination* (4/25/2023 and 6/28/2023 workshop)
- Source Reduction (5/31/2023 workshop)
- PRO Plan (3/29/2023 workshop)
- Budgets (3/29/2023 workshop)
- Document submittals (3/29/2023 workshop)
- Annual reports (4/25/2023 workshop)

The topics above were topics that were covered in previous workshops. Others will be addressed at a subsequent workshop. Workshop information can be found on the SB 54 [webpage](#) under *Events*. For other topics being discussed at the July workshop, please refer to the corresponding discussion document for that topic.

Part I. Background and Informational Items

Public Resources Code Section 42070 requires CalRecycle's Director to appoint a producer responsibility advisory board by July 1, 2023, for the purpose of identifying barriers and solutions to creating a circular economy and advising the department, producers, and producer responsibility organizations in the implementation of SB 54. CalRecycle hosted an informational session on [February 28, 2023](#), which provided a statutory overview and informational session on the advisory board.

The advisory board has 13 voting and 3 nonvoting (denoted by *) members consisting of representatives of local government, environmental and environmental justice organizations, manufacturers, recycling and solid waste enterprises, and retail and grocery associations. The Director appoints members for staggered three-year terms.

CalRecycle is pleased to announce that fifteen (15) of the sixteen (16) appointed advisory board members have accepted the position. The sixteenth member, representing the PRO, will be appointed following the selection of the PRO by CalRecycle in 2024.

The following members were appointed for a 3-year term:

- Timothy Burroughs, Executive Director of StopWaste, Nominated by a Statewide City Association
- Miho Ligare, Plastic Pollution Policy Manager of Surfrider Foundation, Represents an Ocean Advocacy Organization
- Thomas A. Helme, Co-Founder/Project Director of Valley Improvement Projects, Represents an Environmental Justice Organization
- Veronica Pardo, Regulatory Affairs Director of Resource Recovery Coalition of California, Represents a Recycling Service Provider or an Association of Recycling Service Providers
- Neil S. Edgar, Executive Director of California Compost Coalition, Represents the Composting Industry Operating in the State of California
- Ajit Perera, Vice President of Post Consumer Operations of Talco Plastics, Inc., Represents a Manufacturer of Covered Materials of Different Material Types Utilizing Postconsumer Recycled Content
- Wes Carter, President & Co-Founder of Atlantic Packaging Corp, Represents a Manufacturer of Covered Materials of Different Material Types Utilizing Postconsumer Recycled Content
- Timothy James, Director in Local Government Relations of the California Grocers Association, Nominated by a Statewide Association Representing the Grocery Sector*

The following members were appointed for a 2-year term:

- Tedd Ward, Director of Waste Management Authority, Nominated by a Statewide Rural County Association
- Doug Kobold, Executive Director of the California Product Stewardship Council, Represents an Environmental Protection Organization
- Fred Briones, Chief Executive Officer of the Native American Fiber Program, Represents Disadvantaged or Low-Income Community or Rural Area
- Christy Pestoni, Director of Government Affairs of Waste Connections, Represents a Materials Recovery Facility Located within the State of California
- Erin Levine, Resource Recovery Manager – West of World Centric, Represents a Manufacturer that Produces Third-Party Certified Compostable Covered Material
- Patrick Keenan, Associate Packaging Principal Engineer of General Mills, Represents a Manufacturer of Covered Materials of Different Material Types Utilizing Postconsumer Recycled Content
- Rachel Michelin, President & Chief Executive Officer of the California Retailers Association, Nominated by a Statewide Association Representing the Retail Sector*

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)

Part II. Workshop of Non-Regulatory Concepts

Regulation Concepts:

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

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

- AB Item 1 – Membership Terms and Vacancies
- AB Item 2 – Administrative Support
- AB Item 3 – Advisory Board Annual Report

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

AB Item 1: Membership Terms and Vacancies

Statute Sections: PRC 42070(a) and (b)

(a) In implementing this chapter, the department shall establish a producer responsibility advisory board for the purpose of identifying barriers and solutions to creating a circular economy consistent with this chapter and advising the department, producers, and producer responsibility organizations in the implementation of this chapter. The advisory board shall be composed of 13 voting and 3 nonvoting members as provided in the following categories, who shall be appointed by the director:

- (1) One representative nominated by a statewide city association.
- (2) One representative nominated by a statewide rural county association.
- (3) One representative from an environmental protection organization.
- (4) One representative from an ocean advocacy organization.
- (5) One representative from an environmental justice organization.
- (6) One representative from a disadvantaged or low-income community or rural area.
- (7) One representative of a materials recovery facility located within the State of California.
- (8) One representative of a recycling service provider, or a representative of an association of recycling service providers.
- (9) One representative from the composting industry operating in the State of California.

(10) A representative of each of four manufacturers of covered materials of different material types utilizing postconsumer recycled content, one of which produces third-party certified compostable covered material.

(11) One representative nominated by a statewide association representing the retail sector. This board member shall be a nonvoting member.

(12) One representative nominated by a statewide association representing the grocery sector. This board member shall be a nonvoting member.

(13) One representative of a producer responsibility organization. This board member shall be a nonvoting member.

(b) The director shall appoint all members to the advisory board on or before July 1, 2023. The director shall appoint the members for staggered three-year terms, and may reappoint a member for additional terms. At its first meeting, the advisory board shall elect a chair who will serve as chair for the calendar year, and who may be reelected as chair.

