

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: Producer Responsibility Plan

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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 the *Producer Responsibility Plan*. This workshop is split into two parts:

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

One of the topics of this workshop will be the Producer Responsibility Plan. Some of this topic was covered in previous workshops. For background information on this topic, please refer to the following discussion documents from previous workshops:

- [Discussion document pertaining to the Producer Responsibility Organization](#)
- [Discussion document pertaining to Independent Producers](#)

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)

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 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. Producer

Producer Responsibility Plan or Plan – PRC 42041(y)

"Producer responsibility plan" or "plan," unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1

Part II. Workshop of Regulation Concept

Regulation Concept:

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 the producer responsibility plan. The regulation concept discussed in this workshop includes:

- PRP Item 1 – Producer Responsibility Plan Implementation

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

PRP Item 1 – Producer Responsibility Plan Implementation

Relevant Sections: 42041(y), 42051.1

CalRecycle proposes to promulgate regulations to specify what information is required in a producer responsibility plan, building off of requirements specified in PRC 42051.1. This concept intends to provide the full list of components required in a producer responsibility plan, but also includes concepts developed in the March SB 54 workshop. The concepts from the March workshop have been included in this concept along with revisions based on feedback received. CalRecycle is seeking feedback on this entire concept as a whole, which identifies the current requirements for a producer responsibility plan, including specific requirements for the PRO and IP's.

Section 1 – Producer Responsibility Plan Implementation:

A PRO or Independent Producer shall develop a producer responsibility plan that includes the following:

- (a) A source reduction plan required pursuant to Section 42057.
 - (1) For any covered material that is not reasonably anticipated to achieve the requirements of this chapter, the PRO shall include in the plan a timeline and actions to discontinue use of the covered material category.
- (b) Technologies and means that will be utilized to achieve recycling requirements. The plan shall include but not limited to the following:
 - (1) How it is used.
 - (2) The covered materials recycled by the technology.
 - (3) The level of contamination the technology is able to tolerate.
 - (4) The list of overall inputs, including chemicals used (if applicable)
 - (5) The end products, including the amount of by-products, or residuals produced by the technology, and the destination of those products (i.e., further processing, landfill disposal).
 - (6) Current operational status, including location of proposed and current sites.
 - (7) Potential environmental impacts to disadvantaged, low-income or rural communities.
 - (8) How efficient the technology is in achieving recycling rates.
 - (9) Information on financial viability and capacity.
 - (10) Cost effectiveness.
 - (11) Operational and performance history, including violations or other forms of enforcement action taken against it.
 - (12) Demonstration that the means and technologies meet the conditions specified in the definition of “recycle” or “recycling” pursuant to PRC Section 42041(aa).

- (13) Any other information requested by the Department.
- (c) Objective and measurable criteria whenever possible. The plan shall describe the following:
- (1) How the requirements of this chapter will be met, including but not limited to:
 - (A) How it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050 based on the needs assessments.
 - (2) How the PRO or Independent Producer will support and achieve, and how the budget will fund, the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered materials to meet the requirements of this chapter, including but not limited to:
 - (A) Actions necessary to sort, segregate, break or flake, and process material to specifications for sale to a responsible end market.
 - (B) For purposes of this paragraph, "specifications" means the third-party purchasing specifications issued by a buyer or buyers of recycled materials for reprocessing into a new product.
 - (3) How the plan is supplemental to, and not in conflict with, disruptive of, or adversely affecting, the performance of the solid waste network providing services in accordance with local solid waste handling requirements and the intent described in PRC Section 40004.
 - (4) How the PRO or Independent Producer will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure.
 - (5) Except as specified in subdivisions (b), (c), (d), and (e) of PRC Section 42060.5, how the plan will be implemented in a manner utilizing solid waste collection programs and solid waste facilities as the designated system for the curbside collection and processing of covered material.
 - (6) In accordance with Section 40059, how the plan and the activities undertaken pursuant to the plan will be implemented in compliance with state and local laws, rules, and regulations applicable to solid waste handling and in a manner that does not violate existing franchise agreements.
 - (7) How covered material will be collected, processed, and managed, and recycled, remanufactured, or composted, consistent with the goals, standards, and practices required by this chapter, including ensuring covered material collected for recycling will be transferred to viable responsible end markets for processing into new packaging or products, including, but not limited to, how the plan will enhance or expand viable responsible end markets in California including manufacturing.
 - (8) Arrangements with processors or recyclers to ensure that covered materials that are not collected through a curbside collection program are collected and recycled at a viable responsible end market, including any

