

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: Recycling Rate Determination

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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 *Recycling Rate*. This workshop is split into two parts:

- **RRD Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **RRD 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 in the workshop and the type of feedback CalRecycle plans on soliciting in advance of the workshop. All requests for feedback or informational items to share with 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 marked with (*) are 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*.

Part I. Background and Informational Items

Abbreviations and Acronym List

- CalRecycle: California Department of Resources Recycling and Recovery
- Department: California Department of Resources Recycling and Recovery
- CCR: California Code of Regulations (California Regulations)
- MCS: Material Characterization Study
- PRO: Producer Responsibility Organization
- PRC: Public Resources Code (California Statute)
- RR: Recycling Rate

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.

Recycle – PRC 42041(aa)

- (1) “Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.
- (2) “Recycle” or “recycling” does not include any of the following:
 - (A) Combustion.
 - (B) Incineration.
 - (C) Energy generation.
 - (D) Fuel production, except for anaerobic digestion of source separated organic materials.
 - (E) Other forms of disposal.
- (3) To be considered recycled, covered material shall be sent to a responsible end market.
- (4)
 - (A) The department may adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements, and contamination standards, or to otherwise implement this paragraph.
 - (B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:
 - (i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.
 - (ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.
 - (C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.
 - (D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.
- (5) The department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental

impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

Recycling rate – PRC 42041(ab)

“Recycling rate” means the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192, and the amount of covered material recycled, unless and until the department adopts a new methodology for calculating the recycling rate by regulation.

Overview of Recycling Rate

PRC 42050(c) requires that all plastic covered material achieves a 30 percent recycling rate by 2028, a 40 percent recycling rate by 2030, and a 65 percent recycling rate by 2032. PRC 42061(b) requires CalRecycle to calculate and publish recycling rates being achieved in the state for each covered material category by January 1, 2026, and PRC 42061(f) requires updates to the achieved recycling rates at least every two years.

Additionally, PRC 42057(i) prohibits producers from selling, offering for sale, or distributing expanded polystyrene food service ware unless the producer demonstrates to the department that all expanded polystyrene meets specific recycling rates set in statute.

Summary of Recycling Rate – CalRecycle Responsibilities

- PRC 42060(a)(8) – CalRecycle is required to develop a methodology and procedure for determining, to the extent feasible, an annual recycling rate as defined in subdivision (ab) of Section 42041.
- PRC 42061(b) – By January 1, 2026, CalRecycle shall calculate and publish the current recycling rates achieved in the state for each covered material category.
- PRC 42061(f)(1) – CalRecycle shall determine a process to update the achieved recycling rates that were published according to 42061(b). CalRecycle shall update these achieved recycling rates at least every two years.
- PRC 42062(c) – CalRecycle shall publish whether the achieved recycling rate of each covered material category complies with the rates of PRC 42050(c).
- PRC 42061(a)(2) through (a)(5) – CalRecycle shall conduct and publish a characterization study of covered material categories disposed of in California landfills. The first study, to be completed by July 1, 2025, will determine the approximate amount of covered material disposed of in landfills. CalRecycle shall update the characterization study in 2028, 2030, 2032, and at least every four years thereafter. At any time, CalRecycle may publish additional information regarding characterization of covered materials that was not available at the time of the most recent characterization study.

Summary of Recycling Rate – Producer & PRO Responsibilities

- PRC 42050(c) – Requires that all plastic covered material must achieve the following recycling rates:
 - Not less than 30% on and after January 1, 2028.
 - Not less than 40% on and after January 1, 2030.
 - Not less than 65% on and after January 1, 2032.
- PRC 42057(i) – A producer shall not sell, offer for sale, distribute, or import in or into California expanded polystyrene food service ware unless the producer demonstrates to the department that the polystyrene meets the following recycling rates:
 - Not less than 25% on and after January 1, 2025.
 - Not less than 30% on and after January 1, 2028.
 - Not less than 50% on and after January 1, 2030.
 - Not less than 65% on and after January 1, 2032, and annually thereafter.
- PRC 42083 – A producer may sale, sell, distribute, or import covered material in a covered material category that does not meet the recycling rates established in subdivision (c) of Section 42050 if they can demonstrate to the department that they achieved the applicable rate proportionate to their market share in the state.
- PRC 42051.3(a)(3)(D)(iv) – A producer shall submit an annual report to the department that includes, among other information, current recycling rates.
- PRC 42052(a) – Within a system established by the department, a producer shall submit various information, including:
 - (1) the weight and number by covered material category of plastic items manufactured, sold, distributed, or imported in or into the state
 - (2) the weight and number by covered material category of plastic items recycled
 - (4) any additional information the department deems necessary to collect and report data pursuant to PRC 42060(a).