Regulation Concept:

Pursuant to 42070(b), the director will appoint members for staggered three-year terms but it does not provide a process for reappointments or guidance for representatives who leave the advisory board unexpectedly. CalRecycle would like to promulgate regulations by providing a process for when board members vacate their position and reappointments. The proposed language includes:

(b) The director shall appoint all members to the advisory board on or before July 1, 2023. The director shall appoint the members for staggered three-year terms and may reappoint a member for additional terms. At its first meeting, the advisory board shall elect a chair who will serve as chair for the calendar year, and who may be reelected as chair.

(1) If the PRO has not been approved by the department, the director will delay the appointment of the member who represents the PRO until the PRO has been approved.

(2) Members can be reappointed and must reapply to be considered for additional terms. Terms are measured by fiscal year (July 1st). Subsequent terms begin when the remainder of the initial term concludes.

(i) The department will inform advisory board members at least 60-days before the end of the representative's term of reappointment.

(ii) If an advisory board member does not seek reappointment, the member must inform the department before the end of the term.

(iii) The department will publicly solicit for vacant advisory board seats through the department website and applicable listserv messaging, or the director may appoint a member from the pool of applicants the member originated from during a public solicitation.

- (3) If an advisory board seat becomes vacant due to unforeseen circumstances, a replacement that is representative of the vacant position pursuant to PRC 42070(a) will be appointed per subsection (b)(2)(ii) of this section to complete the remaining term.

Request:

CalRecycle is seeking feedback on advisory board membership terms and the process of filling advisory board member seats as they become vacant.

AB Item 2: Administrative Support

Statute Sections: PRC 42070(c)

(c) The advisory board shall meet at least once per year by the call of the chair or by request of a majority of the voting members. The department shall provide administrative support to the advisory board.

Regulation Concept:

CalRecycle is statutorily obligated to provide administrative support to the advisory board. Statute does not define or list what administrative support entails. CalRecycle is seeking to clarify what these duties are. CalRecycle proposes the following administrative support duties:

- (1) Administrative support duties shall include:
- (i) Provide support for the advisory board support to meet statutory timelines including, but not limited to, reviews and submittal of comments pursuant to PRC 42051.2(a), PRC 42051.2(d)(2), PRC 42070(g)-(h), and any amendment request to the covered material categories list (as proposed in the June 2023 workshop).
 - (ii) Verify public notices and meeting agendas sent from the advisory board to CalRecycle are remediated as required by the American Disability Act (ADA) web accessibility standards prior to submittal and posting them on the department's website.
 - (iii) Distribute advisory board-prepared public notices, agendas, and announcements through listservs deemed appropriate by the department and posting this information on the department's website.
 - (iv) Moderate meetings including teleconference or applicable virtual platform and read written public comments during the meetings.
 - (v) Track attendance at meetings.
 - (vi) Track Board membership status.

Request:

CalRecycle is seeking feedback on what specific duties define administrative support provided to the advisory board by the department.

AB Item 3: Advisory Board Annual Report

In order to ensure transparency and cohesion between the PRO's and the advisory board's recommendations and action items, an advisory board report should be included in the PRO's annual report reflecting their interaction. The Mattress EPR Program currently requires their advisory council to submit an annual report.

14 CCR 18968, Div 7, Chapter 11, Article 3

(a) An annual report shall be submitted by a designee of the mattress recycling organization advisory committee, established pursuant to subsection (3) of subdivision (a) of section 42987 of the Public Resources Code to the mattress recycling organization no later than 30 days prior to when the annual report is due to the department. The annual report may be submitted electronically according to instructions provided by the department. A hard copy, signed by a designated representative of the advisory committee shall be submitted to the mattress recycling organization.

(b) The annual report shall contain the following:

(1) Contact information. Identify the designated representative of the advisory committee responsible for annual report submittal and each member of the advisory committee, including member name and company/affiliation.

(2) A summary of the consultative process between the advisory committee and the mattress recycling organization relating to the ongoing implementation of the plan, as well as any other information deemed pertinent by the advisory committee to maximize the recovery and recycling of used mattresses in the state, per subdivision (k) of section 42990.1 the Public Resources Code.

Regulation Concept:

CalRecycle proposes that the advisory board provide a report to be included with the PRO annual report with the following elements:

(k) The advisory board's annual report shall be submitted by a designee of the advisory board, established pursuant to PRC 42070, to the PRO no later than 60-days prior to when the PRO's annual report is due to the department pursuant to PRC 42051.3(a).

(1) The annual report shall contain the following:

- (i) A list identifying members of the advisory board, the length of time they served on the board during the implementation year of the plan, their company/affiliation, the statutorily-defined category they represent pursuant to Section 42070(a), and their contact information.
- (ii) A list of comments and recommendations provided to the PRO, including but not limited to the advisory board's review of

articles pursuant to PRC 42051.2(a), 42070(g) *[needs assessment]*, 42070(h) *[PRO plan]*, 42070(j) *[complaints brought to the advisory board]* and amendment requests to the covered material categories list *[as proposed in the June 2023 workshop]*.

(iii) A summary of the consultative process of the advisory board and the PRO relating to the ongoing implementation of the plan, as well as any other information deemed pertinent by the advisory board to maximize the prevention of plastic pollution pursuant to PRC 42050.

(2) The PRO may include a description of how it addressed the comments or recommendations raised in the advisory board's report.

Request:

CalRecycle is seeking feedback on the content and need of advisory board reports being included with the PRO's annual report.

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 July 25, 2023 Workshop is submitted no later than **August 8, 2023**. Preferred formats include e-mail, .docx and PDF.

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

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

Requested Feedback on Specific Regulation Concepts:

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

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

This process can be repeated for each regulation concept 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*