

# **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: Reusable and Refillable**

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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 3:00PM, 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 *Reusable/Refillable*. This workshop is split into two parts:

- **R&R Part 1** will be an informational session, providing background information on the requirements discussed in this document.
- **R&R Part 2** will discuss several regulation concepts to solicit feedback to help prepare for the draft regulatory text.

The purpose of this document is to provide interested parties with an overall outline of what is going to be discussed and the type of feedback CalRecycle plans on soliciting in advance of the workshop. All requests for feedback or informational items will be specified in a gray textbox.

This document and corresponding workshop will not address the following topics:

- Recyclability (6/28/2023 workshop)
- Compostability (6/28/2023 workshop)
- Responsible End Markets (5/31/2023 workshop)
- Covered Material Category Determination\* (4/25/2023 and 6/28/2023 workshop)
- Source Reduction (5/31/2023 workshop)
- PRO Plan (3/29/2023 workshop)
- Budgets (3/29/2023 workshop)
- Document submittals (3/29/2023 workshop)
- Annual reports (4/25/2023 workshop)

The topics above were topics that were covered in previous workshops. Others will be addressed at a subsequent workshop. Workshop information can be found on the SB 54 [webpage](#) under *Events*. For other topics being discussed at the July workshop, please refer to the corresponding discussion document for that topic.

## **Part I. Background and Informational Items**

The terms “reuse” and “refill” were mentioned during the May 31, 2023 workshop under the requirements of SB 54’s source reduction goals. This section revisits those goals with a focus on reuse and refill.

### **Abbreviations and Acronym List**

- CalRecycle: California Department of Resources Recycling and Recovery
- Department: California Department of Resources Recycling and Recovery
- PRO: Producer Responsibility Organization
- PRC: Public Resources Code (California Statute)
- CCR: California Code of Regulations (California Regulations)

## Relevant Definitions

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

### *Covered material – PRC 42041(e)*

(1) “Covered material” means both of the following:

(A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.

(B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, “single-use food service ware” includes both of the following:

(i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.

(ii) Wraps or wrappers and bags sold to food service establishments.

(2) Notwithstanding paragraph (1), “covered material” does not include any of the following:

(A) Packaging used for any of the following products:

(i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).

(ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

(iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer,

chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the department.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(D) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with products covered under the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7.

(H)

(i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

*Covered material category – PRC 42041(f)*

“Covered material category” means a category that includes covered material of a similar type and form, as determined by the department.

*Packaging – PRC 42041(s)*

“Packaging” means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. “Packaging” includes, but is not limited to, all of the following:

- (1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.
- (2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.
- (3) Transport packaging or tertiary packaging intended to protect the product during transport.
- (4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:
  - (A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.
  - (B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.

*Reusable or refillable or reuse or refill – PRC 42041(af)*

“Reusable” or “refillable” or “reuse” or “refill,” in regard to packaging or food service ware, means either of the following:

- (1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain.
  - (B) Designed for durability to function properly in its original condition for multiple uses.
  - (C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.
  - (D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.
- (2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized multiple times for the same product.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

#### *Single use – PRC 42041(ai)*

“Single use” means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

#### *Source Reduction – PRC 42041(aj)*

“Source reduction” means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. “Source reduction” does not include either of the following:

- (1) Replacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted.
- (2) Switching from virgin covered material to postconsumer recycled content.

## **Overview of Reusable & Refillable**

Reuse, refill, reusable and refillable, defined in PRC 42041(af), is used multiple times in statute pertaining to primarily two things: the description of covered materials and the implementation of source reduction strategies.

### Statutory Summary

- Independent producers must demonstrate a source reduction of its covered materials through shifting to refill, reuse, or elimination. – PRC 42051(b)(2)(A)(i)
- The PRO plan must include arrangements to establish and fund reuse or refill infrastructure. – PRC 42051.1(c)(7)
- The PRO plan must include efforts to educate the public and promote reuse and refill behaviors and systems. – PRC 42051.1(e)(2) and (3)
- The PRO budget may accomplish elements of the needs assessment including investments in reuse and refill infrastructure. – PRC 42051.1(i)(3)(H)
- The fee schedule established by the PRO must take into consideration actions by producers to include clear and accurate reuse and refill labeling and instructions and invest in robust and sustainable reuse and refill systems. – PRC 42053(e)(5-6)

- By January 1, 2032, the PRO must ensure a 25% source reduction by weight and plastic component of plastic covered materials. Ten percent (10%) of this source reduction is by switching to reusable/refillable packaging or food service ware. The remaining source reduction shall be through other means including shifting to bulk or large format packaging to allow for refill of home or commercial reusable containers. – PRC 42057(a)(2)(A) and (B)
- The PRO must report annually to the department the source reduction individual producers achieve by switching to reusable/refillable packaging or food service ware or by switching to bulk packaging that allows consumers to refill home or commercial containers. – PRC 42057(c)(2) and (5)
- Producers must submit to the PRO, their individual source reduction plans to achieve these goals. – PRC 42057(d)(2)(A) and (D)
- After January 1, 2032, the PRO may require participant producers to increase source reduction by shifting to reusable or refillable packaging or food service ware if the department has determined an increase in number or weight of plastic components. – PRC 42057(h)(1)
- The needs assessment shall include:
  - An evaluation of state statutory provisions and funding sources related to market development and financial incentives to help achieve the state’s goals related to reuse. – PRC 42067(e)(2)(A)
  - Consumer education needs for reuse. – PRC 42067(e)(2)(F)
  - An evaluation for funding needed to develop reuse and refill infrastructure with convenient access for consumers. – PRC 42067(e)(3)(C)
- The advisory board shall provide the department and the PRO with recommendations regarding key barriers and possible pathways toward reusable packaging and products and refillable systems. – PRC 42070(e)(C)

## **Part II. Workshop of Regulation Concepts**

Pursuant to PRC 42041(e)(A), covered materials are single-use items that are typically not refilled or otherwise reused. Additionally, many of the source reduction goals outlined in SB 54 will require the conversion of single-use packaging and food service ware to reusable and refillable alternatives. CalRecycle seeks to add clarity to what items can be qualified as “reusable” or “refillable” in PRC 42041(af) and “single-use” in PRC 42041(ai) by building upon existing statutory definitions and proposed regulatory definitions.

