

SB 54 Informal Rulemaking Workshop: May 2023 Workshop Discussion Document - 2

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

May 31, 2023

Department of Resources Recycling and Recovery

**SB 54 Regulation Implementation Team, Packaging EPR Section,
Knowledge Integration Section**

Regulations Unit, Legal Affairs Office

Topic: Responsible End Markets

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Overview and Purpose of Workshop

The Department of Resources Recycling and Recovery (CalRecycle) has scheduled a workshop on [May 31, 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 \(Allen, Chapter 75, Statutes of 2022\)](#).

The topic of this workshop will be “responsible end markets.” This workshop is split into two parts:

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

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 will not address the following topics:

- Needs Assessment
- Recyclability
- Recycling Rates
- Compostability
- Covered Material Category Determination
- Source Reduction (see *May Workshop Discussion Document 1*)
- Enforcement
- PRO Plan*
- Budgets*
- Document submittals*
- Annual reports*

The topics above marked with (*) are topics that were covered in previous workshops and others will be addressed at a subsequent workshop. Discussion documents, presentation slides, and other information from prior workshops can be found on the [SB 54 webpage](#) under *Past Events*.

Part I. Background and Informational Items

The term “end market” is used to describe the entity who receives recyclable materials and utilizes the material as a product or starting material for production of a new product. SB 54 defines the term “responsible end market” to mean “a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.” The term is used throughout the statute and requirements reference the term. This section provides a statutory overview of the term “responsible end market” and identifies the sections where the term is used.

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)
- REM: Responsible End Market

Relevant Definitions

Listed below are the existing statutory definitions relevant to the May 31, 2023, rulemaking workshop. CalRecycle may further refine these definitions in regulations.

Processing – PRC 42041(v)

“Processing” means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market.

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.

Responsible end market – PRC 42041(ad)

“Responsible end market” means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety.

Use of the term “responsible end markets” in statute.

Definition of Covered Material

Under the producer demonstrated exemption from covered material [PRC 42041(e)(2)(H)], covered material that qualifies for this exemption must ensure that the material is recycled at a responsible end market.

Definition of Processing

REM is used in the definition of processing [PRC 42041(v)]:

“Processing” means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a **responsible end market**.

Definition of Recycling

REM is used in the definition of recycling [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.

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(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.

PRO Plan

PRC 42051.1 makes a number of references to "responsible end markets" pertaining to the PRO plan. Listed here is a brief summary of these requirements.

- PRC 42051.1(c)(1) requires the PRO to include in the plan a description of how the PRO intends to provide, in an economically efficient and practical manner, necessary infrastructure and viable responsible end markets to ensure covered material will meet the source reduction and recycling goals.
- PRC 42051.1(c)(2) requires the PRO to include in the plan a description on how it will support, achieve, and fund the development of viable responsible end markets.
- PRC 42051.1(c)(5) requires the PRO to include in the plan a description of how it will ensure covered material is transferred to a viable responsible end market for processing into new packaging or products and how the plan will enhance or expand viable responsible end markets in California including manufacturing.
- PRC 42051.1(c)(6) requires the PRO to include in the plan a description of any arrangements the PRO makes with processors or recycler 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 investments that will be made to cover the cost of the covered material being processed or recycled by the processors or recyclers.

PRO Budget

PRC 42051.1 makes a number of references to "responsible end markets" pertaining to the PRO's budget. Listed here is a brief summary of these requirements.

- PRC 42051.1(i)(3)(F) requires the PRO to include in the budget an element that will fund, provide, or facilitate the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.
- PRC 42051.1(i)(3)(G) requires the PRO to include in the budget an element that will enhance 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.

- PRC 42051.1(j)(1)(B) requires the PRO budget to cover the costs incurred by local jurisdictions, recycling service providers, and other collection programs associated with:
 - Transportation of covered material to viable responsible end markets.
 - Cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market.
 These costs include both costs related to curbside and noncurbside collection programs and may be varied based factors such as distance to a viable responsible end market.
- PRC 42051.1(j)(1)(B) requires the PRO budget to cover the costs of investments to develop and sustain viable responsible end markets for each covered material category.

PRO Fees

PRC 42053 makes a number of references to “responsible end markets” pertaining to the PRO’s fees. The fees are set by the PRO and assessed to producers who participate in the PRO’s plan. The PRO is required to assess fees high enough to cover all of the costs of the program, including the following items pertaining to responsible end markets:

- Cost to develop and sustain viable responsible end markets for each covered material category. [PRC 42053(d)(1)(A)]
- Costs to collect, sort, avoid, or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material either through curbside collection or other means. [PRC 42053(d)(1)(B)]
- Costs incurred by local jurisdictions or recycling service providers to process and transport covered materials in a manner and quality sufficient for acceptance by viable responsible end markets. This includes costs incurred by local jurisdictions or recycling service providers to reduce or mitigate the rate of inbound contamination by noncertified compostable products at composting facilities. These costs may vary by local jurisdiction. [PRC 42053(d)(1)(C)]

Legislative Report

Pursuant to PRC 42061(a)(3)(B), the department shall, on or before January 1, 2024, report to the Legislature pursuant to PRC 42355.51 [implementation of SB 343 (Allen, Chapter 507, Statutes of 2021)]. Specifically pertaining to viable responsible end markets, the report may include information pertaining to potential disruption of viable responsible end markets due to the loss of a recyclable designation.

