

SB 54 Informal Rulemaking Workshop: July 2023 Workshop Discussion Document

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: Definition of “Producer”

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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 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 regarding the definition of *Producer*. This workshop is split into two parts:

- **PD Part 1** will be an overview of the statutory definition of “producer.”
- **PD Part 2** will discuss a regulation concept to further clarify the definition of “producer” in regulations.

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

Relevant Statutory Definitions

Listed below are the existing statutory definitions relevant to this rulemaking workshop topic. CalRecycle may further refine these definitions in regulations.

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.

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 regulations to implement, interpret, or make specific provisions of SB 54 necessary for the Department's implementation of statute.

CalRecycle would like to solicit initial feedback from interested parties on regulatory concepts pertaining to PRO fee. The regulation concepts discussed in this workshop include:

- PD Item 1 – Definition of “Person.”
- PD Item 2 – Definition of “Product.”
- PD Item 3 – Definition of “uses covered material.”
- PD Item 4 – Definition of terms related to “brand” or “trademark.”
- PD Item 5 – Definition of “in the state.”

CalRecycle welcomes written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 8.

PD Item 1: Definition of “Person.”

The definition of producer uses the term “person.” CalRecycle is seeking to define the term “person” and is deriving it from the definition of person in PRC 40170.

Proposed Definition

“Person” means an individual, firm, limited liability company, association, partnership, public or private corporation, or any other non-governmental legal entity and, for purposes of whether a person other than a natural person is in the state pursuant to PRC § 42041(w), any entity owning, directly or indirectly, a majority or controlling interest in such entity.

Request:

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

PD Item 2: Definition of “Product.”

The definition of producer uses the term “product.” CalRecycle is seeking to define the term “product.”

Proposed Definition

“Product” means a physical good and all packaging associated with said good for any of the purposes stated in § 42041(s). For purposes of determining whether a particular person is the producer pursuant to § 42041(w)(3) of covered material used by a product, what constitutes the product shall be evaluated as of the time the person sells, offers for sale, or distributes the product.

Request:

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

PD Item 3: Definition of “uses covered material.”

The definition of producer uses the phrase “uses covered material.” CalRecycle is seeking to clarify the phrase.

Proposed Definition

“Uses covered material” and “using covered material” means is covered material or is wholly or partially composed of covered material.

Request:

CalRecycle is seeking feedback on the proposed definition of the phrase “uses covered material.”

PD Item 4: Definition of terms related to “brand” or “trademark.”

The definition of producer uses the terms “brand” and “trademark.” Furthermore, the definition uses terms like “use a trademark or brand.” CalRecycle is seeking to clarify this terminology.

Part I: Proposed Definition of “Brand” or “Trademark”

“Brand” or “trademark” means a trademark or service mark, as those terms are defined in California Business and Professions Code § 14202(a) and (b).

Informational Item

BPC 14202

(a) “Trademark” means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) "Service mark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of that person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

Part II: Proposed definition of "use" or "used" with respect to trademark or service mark.

"Use" or "used" means, with respect to a trademark or service mark, use of a trademark or service mark on goods or services as described in California Business and Professions Code § 14202(h). For purposes of § 42041(w)(1) and (w)(2), commercial activity involving goods and services is deemed under a brand or trademark when the brand or trademark is used on such goods and services.

Informational Item

BPC 14202(h)

"Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use if it is used on either of the following:

- (1) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes that placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state.
- (2) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

Part III: Proposed definition of "used in a commercial enterprise" with respect to products.

"Used in a commercial enterprise" means, with respect to a physical good, directly associated with commercial activity, regardless of whether any brand or trademark is used (as defined in this section) on the physical good itself."

Request:

CalRecycle is seeking feedback on the proposed definitions.

PD Item 5: Definition of “in the state.”

SB 54 uses the term “in the state.” CalRecycle is seeking clarify the phrase.

Proposed Definition

“In the state,” as that term is used in PRC §§ 42040 – 42084 with respect to a person, means that service of process, excluding service by publication and any other manner of service requiring a court order, on the person may be completed in the state or in any other state pursuant to the Code of Civil Procedure sections 413.10 – 417.40 (Article 1 of Chapter 4 of Title 5 of Part 2 of the CCP) or California Corporations Code § 2110 and the person is subject to jurisdiction of California courts pursuant to CCP § 410.10 based on the manufacture, sale, offer of sale, or distribution in the state of products using covered material.

Request:

CalRecycle is seeking feedback on the proposed definition of the phrase “in the state.”

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 2023 Workshop to be submitted no later than **August 08, 2023**. Preferred formats include e-mail, Word document, or PDF.

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., REM Item 1, REM Item 2], including the specific title, (2) feedback or questions related to that regulation concept. For example, when providing feedback on *REM Item 2 – Definition of “viable,”* the preferred format would be:

REM Item 2 – Definition of “viable”:
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*