

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: Data Reporting

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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 persons 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 *Data Reporting*. This workshop is split into three parts:

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

SB 54 relies heavily on quantifiable data to track progress of producers, independent producers, retailers, wholesalers and the PRO meeting the law's various requirements and target goals. CalRecycle is seeking to promulgate regulations to ensure that it has the data and reporting system required to register, house and analyze

the information required. This section summarizes the statutory requirements pertaining to data and reporting requirements.

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)
- RDRS: Recycling and Disposal Reporting System

Relevant Definitions

Listed below are the existing statutory definitions relevant to the July 24, 2023 rulemaking workshop. CalRecycle may further refine these definitions in regulations.

Local Jurisdiction – PRC 42041(l)

“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.

Producer – PRC 42041(w)

- (1) “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.
- (2) 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.
- (3) 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.
- (4) “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.

(5) 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.

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:

- (A) Remote offering, including sales outlets or catalogs.
- (B) Electronically through the internet.
- (C) Telephone.
- (D) Mail.
- (E) 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.

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

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) 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 Data Reporting

The data reporting requirements within SB 54 can be specific to various goals within the program (e.g., source reduction and recycling rates). By requiring registration with timely and consistent reporting of data, the department, independent producers, producers, retailers, wholesalers and the PRO are able to assess the successfulness of implementation, decisions, and recommendations.

Independent Producers – PRC 42051(b)(2)(B)(iii)

Annually report sales, recycling, composting, and source reduction data to the department.

PRO Annual Report – PRC 42052(a)

A PRO shall register in the department's Recycling and Disposal Reporting System, or an alternative reporting system established by the department, and annually submit to the system all of the following information on behalf of each producer who participates in the PRO's approved plan:

- (1) The aggregate quantities in total weight and the number of plastic components of covered material, by covered material category and by type of plastic component, manufactured, sold, distributed, or imported in or into the state, as the department deems necessary to determine compliance with this chapter in a form, manner, and frequency determined by the department pursuant to paragraph (2) of subdivision (a) of Section 42060.
- (2) The aggregate quantities in total weight and number of plastic components, of covered material by covered material category recycled as the department deems necessary to determine compliance with this chapter in a form and manner determined by the department pursuant to paragraph (2) of subdivision (a) of Section 42060.
- (3) For covered material not collected through a curbside collection program, the PRO shall collect, validate, and submit to the system data demonstrating take-back and dropoff and alternative collection and recycling program performance, including the amount and type of covered materials collected.
- (4) Any additional information deemed necessary by the department to collect and report data pursuant to subdivision (a) of Section 42060.

PRO Annual Report – PRC 42051.3(a)(3)

The annual report shall include all of the following:

- (A) The PRO's cost and revenues, including an updated budget and any updates to the fee schedule necessary to ensure the revenues are sufficient to cover the full costs of implementing this chapter in the upcoming year.
- (B) An updated list of the names and contact information of each participant of the plan.
- (C) A description of outreach efforts and education to consumers.

- (D) A report on activities the PRO has taken to implement each provision of the plan, including, but not limited to, all of the following:
- (i) A description of the methods used to collect, transport, process, and recycle or compost covered material.
 - (ii) The recycling technologies and means that will be utilized to achieve recycling requirements, including demonstration that the means and technologies meet the conditions specified in subdivision (aa) of Section 42041.
 - (iii) Progress made in meeting source reduction goals.
 - (iv) Current recycling rates and progress made in meeting recycling rates and any investments made to achieve recycling rate requirements.
- (E) The source reduction data specified in subdivision (c) of Section 42057.

PRO Plan, Plan Update or Annual Report – PRC 42057(c)

As part of any producer responsibility plan, plan update, or annual report submitted to the department, the PRO shall report the following data, disaggregated by each participant producer:

- (1) The amount of plastic covered material and products sold in plastic covered material, including the number of plastic components and weight of plastic covered material, sold, offered for sale, or distributed in the state.
- (2) The number of plastic components and the weight of plastic covered material shifted to a refillable or reusable packaging or food service ware.
- (3) The number of plastic components and the weight of plastic covered material eliminated.
- (4) The number of plastic components and the weight of plastic covered material shifted from a plastic covered material to a nonplastic covered material.
- (5) The number of plastic components and the weight of plastic covered material reduced through concentration, right-sizing, and shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers.
- (6) The amount of postconsumer recycled content used compared to virgin plastic in covered material.