Needs Assessment

PRC 42067 makes a number of references to “responsible end markets” pertaining to the Needs Assessment.

Pursuant to PRC 42067(e)(2), the Needs Assessment shall include evaluation of a number of topics pertaining to covered material and covered material categories, including:

- Current market conditions and the need to create viable responsible end markets in the state and regionally. [PRC 42067(e)(2)(E)]
- Actions and investments necessary to provide sufficient access to collection, recycling, composting, processing, and transportation to viable responsible end markets. [PRC 42067(e)(2)(H)]
- An evaluation of the availability or lack of availability of markets for recycled covered material, the need to incentivize recycled or composted material market development, and the associated investments and actions needed to ensure that the covered materials are recycled or composted and have viable and sufficient responsible end markets to meet the requirements of Section 42050. [PRC 42067(e)(2)(I)]
- Availability of responsible end markets and mechanisms to identify and expand responsible end markets. The evaluation shall include identification of measures to avoid and minimize environmental and public health impacts on communities where recycling occurs. [PRC 42067(e)(2)(K)]

Pursuant to PRC 42067(e)(3), the Needs Assessment shall include evaluation of the needs associated with shifting packaging or food service ware from a covered material category that is unlikely to develop sustained viable responsible end markets to a covered material category that either has a viable responsible end market or is likely to develop a sustained viable responsible end market.

Pursuant to PRC 42067(e)(5), the Needs Assessment may include items such as the following:

- Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets. [PRC 42067(e)(5)(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. [PRC 42067(e)(5)(H)]

Advisory Board

Pursuant to PRC 42070(e)(1)(A), the advisory shall provide the PRO, the department, and a third party conducting or updating a needs assessment with initial recommendations on key barriers and possible solutions to advance the objectives of increasing recovery of covered material and decreasing the leakage of plastic into the environment. These recommendations shall include key barriers and possible solutions

related to available and viable responsible end markets and market development for covered materials.

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 responsible end markets (REM). The regulation concepts discussed in this workshop include:

- REM Item 1 – Definition of Responsible End Market.
- REM Item 2 – Clarification of the definition of “viable.”
- REM Item 3 – Clarification of the phrase “economically efficient and practical”

CalRecycle welcomes written feedback and suggestions on the proposed concepts. Guidance for providing written feedback is specified on page 15.

REM Item 1: Definition of Responsible End Market

The State of Oregon Department of Environmental Quality, in their implementation of the “Recycling Modernization Act” ([Senate Bill 582](#)), has developed a proposed definition of “responsible end markets” in their [draft regulations](#). CalRecycle is seeking to clarify the definition of “responsible end market,” and is building concepts utilizing Oregon’s draft regulations.

Part I: Definitions of “End Market”

Prior to defining “responsible end market,” CalRecycle proposes to define “end market” to mean the following, based on the material types:

- **Glass:** For glass, the end market is the entity that first uses the glass in lieu of a virgin material downstream of the beneficiation plant, including a bottle manufacturer, a fiberglass manufacturer, or a pozzolan producer.
- **Metal:** For metal, the end market is the entity that smelts the recycled material and produces ingots, sheet, coil, or other materials that are subsequently refabricated into packaging or product.
- **Paper:** For paper, the end market is the entity that re-pulps the recycled material either into a pulp product that is sold to paper manufacturers or used to produce paper or paperboard products. If paper is recycled in a manner that does not involve repulping, the end market is the entity that uses the beneficiation waste

paper to produce a product that is sold without further processing or manufacturing.

- **Plastic:**
 - For plastic that is used for food and beverage applications or used for production of children’s products, the end market is the entity that places it into a mold for the manufacturer of such product.
 - For all other plastic (except compostable plastics), the end market is the entity that last handles flake or pellet containing recycled plastic prior to sale or transfer to another entity that creates a new product either by placing it into a mold or through extrusion or thermoforming.
- **Compostable Materials:** For compostable materials, including compostable plastics, the end market is the entity that converts the material into an organic waste product through composting or anaerobic digestion.

Part II: Standards of “responsible.”