### **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 reusable and refillable. The regulation concepts discussed in this workshop include:

- R&R Item 1 – Expanding the proposed definition of “durable” definition
- R&R Item 2 – Proposed definition of “multiple-uses”
- R&R Item 3 – Expanding reuse/refill definition to include “return to marketplace”
- R&R Item 4 – Clarify “safely reused”
- R&R Item 5 – Expanding the definition of “washable”

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

### **R&R Item 1: Expanding the proposed definition of “durable”**

Statute Sections: PRC 42041(ai)

#### *Single use – PRC 42041(ai)*

“Single use” means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

#### **Regulation Concept:**

The department at its April 25, 2023 workshop proposed a definition for “durable” to clarify the term “single-use.” CalRecycle would like to propose a revised definition.

Previously proposed definition of durable:

Durable: For a product to be considered sufficiently “durable,” CalRecycle will require the item to remain reusable for its intended purpose for a minimum of one year. This standard is modified from 14 CCR Sec. 17989.3(a)(2).

Revised definition of “durable:”

“Durable,” in regard to packaging or food service ware, means the product will remain usable for its original intended purpose and multiple-uses. This standard is modified from 14 CCR Sec. 17989.3(a)(2).

#### **Request:**

CalRecycle is seeking feedback on additions to the proposed definition of “durable.”

## R&R Item 2: Proposed definition of “multiple-uses/multiple-cycles/multiple-times”

Statute Sections: PRC 42041(af)

“Reusable” or “refillable” or “reuse” or “refill,” in regard to packaging or food service ware, means either of the following:

- (1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized *multiple times* for the same product, or for another purposeful packaging use in a supply chain.
  - (B) Designed for durability to function properly in its original condition for *multiple uses*.
  - (C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for *multiple cycles*.
  - (D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for *multiple cycles*.
- (2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:
  - (A) Explicitly designed and marketed to be utilized *multiple times* for the same product.
  - (B) Designed for durability to function properly in its original condition for *multiple uses*.
  - (C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer *multiple times*.

### **Regulation Concept:**

Pursuant to PRC 42041(af), in order for packaging or food service ware to be considered reusable or refillable it must be able to be used for multiple-uses, cycles, or times. The revised proposal for the definition of “durable” also uses the term. The department seeks to clarify these definitions by adding a proposed definition for “multiple-uses/cycles/times”

The proposed definition of “multiple-uses or multiple cycles or multiple times” is:

“Multiple-uses,” “multiple cycles,” or “multiple times” in regard to packaging or food service ware designed for reuse or refill, means that the material is used enough times that the environmental benefits exceed the use of its single-use counterpart, including the impacts of the material’s end-of-life management.

### **Request:**

CalRecycle is seeking feedback on the proposed definition of “multiple-uses.”

### **R&R Item 3: Expanding reuse/refill definition to include “return to marketplace”**

Statute Sections: PRC 42041(af)(1)

Please refer to R&R Item 2 for statute section.

#### **Regulation Concept:**

Multiple other states include terminology in their definitions of “reusable” that alludes to a return to the marketplace. Examples of this include:

- Oregon: ORS 459A.822: “return...into the economic stream”
- Maine: Title 38 Section 1771: “change in ownership”
- Colorado: HB 2255: “return to the marketplace”

CalRecycle seeks to expand the definition reusable/refillable to include another condition for products that are intended for reuse/refill by the producer or partnering retailer that aligns with other states. This condition would not apply to products intended for reuse/refill by the consumer.

Additional condition:

- Returns into the marketplace for resale or distribution.

#### **Request:**

CalRecycle is seeking feedback on adding “return to the marketplace” to clarify reuse/refill.

### **R&R Item 4: Clarify “safely reused”**

Statute Sections: PRC 42041(af)

Please refer to R&R Item 2 for statute section.

#### **Regulation Concept:**

PRC 42041(af)(1)(C) and PRC 42041(af)(2)(C) specify that in order for items to be considered reusable/refillable they must be able to be “safely reused.” CalRecycle seeks to add clarity to this language by expanding the definition to include another condition for reusable/refillable.

Additional Condition:

- Retains its form and function during reuse and washing without posing a negative environmental or public health risk; including but not limited to chemical leaching and microplastic shedding.

**Request:**

CalRecycle is seeking feedback on adding language to clarify “safely reused” to define reuse/refill.

**R&R Item 5: Expanding the definition of “washable”**

Statute Sections: PRC 42041(ai)

Please refer to R&R Item 1 for statute section.

**Regulation Concept:**

The previously proposed definition of “washable” used language that was specific to food service ware. CalRecycle would like to expand the definition to include a description applicable to packaging.

Proposed definition of “washable”

“*Washable*” means either of the following:

- (A) For purposes of packaging, excluding food packaging, washable means that the packaging can be sufficiently cleaned to safely and hygienically refill or reuse.
- (B) For purposes of food service ware and food packaging, washable means that a product maintains its shape, structure, and function after 780 cycles in a cleaning and sanitizing process as defined in California Health and Safety Code Section 114101 and 114099.7, respectively, as demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory

**Request:**

CalRecycle is seeking feedback on additions to the extended proposed definition of “washable.”

## **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](mailto: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 24th 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*