- investment that will be made to cover the cost of the covered material being processed or recycled by processors or recyclers.
- (9) Arrangements to establish and fund reuse or refill infrastructure, fund facility retrofits, or other needed infrastructure to eliminate plastic covered material, shift covered material from plastic to a nonplastic covered material category, or any other actions taken, or that will be taken, to implement the source reduction requirements pursuant to PRC Section 42057.
 - (10) How postconsumer recycled content will be incorporated into covered material, including the amounts of postconsumer recycled content.
 - (11) How the plan will be implemented in a manner consistent with the waste hierarchy established in Section 40051.
- (d) Efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems. The PRO or Independent Producer shall ensure coordination between these efforts and existing educational and promotional efforts. These may include, but are not limited to, all of the following:
- (1) Education and engagement to reduce the rate of inbound contamination or unwanted materials.
 - (2) Outreach to obtain consistently high levels of public participation in and use of collection services and reuse and refill systems.
 - (3) Education and engagement with residents on proper recycling, composting, and reuse and refill behaviors.
 - (4) Support for increased statewide and local outreach needed to achieve the plan's goals.
 - (5) Establishment of an internet website designed with functionality for mobile platforms, provided with language options suited to local demographics, consistent with section 7295 of the Government Code, and maintained to ensure all information is up to date and accurate. The internet website's digital content and navigability must be accessible to disabled individuals. The internet website shall include, but is not limited to, the following:
 - (A) Information of how covered material, by covered material category, should be recycled or composted within a person's local jurisdiction.
 - (B) List of authorized entities who collect covered material.
 - (6) The program should lead to ultimate consumer awareness and accessibility. The program should educate and encourage consumers to reduce waste and proper sortation of covered materials when recycling, composting, or disposing.
 - (7) Conduct activities and produce materials to promote awareness and maximize ultimate participation in the program, including, but not limited to, provision of educational and outreach materials for consumers; materials should be accessible in languages suited to local demographics, consistent with Section 7295 of the Government Code.
 - (8) Whenever possible, ensure that all materials produced are in compliance with Section 7405 of the Government Code and the Web Content

Accessibility Guidelines 2.0 published in 2008 by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria to allow for posting on the department's website.

- (9) How the performance of the education and outreach program is being measured, which shall include but not be limited to, metrics to evaluate performance of the comprehensive education and outreach program, including, ultimate user awareness, program usage, and accessibility
 - (10) To the extent possible, develop materials in collaboration with other entities including but not limited to, local jurisdictions, and trade associations
- (e) A process for determining and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter. Payment of these costs shall be reflected in the budget pursuant to subdivision (j).
- (1) The plan shall include a process to resolve disputes for determining and paying the reasonable costs pursuant to paragraph (1) that arise between the PRO and a local jurisdiction or a recycling service provider. This process shall be reviewed by the advisory board to ensure the PRO or Independent Producer covers costs related to this chapter and shall become effective upon plan approval by the department.
- (f) Source reduction data specified in subdivision (c) of Section 42057.
- (g) Consideration of the needs assessment and any recommended investments to meet the needs identified in the needs assessments and inform the budget.
- (1) The budget shall not propose investing in activities in violation of Section 40004 or an agreement entered into pursuant to PRC Section 40059 and shall include a mechanism to disburse funds for identified activities.
 - (2) The budget may include, but shall not be limited to, elements that will accomplish all of the following:
 - (A) Expanding access to or improvement of curbside collection services wherever feasible.
 - (B) Expanding access to drop-off recycling services or other mechanisms where curbside collection services are not feasible, or as necessary in order to supplement curbside collection services to achieve the requirements of this chapter.
 - (C) Expanding access to collection services in public spaces.
 - (D) Providing or facilitating deployment of innovative enhanced collection, composting, and recycling systems and innovative recycling systems within a recycling center or MRF that utilizes advanced technology, such as artificial intelligence and robotics, to improve the identification and sorting of covered materials, where feasible.
 - (E) Creation of on-premises access to recycling or composting services for multifamily residences.