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 recycling rate. The regulation concepts discussed in this workshop include:

- RR Item 1 – Definition of “Recycling Rate”
- RR Item 2 – Definition of “Generation”
- RR Item 3 – Methodology for Recycling Rate Determinations

- RR Item 4 – Process for Recycling Rate Determinations and Updates
- RR Item 5 – Recycling Rates for New Covered Material Categories

CalRecycle welcomes written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 11.

RR Item 1: Definition of “Recycling Rate”

Statute Sections: PRC 42041(ab)

Please see Part I for the statutory definition of Recycling Rate – PRC 42041(ab).

Regulation Concept:

PRC 42041(ab) defines the recycling rate as the amount of material recycled divided by the total amount of material recycled and disposed unless and until the department adopts a new methodology.

CalRecycle proposes to calculate recycling rate as recycling divided by generation.

Proposed definition:

“Recycling rate” means the percentage, overall and by category, of covered material that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material generated in a given year.

Request:

CalRecycle is seeking feedback on the proposed definition of recycling rate.

RR Item 2: Definition of “Generation”

Statute Sections: PRC 42041(ab)

Please see Part I for the statutory definition of Recycling Rate – PRC 42041(ab).

Regulation Concept:

SB 54 requires CalRecycle to calculate the recycling rate of covered materials. PRC 42041(ab) defines the recycling rate as the amount of material recycled divided by the total amount of material recycled and disposed. In the definition of recycling rate section, CalRecycle proposed to define recycling rate as the amount of material recycled divided by the amount of material generated. CalRecycle therefore proposes to define the term generated or generation.

Proposed definition:

“Generation” or “generated” means, for the purposes of this chapter, the total amount of covered material that is manufactured, sold, distributed, or imported in or into the state.

Request:

CalRecycle is seeking feedback on the proposed definition of generation.

RR Item 3 – Methodology for Recycling Rate Determinations

Statute Sections: PRC 42041(ab), PRC 42060(a)(8), PRC 42061(b), PRC 42051.3(a)(3)(D)(iv)

Please see Part I for the definition of Recycling Rate (PRC 42041(ab)).

PRC 42060(a)

(8) The department shall establish a methodology and process to calculate, to the extent feasible, an annual recycling rate defined by subdivision (ab) of Section 42041.

PRC 42061(b)

(1) By January 1, 2026, the department shall calculate and publish on its internet website the current recycling rates being achieved in the state for each covered material category. These recycling rates shall be deemed to meet the description in subdivision (g) of Section 11340.9 of the Government Code and may be filed by the Office of Administrative Law, at the request of the department, pursuant to Section 11343.8 of the Government Code.

(2) In determining a recycling rate, the department may consider data gathered pursuant to any of the following, including any amendments thereto:

- (A) Chapter 746 of the Statutes of 2015.
- (B) Chapter 6 (commencing with Section 42370).
- (C) Chapter 395 of the Statutes of 2016.
- (D) Chapter 5.5 (commencing with Section 42300).
- (E) Division 12.1 (commencing with Section 14500).
- (F) Chapter 5.7. (commencing with Section 42355).
- (G) Data voluntarily provided by local jurisdictions.
- (H) Data and information received from producers.
- (I) Any other relevant data and information received by the department.

PRC 42051.3(a)(3)(D)(iv)

(D) The annual report shall include all of the following:

- (iv) Current recycling rates and progress made in meeting recycling rates and any investments made to achieve recycling rate requirements.