Source Reduction Plans – PRC 42057(d)

(d) Producers who are members of the PRO shall submit to the PRO individual source reduction plans that include both of the following:

- (1) In the first individual producer source reduction plan, the producer shall include any amount of covered material, by number of plastic components and weight of covered material, the producer source reduced since January 1, 2013.
- (2) The amount of plastic covered material, by number of plastic components and weight of plastic covered material, the producer plans to source reduce by January 1, 2027, January 1, 2030, and January 1, 2032. The producer shall describe how much will be source reduced in each of the following ways:

- (A) The number of plastic components and the weight of plastic covered material shifted to a refillable or reusable package.
- (B) The number of plastic components and the weight of plastic covered material eliminated.
- (C) The number of plastic components and the weight of plastic covered material shifted from a plastic covered material to a nonplastic material.
- (D) The number of plastic components and the weight of covered material source reduced through concentration, right-sizing, lightweighting, and shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers.
- (E) The amount of postconsumer recycled content used compared to virgin plastic in covered material.

Recycling Rates

- In determining a recycling rate, the department may consider data and information received from producers and by the department. – PRC 42061(b)(2)(H) and (I)
- A producer may be required to submit data to the department when requesting a rate be included or changed on the list, or a covered material category added to the list. – PRC 42061(f)(3)
- Starting in 2026 and every two years after, the department will review relevant data to assess whether the recycling rate needs to be adjusted. – PRC 42062(a)

Miscellaneous Data Requirements

- Each producer in the state shall file its primary business address with the department in a manner prescribed by regulation. Each producer shall notify the department of any change in their business address within 30 days. A PRO may satisfy the requirements of this subdivision on behalf of a producer by including the producer's primary business address in a plan, update, or annual report per PRC 42051.3(a)(3)(B) or otherwise notifying the department of the address and any changes of address. – PRC 42051(c)
- The PRO plan shall include specific measures to ensure that producers participating in the plan comply with the requirements of the plan and statute including record maintenance protocols requiring the PRO to maintain records sufficient to demonstrate whether each producer participating in the plan has complied with the requirements of the plan and statute for at least the previous three years. Those protocols shall ensure that all records remain reasonably accessible by the department upon request. – PRC 42051.1(m)(4)
- An approved annual report and approved plan shall be a public record, except that financial, production, or sales data reported to the department by the PRO is not a public record for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department shall release financial,

production, or sales data in summary form so the information cannot be attributable to a specific producer, retailer, or wholesaler, or to any other entity. – PRC 42051.2(b)(5) and PRC 42063(c)

- To determine if a producer complies with statute during an audit, the department determines the form and manner that a producer or PRO shall maintain records of covered materials offered for sale, sold, distributed, or imported in or into the state. – PRC 42052(d)
- The department shall request data consistent with established covered material categories. – PRC 42060(a)(2)(C)(i)
- To the maximum extent feasible, the department shall seek to use records and information that the local jurisdiction, producer, retailer, wholesaler, or PRO already maintains, in order to minimize the burden imposed by the reporting and recordkeeping requirements while still enabling the department to determine compliance with statute. – PRC 42060(a)(2)(C)(ii)
- The department shall, to the extent feasible, make the reporting consistent with other recognized third-party reporting systems used by producers or other packaging extended producer responsibility programs – PRC 42060(a)(2)(D)
- Market-sensitive trade secret data received by the department pursuant to this chapter shall be held confidentially by the department as required by Section 40062 and any implementing regulations, provided that the furnisher of the data complies with the requirements set forth in subdivision (b) of Section 40062 and any implementing regulations for identifying the information claimed to be a trade secret. – PRC 42060(a)(2)(E)

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 data reporting. The regulation concepts discussed in this workshop include:

- DR Item 1 – Registration and reporting requirements
- DR Item 2 – Recordkeeping and data requirements

We welcome written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 14.