In order for an entity to be deemed “responsible,” the entity must meet all of the following criteria:

- a. Entity shall be compliant, meaning:
 - (1) The entity is compliant with all local, state, and federal laws as well as treaty obligations, including relevant environmental, labor, and public health laws.
 - (2) The entity operates with all required permits, licenses, or other clearances that may be required by local, state, or federal regulatory agencies including, but not limited to, local health and local land use authorities.
- b. Entity shall be transparent, which means:
 - (1) The entity documents the chain of custody of materials transported from origination (within California) to the end market.
 - (2) The entity maintains relevant records pertaining to the chain of custody.
 - (3) The entity properly documents any penalties or violations.
 - (4) The entity is willing to be named and audited.
- c. Entity shall maximize benefits to the environment and minimize risks to public health and safety, which means:
 - (1) The entity abides by all air and water quality, land emissions, and disposal laws.
 - (2) The entity stores and manages waste and recyclables in a way that avoids release into the environment.
 - (3) The entity manages inputs sustainably.
 - (4) The entity has an adequate emergency response plan in place.
- d. Entity shall achieve yields of recycling and/or composting of at least 60%. Yield is to be calculated by the following formula: Amount of Material that is successfully processed or remanufactured divided by the amount of material that entered the recycling supply chain initially.

Part III: Defining “responsible end market.”

To be deemed a “responsible end market,” the end market along with all entities within the supply chain leading to the end market (referred to as an “intermediate supply chain entity”) must meet the standards of *responsible* (defined in Part II).

Part IV: Verification of “Responsible End Markets”

The PRO shall verify and demonstrate to CalRecycle that all covered materials collected for recycling and composting are sent to responsible end markets. The PRO must first conduct an initial screening of each end market and intermediate supply chain entity. The results of the initial screening shall be included within the PRO’s plan. The initial screening should detail the following:

- Name and contact information of each entity.
- Classification of entity (e.g., exporters, brokers, haulers, transporters, etc.).
- The list of local, state, and federal laws and international treaties that apply to each entity.
- Description of how each entity (end market and intermediate supply chain entity) meets the standards of responsible and any supporting information.

Additionally, the PRO will be required to annually verify this information and include the information in the PRO’s annual report. In addition, the PRO will be required include:

- Records of noncompliance by an entity.
- A description of any corrective actions that were taken to ensure the entity became compliant.
- Descriptions of any instances where materials are no longer sent to due to an entity’s noncompliance.
- Copies of any audits conducted (see Part V).

Part V: Auditing and Reporting

To ensure covered materials are sent to responsible end markets, the PRO must conduct auditing and provide audit results to the department as part of the annual report. The audit may include random bale tracking to verify chain of custody and shall demonstrate and certify that the end markets meet the standards of *responsible*.

The PRO shall also indicate in any reporting what information is deemed confidential.

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to clarify the term “responsible end market.” Feedback is appreciated on each individual portion of the concept.

REM Item 2: Clarification of the definition of “viable.”

The term “viable responsible end market” is used throughout the statute. CalRecycle proposes to define “viable responsible end market” as meaning a responsible end market that is feasible and capable of being economically successful.

Reasonable actions the PRO can take to ensure the viability of a responsible end market include the following:

- Providing financial support to help an existing end market that does not meet the standards of responsible.
- Providing financial support to help divert materials from an end market that does not meet the standards of responsible to an end market that does meet the standards of responsible.
- Developing new responsible end markets for covered materials.
- Explore alternatives for covered material that don’t have a responsible end market.

Request for Feedback:

CalRecycle is seeking feedback on the clarification of the term “viable responsible end market.”

REM Item 3: Clarification of the phrase “economically efficient and practical.”

PRC 42051.1(c)(1)

(c) The plan shall include objective and measurable criteria whenever possible, and describe all of the following:

- (1) How the PRO will meet the requirements of this chapter, including, but not limited to, 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.

Proposed Regulation Concept:

PRC 42051.1(c)(1) requires the PRO to include in its plan descriptions on how the PRO will provide for necessary infrastructure and viable responsible end markets to ensure covered material meet the goals of the program. CalRecycle is seeking to clarify in regulations that increased costs alone does ***not*** qualify an action as being ***not*** “economically efficient and practical.”

CalRecycle recognizes that certain actions the PRO takes may lead to increased costs. Nevertheless, CalRecycle believes that the PRO may find that increased costs are

justified as “economically efficient and practical” if an action yields viable responsible end markets and ultimately yields environmental and societal benefits. These benefits include, but are not limited to, the following:

- Improved access to collection systems of covered materials for recycling and composting, especially in disadvantaged, environmental justice, and rural communities.
- Better environmental and economic conditions near waste management/processing facilities, especially in environmental justice and disadvantaged communities.
- Improved economic opportunities, especially in disadvantaged communities.

Request for Feedback:

CalRecycle is seeking feedback on the proposed concept to clarify the phrase “economically efficient and practical.”

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 May 31, 2023 Workshop to be submitted no later than **June 14, 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*