Regulation Concept:

CalRecycle is required to establish a methodology and calculate the recycling rate of covered material categories by January 1, 2026 and at least every two years thereafter. When calculating recycling rate, CalRecycle proposes the following methodology:

- CalRecycle will use the best available information to assess recycling and generation. Anticipated sources of data include, but are not limited to:
 - Data from material characterization studies of disposal facilities – PRC 42061(a)(2) through (a)(5)
 - Data from PRO regarding recycling and generation of covered materials – PRC 42052
 - Data reported by facilities within the Recycling and Disposal Reporting System – CCR 18815.1 through 18815.13

- Data provided by jurisdictions, producers, or other parties
- Data from other sources that CalRecycle deems relevant.
- CalRecycle will use data from the most recent calendar year for which data are available.
- When assessing recycling for the purposes of the recycling rate, CalRecycle proposes to consider materials as recycled after they have been processed or remanufactured into new material or products by a responsible end market.
- When calculating recycling rate, the amount of covered material will be estimated in mass. Thus, recycling rate will refer to the mass of recycled material divided by the mass of generation.
- When a PRO calculates the recycling rate that it reports to CalRecycle pursuant to PRC 42051.3(a)(3)(D)(iv), the PRO must use the same methodology as CalRecycle, or another methodology that CalRecycle approves. If the latter, CalRecycle proposes to require the PRO to provide the inputs and assumptions used in the calculation.

Request:

CalRecycle is seeking feedback on the proposed methodology for calculating the recycling rate.

RR Item 4: Process for Recycling Rate Determinations and Updates

Statute Sections: PRC 42061(f)

PRC 42061(f)

- (1) The department shall determine a process for updating the rates published pursuant to subdivision (c) of Section 42060. The department shall update the list at least every two years and shall regularly, but no less than once every two years, evaluate the list of rates to determine whether the rates are still accurate. After evaluation, the department may amend the list to remove, add, or change rates. The department shall post any updates to the list on its internet website.
- (2) A producer may demonstrate compliance with the rates in subdivision (c) of Section 42050 by submitting to the department evidence that the particular type of covered material meets the applicable recycling rate by reference to a recycling rate on the department's list or through another mechanism approved by the department.
- (3) A producer that seeks to have a rate included or changed on the list, or a covered material category added to the list, may be required by the department to submit data for purposes of the department's determination of the rate to include on the list or the appropriateness of adding the category.
- (4) Publication of and updates made to the list pursuant to this subdivision are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Regulation Concept:

This regulation concept establishes the procedures and obligations for the periodic update of achieved recycling rates for covered materials. The department shall update the achieved recycling rates at least once every two years. The proposed concept is:

The department will obtain and analyze updated data prior updating the recycling rates.

- Anticipated sources of data include, but not limited to:
 - Data from material characterization studies of disposal facilities – PRC 42061(a)(2) through (a)(5)
 - Data from PRO regarding recycling and generation of covered materials – PRC 42052
 - Data reported by facilities within the Recycling and Disposal Reporting System – CCR 18815.1 through 18815.13
 - Data provided by jurisdictions, producers, or other parties
 - Data from other sources that CalRecycle deems relevant.
- Regulations for periodic update of achieved recycling rates will be subject to the similar regulations established for the methodology for recycling rate determinations and shall be updated with regards to the data from the most recent calendar year for which data are available.
- Additionally, the department holds the authority to amend the recycling rates based on amendments to the covered material category list.
- The finalized achieved rates shall be published in a timely manner on the department's official website.

Request:

CalRecycle is seeking feedback on the proposed concept for updating recycling rates.

RR Item 5: Recycling Rates for New Covered Material Categories

Statute Sections: PRC 42061(f)(3)

PRC 42061(f)(3)

A producer that seeks to have a rate included or changed on the list, or a covered material category added to the list, may be required by the department to submit data for purposes of the department's determination of the rate to include on the list or the appropriateness of adding the category.

Regulation Concept:

This regulatory concept outlines the procedure for determining the recycling rate in response to the creation of a new covered material category.

- After a covered material category is updated or removed from the list, the department and PRO will update any required reporting or data collection efforts to reflect the updated list.

- When CalRecycle obtains the most recent calendar year of data after the new covered material category is added, the department shall estimate the recycling rates for new covered material categories.
- Anticipated sources of data include, but not limited to:
 - Data from material characterization studies of disposal facilities – PRC 42061(a)(2) through (a)(5)
 - Data from PRO regarding recycling and generation of covered materials – PRC 42052
 - Data reported by facilities within the Recycling and Disposal Reporting System – CCR 18815.1 through 18815.13
 - Data provided by jurisdictions, producers, or other parties
 - Data from other sources that CalRecycle deems relevant.
- Establishment of new recycling rates are subject to the same requirements as update of recycling rates.
- The finalized rates shall be published in a timely manner on the department's official website.

Request:

CalRecycle is seeking feedback on the proposed concept for determination of recycling rates of a new covered material category.

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 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*