DR Item 1: Registration and Reporting Requirements

Statute Sections: 42052(a)

PRC 42052(a)

A PRO shall register in the department's Recycling and Disposal Reporting System, or an alternative reporting system established by the department, and annually submit to the system all of the following information on behalf of each producer who participates in the PRO's approved plan.

Regulation Concept:

When comparing RDRS to the data needs for SB 54, CalRecycle has identified that RDRS will not be sufficient. Pursuant to PRC 42052(a), the department proposes that an alternative reporting system should be established. The areas where there is no overlap between the two programs is visualized below and helps illustrate this point. However, we can use the RDRS regulations as a model for the data reporting section of SB 54 regulations. Listed below are all sections of the RDRS regulations with a reference to three other sections identified as having no overlap with SB 54 requirements.

Article 9.25. Recycling and Disposal Reporting System

Overlap with SB 54 Requirements

- § 18815.3. Registration, Reporting and Exemptions.
- § 18815.4. Reporting Requirements for Haulers.
- § 18815.5. Reporting Requirements for Transfer/Processors.
- § 18815.6. Reporting Requirements for Disposal Facilities.
- § 18815.7. Reporting Requirements for Recycling and Composting Facilities and Operations.
- § 18815.8. Reporting Requirements for Brokers and Transporters.
- § 18815.9. Methods.
- § 18815.11. Record Retention Requirements for a Reporting Entity.
- § 18815.12. Confidentiality of Reports and Records and Record Review Requirements for a Reporting Entity.
- § 18815.13. Complaints Regarding Non-Compliance.

No Overlap with SB 54 Requirements

- § 18815.1. Scope and Purpose.
- § 18815.2. Definitions.
- § 18815.10. Procedure for Imposing Civil Liabilities.

Regulation Concept:

The regulation concept looked at the existing RDRS reporting system and regulations as a model and provided insight on the registration process, and what SB 54's alternative reporting system would potentially need. The proposed regulations on the registration and reporting requirements state:

- (a) An independent producer, producer, retailer, wholesaler and PRO operating on behalf of a producer, retailer or wholesaler, hereby known as reporting entity for this section, shall register with the department pursuant to 42051(c) and meet reporting requirements pursuant to Chapter 3, Part 3, Division 30 of the Public Resources Code.
- (b) The reporting entity shall file its primary business address with contact information for the primary and secondary contact with the department in a format determined by the department, by January 1, 2027, pursuant to PRC 42051(c).
 - (1) Contact information includes, but is not limited to, name, title, business name, mailing address, physical address, phone number, and email address.
- (c) A reporting entity who begins operation, or changes activities such that reporting is required, after January 1, 2027, shall register with the department within six (6) months of being subject to the reporting requirements per subsection (a) and begin reporting for the following reporting cycle.
- (d) Upon the date a producer, retailer, or wholesaler no longer participates in the PRO's approved plan, the PRO shall notify the department within 30 calendar days pursuant to Section PRC 42051(d), and either:
 - (1) Request that their reporting system registration status become permanently inactivated.
 - (2) Transfer their registration to the appropriate reporting entity identity as applicable.
- (e) Registered reporting entities whose activities have permanently changed such that they no longer meet the reporting requirements outlined in this section, they may request that the department permanently inactivate their reporting system registration.
 - (1) In that request, the reporting entity shall demonstrate to the department why they no longer should be registered. The burden of proof shall be on the reporting entity.
 - (2) The department shall act on a request within 60 days.
 - (3) A reporting entity shall continue to report until and unless the department permanently inactivates the reporting entity from the reporting system registration.
- (f) Registered reporting entities that are exempt from the registration and reporting requirements pursuant to PRC 42060(a)(5) may request that the department permanently inactive their reporting system pursuant to paragraph (1) through (3) of subsection (e) in this section.
- (g) Reporting entities shall commence filing reports using the department's reporting system on or before August 1, 2026, and on or before August 1 each year thereafter for the period covering the entire previous calendar year in a format and platform determined by the department.

