

SB 54 Informal Rulemaking Workshop

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

July 24, 2023

Department of Resources Recycling and Recovery

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

Regulations Unit, Legal Affairs Office

Topic: Compostable Materials

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.

Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop on [July 24, 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 *Compostable Materials*. This workshop is split into two parts:

- **CM Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **CM 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 will be 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

The Department has previously workshopped topics pertaining to [compostability](#). CalRecycle intends to add more clarity to the definition of compostable and the

determination of compostability by proposing additional regulation concepts to build on previous material.

Abbreviations and Acronym List

- CalRecycle: California Department of Resources Recycling and Recovery
- Department: California Department of Resources Recycling and Recovery
- PRO: Producer Responsibility Organization
- PRC: Public Resources Code (California Statute)
- ASTM: American Society for Testing and Materials

Relevant Definitions

Listed below are the existing statutory definitions relevant to the July 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.

Part II. Workshop of Regulation 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 Third Party Certification for compostability. The regulation concepts discussed in this workshop include:

- CM Item 1 – Third-Party Certification Entity Criteria
- CM Item 2 – Definition of “Fiber-based”
- CM Item 3 – Definition of Cellulosic
- CM Item 4 – Labeling Requirement

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

CM Item 1: Third-Party Certification Entity Criteria and Approval Process

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” in accordance with PRC 42357(g).

PRC 42357(g)(1) (A)

(1) A person shall not sell or offer for sale a product in this state that is labeled with the term “compostable” or “home compostable” unless the product satisfies all of the following:

(A) If any standard specification is applicable to the product pursuant to this chapter and **the department has approved a third-party certification entity** to certify products according to that standard specification, the product shall have certification that it meets at least one such standard from an approved third-party certification entity for the standard. This requirement shall only apply on and after January 1, 2024, and it shall not apply unless there is, and has been for at least one year immediately prior to the product being sold or offered for sale, a third-party certification entity approved by the department to provide the applicable certification.

This section describes the standards “compostable” products must achieve and that the department must approve a “third-party certification entity” to certify that the products meet those standards. CalRecycle seeks to provide the criteria and approval process for which third-party certification entities will need to adhere to.

(a) For purposes of approval pursuant to § 42357(g)(1)(A), a third-party certification entity must satisfy the following criteria:

(1) ISO/IEC 17025 accreditation issued by an accrediting body that is a signatory member of either the International Accreditation Forum or the International Laboratory Accreditation Cooperation, or both, or is a signatory to a mutual recognition arrangement established by either organization.

(2) Does not hold any financial interest, whether direct or indirect, of any entity on whose behalf it has issued a certification applicable to any product subject to the labeling restriction imposed by § 42357(g)(1) and does not engage in any business with any such entity other than for the purpose of considering the issuance of such certifications.

(b) A third-party certification entity shall request approval, or renewal of a prior approval, by submitting the following in the manner prescribed by the department:

(1) Contact information.

(2) Documentation of the accreditation required pursuant to subdivision (a)(1). Identifying an accrediting body’s directory or other publication identifying the entity as holding the accreditation required under this section shall be deemed sufficient documentation.

(3) An affidavit, subject to the penalty of perjury, that the entity satisfies the requirements for approval pursuant to subdivision (a).

(c) The department’s approval of a third-party certification entity shall expire on January 1 of the fifth calendar year following the calendar year in which the

department approved the entity or as of the date the entity's accreditation expires or otherwise becomes invalid.

- (d) No earlier than 2 years before expiration of the department's approval, the entity may request renewal. Renewed approvals shall expire in the same manner as initial approvals, as described in subdivision (c).
- (e) The department shall maintain on its website a list of currently approved third-party certification entities. Notwithstanding a third-party certification's presence on such list, it shall be deemed not approved as of the date it no longer holds a valid, unexpired accreditation pursuant to subdivision (a)(1). A person selling or offering for sale products labeled with terms restricted pursuant to Pub. Resources § 42357 shall be responsible for verifying that a third-party certification entity held a valid accreditation as of the date it issued a certification for purposes of complying with § 42357(g)(1)(A).
- (f) For the purpose of determining whether the certification requirement pursuant to § 42357(g)(1)(A) applies to a particular product, a third-party certification entity identified on the list published pursuant to subdivision (e) shall be deemed to have been approved as of the date it was added to the list. For all other purposes, however, regardless of when a third-party certification entity is added to that list, its approval shall be retroactive as of the effective date of the accreditation satisfying the requirements of subdivision (a)(1).

Request:

CalRecycle is seeking feedback on accreditation standards for third-party certification entities.

CM Item 2: Definition of “Fiber-based”

Statute Sections: PRC 42050(b)

Please see CM Item 1 for statute.