- (F) Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.
 - (G) Enhancing existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.
 - (H) Infrastructure or other mechanisms needed to implement a source reduction plan, including, but not limited to, investments in reuse, refill, and composting infrastructure.
 - (I) Infrastructure or other activities needed to achieve recycling rates for all covered material under the plan and ensure covered material is recyclable or compostable.
- (3) In developing the budget, the PRO or Independent Producer may delineate investments the PRO or Independent Producer will make based on covered material categories.
- (h) The plan shall include a budget designed to fully fund the costs necessary to implement this chapter.
- (1) The budget shall include, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:
- (A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.
 - (B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

- (C) Reimbursing costs incurred by department and the California Department of Tax and Fee Administration.
 - (D) Administering the PRO or Independent Producer.
 - (E) Environmental mitigation activities associated with Section 42064.
 - (F) Investments to develop and sustain viable responsible end markets for each covered material category.
 - (G) Other investments necessary to implement the plan and achieve the source reduction, recyclability and compostability, recycling rate, and other requirements of this chapter, including, but not limited to, ensuring that plan implementation avoids and minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas.
 - (H) If reasonable and able to be discretely directed, funding derived from a material type may be spent on investments needed for that specific material type.
- (2) A producer, or PRO or Independent Producer shall not expend revenue collected for implementation of the plan for any of the following purposes:
- (A) To pay an administrative civil penalty pursuant to Section 42081.
 - (B) To pay costs associated with litigation between the producer or organization and the state.
 - (C) To compensate a person whose position is primarily representing the PRO, or Independent Producer relative to the passage, defeat, approval, or modification of legislation that is being considered by a local, state, or federal government body, nor shall the PRO or Independent Producer use or permit the use of these funds for paid advertisement 30 calendar days prior to or during a legislative session for the purposes of encouraging the passage, defeat, approval, or modification of legislation that is being considered, or was considered during the previous legislative session.
 - (D) To subsidize, incentivize, or otherwise support incineration, engineered municipal solid waste conversion, the production of energy or fuels, except for fuels produced using anaerobic digestion of source separated organic materials, or other disposal activities.
- (3) A PRO or Independent Producer shall not maintain total program reserves exceeding 60 percent of its annual operating expenses, consistent with the requirements of the Financial Accounting Standards Board's Accounting Standards Update 2016-14, Not-for-Profit Entities (Topic 958), and any future updates to that standard.
- (A) The department, in approving the annual budget, may authorize the total reserves to be increased to up to 75 percent of the PRO's or Independent Producer's annual operating expenses if

the department determines the increase is necessary to implement the requirements of this chapter.

- (B) If a PRO's or Independent Producer's reserves exceed the amount specified in subparagraph (A) or (B), the department may require the PRO or a participant producer, or an Independent Producer to increase spending on implementing the requirements of this chapter.
- (i) Consistent with subdivision (l), the PRO, or a participant producer of the PRO, or an Independent Producer may rely on a range of means to collect and recycle or compost various categories of covered materials that are not collected and recycled or composted through a curbside collection program, including, but not limited to, dropoff recycling services and retailer take-back.
- (j) Curbside recycling and composting collection for covered materials under any of the following circumstances:
 - (1) The category of covered materials can be made suitable for curbside collection and can be effectively sorted by the facilities receiving the curbside collected material for recycling or composting.
 - (2) The recycling facility providing processing and sorting service, in consultation with the local jurisdiction, agrees to include the category of covered materials as an accepted material for recycling or composting and agrees to collect and sort the material in a manner that achieves the quality necessary for recycling and remanufacturing or composting.
 - (3) The provider of the curbside collection and recycling or composting service agrees to the costs arrangement.
 - (4) Additionally, for the PRO:
 - (A) If a MRF chooses to send material to another sorting facility for additional sorting and recycling of covered materials, the PRO shall provide the initial MRF a rebate based on criteria the PRO shall develop to cover transportation costs of the covered materials provided the covered material is free of toxic or hazardous materials.
- (k) The PRO or Independent Producer shall ensure that the plan implementation avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas and vulnerable communities outside the state.
- (l) Identify all responsible end markets covered material is sent, and for each responsible end market, provide information including but not limited to:
 - (1) Name of entity.
 - (2) Address of entity.
 - (3) Name of a representative of the entity.
 - (4) Contact information of the representative.
 - (5) Description of the entity, including the type of business the entity is.