- (h) A registered reporting entity shall file a report for each reporting period using the department's reporting system and ensure that the information they submit is accurate and complete.
 - (1) A reporting entity shall use information available at the time the report is due.
 - (2) If the reporting entity has not received the required information from a person, either directly or through the department's reporting system, then the reporting entity shall submit all available information in their report to the department and identify the reporting entities who have not provided them with the required information.
- (i) Each report to the department shall include:
 - (1) Updated contact information of the person submitting the report if different from subsection (b)
 - (2) Data as required per the Data Requirements of [DR Item #2]
 - (A) If a reporting entity identifies an error in a previously submitted report, then they shall notify the department within 30 calendar days pursuant to PRC 42051(d)(1) and correct the error, unless additional time is necessary to correct the error. In no case shall the corrections be delayed more than an additional 14 days, unless agreed to by the department.
 - (B) If the data is not complete, the department will act accordingly pursuant to PRC 42051.3(b)(1)
 - (C) If the department requests additional data, a producer or PRO shall respond within 14 calendar days to the request and the department will act accordingly pursuant to PRC 42052(c).
- (j) Reports shall be submitted in a frequency determined by department pursuant to subsection (c) and (d) of section [DR Item #2].
 - (1) If the report due date is a weekend or holiday, the reporting entity shall submit the report on the next business day.

Request:

CalRecycle is seeking feedback on the need for an alternative reporting system and the registration and reporting requirements. CalRecycle is also seeking feedback on whether the RDRS requirements specified above would overlap with SB 54 requirements or not.

Item 2: Recordkeeping and Data Requirements

Statute Sections: PRC 42051(b)(2)(B), PRC 42051.1(m), PRC 42051.3(a)(3), 42052(a), and 42057(c)

Please refer to Part I for an overview of data that is collected for the annual report.

Regulation Concept:

SB 54 outlines what types of data should be reported annually by the PRO, retailers, wholesalers, and independent producers. CalRecycle is also tasked to avoid and minimize negative environmental or public health impacts. These impacts can be quantified with additional data not specified in statute. CalRecycle would like to promulgate regulations to include additional data points, increase the reporting requirements, and specify a record retention policy.

Recordkeeping and Data Requirements:

- a. Independent producers, retailers, and wholesalers, or a PRO operating on behalf of a producer, retailer, or wholesaler, shall keep the following records:
 1. Data as specified in PRC 42051(b)(2)(B), 42051.1(m), 42051.3(a)(3), 42052(a), and 42057(c)
 2. In addition to the amount and type of covered materials collected as stated in PRC 42052(a)(3), the covered material category shall be included.
 3. Amount of material accepted at a responsible end market (workshopped in June as a 'defined stream.')
 4. Amount of raw material to determine amount reclaimed (workshopped in June.)
 5. Amount of material disposed at a responsible end market.
 6. Amount of material sent to a facility that is not a responsible end market.
 7. Complaints received by the PRO from producers, responsible end markets, local jurisdictions, advisory board and interested parties.
 - A. Complaint records shall include name, address, location, and description of complaint unless complaint was made anonymously.
 - B. Complaint records shall include how the PRO processed, addressed or resolved the complaint.
- b. A reporting entity shall maintain the documentation described in this section in a usable format, either electronically or on paper.
- c. Data as listed in subsection (a) shall be submitted to the department annually on or before August 1, 2026, and on or before August 1 each year thereafter for the period covering the entire previous calendar year in a format and platform determined by the department.
 1. Whenever there is a plan update or an amendment to the plan, data as required by this section shall be submitted to the department.
- d. Data as listed in paragraph (3) through (6) of subsection (a) in this section shall be reported to the department quarterly in a format and platform determined by the department.
- e. All records required by this article shall be kept in one location and accessible for three (3) years and shall be made available for inspection by the department during normal hours.
- f. The independent producer, or a producer, retailer, wholesaler or a PRO operating on behalf of a producer, retailer, or wholesalers shall submit copies of

specified records to the department upon request or at a frequency approved by the department.

Request:

CalRecycle would like feedback on the recordkeeping and reporting requirements for producers, independent producers, retailers, wholesalers, and the PRO.

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, 2021 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*