Regulation Concept:

In the department's proposed definition of “compostable” presented at the [June 28th workshop](#), the term “fiber-based” was used, which is also consistent with labeling standards pursuant to PRC 42356.1(d).

PRC 42356.1(d)

(d) Fiber products that are demonstrated to not incorporate any plastics or polymers, including, but not limited to, through lamination, extrusion, or mixing, are not required to comply with an ASTM standard specification pursuant to this chapter.

Under this proposed definition, “fiber-based” materials that do not contain plastics would not be required to meet the ASTM standards for plastics designed for compostability. CalRecycle’s proposed definition from the June workshop states:

“Compostable” means that 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.

CalRecycle seeks to provide a definition for “fiber-based” in regulations which would require alternative standards for those materials.

Proposed definition of “fiber-based:”

“Fiber-based” means a covered material that is made from animal or natural cellulosic fibers that meets the ASTM D8410-21 Standard for Evaluation of Cellulosic-Fiber-Based Packaging Materials and Products for Compostability in Municipal or Industrial Aerobic Composting Facilities.

Request:

CalRecycle is seeking feedback on using ASTM D8410-21 for determining what covered materials would qualify as “fiber-based.”

CM Item 3: Definition of “Cellulosic fibers”

Statute Sections: PRC 42050(b)

Please see CM Item 1 for statute.

Regulation Concept:

In CM Item 2, we use the term “cellulosic fibers” in the proposed definition of “fiber-based.” CalRecycle would like to provide a definition for “cellulosic fibers.”

Proposed definition of “cellulosic fibers”

“Cellulosic fibers” in reference to fiber-based covered materials means fibers derived from plant matter including, but not limited to, seed fibers, bast fibers, and leaf fibers.

Request:

CalRecycle is seeking feedback on the proposed definition of cellulosic. Please note that processes that add plastics in combination with natural cellulosic fibers are already excluded pursuant to PRC 42356.1 (d)

CM Item 4: Labeling Requirements

Statute Sections: PRC Section 42040(b)(3)(B) and (C)

(B) It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to ratepayers, and increase system efficiency.

(C) It is also the intent of the Legislature that these improvements will allow California, going forward, to better harmonize curbside collection programs as local jurisdictions will collect material identified as either recyclable or compostable if that material is found to be suitable for curbside collection.

Regulation Concept:

SB 54 aims to minimize consumer confusion and harmonize the overlapping goals of the California Compostable Product Labeling law (AB 1201) and the Sustainable Packaging for the State of California law (SB 1335). Pursuant to PRC 42050(b) and 42357(g)(1)(E), CalRecycle seeks to add criteria to clarify what can be “associated with recovery of desirable organic wastes” and what is “collected for composting.” Additionally, 14 CCR Section 17989.5(a)(1)(A), pertains to collection criteria for compostable materials under SB 1335 (Allen, Chapter 610, Statutes of 2018) regulations.

PRC 42050(b)

Consistent with the policy goal established in Section 41780.01 and consistent with the waste hierarchy established in Section 40051, producers of covered material sold, offered for sale, imported, or distributed in the state shall achieve all of the following with respect to the materials for which they are the producers:

(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)

PRC 42357(g)(1)(E)

A person shall not sell or offer for sale a product in this state that is labeled with the term “compostable” or “home compostable” unless the product satisfies all of the following:

(E) Is designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department’s regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations.

14 CCR Section 17989.5(a)(1)(A)

(a) A food service packaging item is "compostable" and shall be included on the List if the department determines it meets the requirements of Section 17989.2 and satisfies all the following criteria:

(1) The food service packaging item meets either of the following criteria:

(A) Prior to January 1, 2026, the food service packaging item is comprised of materials that are regularly collected for composting by at least 50 percent of organic waste recycling programs statewide and accepted by at least 50 percent of the compost facilities in the state that accept mixed materials. Effective January 1, 2026, the food service packaging item is comprised of materials that are regularly collected for composting by at least 75 percent of organic waste recycling programs statewide and accepted by at least 75 percent of the compost facilities in the state that accept mixed materials.

CalRecycle is seeking to promulgate regulations by proposing the below draft regulation language to reference which criteria must be followed in order to qualify as “compostable.”

For purposes of determining whether material is eligible to be labeled “compostable” for purposes of PRC § 42050(b), the material satisfies the criterion stated in PRC § 42357(g)(1)(E) if the material satisfies the collection and acceptance thresholds stated in 14 CCR § 17989.5(a)(1)(A).

Request:

CalRecycle is seeking feedback on the proposed concept regarding eligibility to be labeled “compostable.”

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 24, 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*