- (6) List of local, state, and federal laws and international treaties that apply to the entity.
- (7) List of permits, licenses, or other clearances held by the entity.
- (8) Description of how this entity meets the criteria for being deemed a Responsible End Market pursuant to this chapter.
- (9) A summary of any violations or enforcement history the entity has had in the past five years prior to the submission of the plan.
- (10) For the PRO:
 - (A) The list of producers registered with the PRO that are sending covered material to this responsible end market.

Section 2 – Producer Responsibility Plan Requirements specific to the PRO:

The PRO shall in addition to the requirements specified in Section 1, include in their Producer Responsibility Plan the following:

- (a) Actions and investments that the PRO will implement in order to meet the requirements of this chapter and address the needs and investments identified in the needs assessment.
- (b) A fee for participants of the PRO consistent with the provisions of Section 42053, set forth the calculation of the fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO's approved plan. This shall include but not be limited to:
 - (1) A description of the fee structure and a schedule of the fees actually charged to producers who are participants of a PRO's approved plan.
 - (2) A fee schedule for each producer and shall annually charge each producer the total amount identified in the fee schedule once the plan is approved.
 - The fee schedule shall include:
 - (A) The base fee for the producer, as described in subdivision (c).
 - (B) Any additional malus fees charged to the producer.
 - (C) Any credits awarded to the producer.
 - (D) The producer's contribution to covering the administrative costs of the PRO.
 - (E) The producer's contribution to reimburse the department.
 - (F) The producer's contribution towards reimbursing costs to department incurred through administering the advisory board.
 - (G) The producer's contribution to the California Plastic Pollution Mitigation Fund, pertaining to Section 42064 of the Public Resources Code.
 - (H) Any other costs identified in the PRO's budget.
- (c) A closure or transfer plan to settle the affairs of the PRO that ensures that producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of dissolution of the organization, or revocation of a plan by the department.

- (1) The plan shall describe a process for notifying the department, the advisory board, local jurisdictions, and any contractors or other impacted entities of the dissolution or plan revocation.
 - (2) The closure or transfer plan shall provide for sufficient reserve funds in the trust fund or escrow account established pursuant to Section 42056 to allow the PRO to satisfy all obligations in the event of dissolution of the PRO until the participants of the PRO's approved plan have become a participant of a different PRO's approved plan.
- (b) Specific measures to ensure that producers participating in the plan comply with the requirements of the plan and this chapter. Those measures shall include, at a minimum, all of the following elements:
- (1) Adequate incentives for compliance, including, but not limited to, fees for failing to provide accurate and timely information required to be provided to the PRO or otherwise materially violating requirements of the plan or this chapter. Notwithstanding the PRO's assessment of a fee, the department may take enforcement action pursuant to Article 5 (commencing with Section 42080) against individual producers or the PRO in violation of this chapter.
 - (2) Protocols to ensure that the PRO becomes aware, within a reasonable time, of producers' violations of the requirements of the plan or this chapter.
 - (3) Criteria for determining when a producer's performance merits terminating the producer's participation in the PRO's plan, and a process for making that determination.
 - (4) 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 this chapter for at least the previous three years. Those protocols shall ensure that all records remain reasonably accessible by the department upon request.
 - (5) The plan shall include the specific data information required under subdivision (c) of Section 42057.

Section 3 – Producer Responsibility Plan Requirements specific to Independent Producers:

An Independent Producer shall in addition to the requirements specified in Section 1, include in their Producer Responsibility Plan the following:

- (a) A source reduction plan that meets all of the applicable requirements of a PRO source reduction plan prepared in accordance with subdivision (d) of Section 42057, including, but not limited to, the review, update, and approval process.
- (b) How the Independent Producer will fully cover the costs associated with implementing this chapter to the same extent as any other producer participating in a PRO based on the producer's share of covered material.

Request for Feedback:

CalRecycle is seeking feedback on the proposed regulatory concepts pertaining to the Producer Responsibility Plan, including the overall plan requirements, requirements specific to the PRO and Independent Producers.

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*