

November 4, 2024

CalRecycle

Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95814

Submitted Electronically at <https://calrecycle.commentinput.com/?id=Jkr3fx2dFa>

RE: NOTICE OF 15-DAY CHANGES TO PROPOSED RULEMAKING

Dear Analyst Derksen,

The Flexible Packaging Association (FPA) is submitting these comments on the SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.

I. Introduction to FPA

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day – including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Flexible Packaging remains the packaging of choice due to its highly effective design features in lightweighting, durability, and the unique ability to tailor the chemistry of

the package to the item being packaged. For food products, which represent 46.3% and \$19.9 billion of flexible packaging sales in the U.S., FPA's members utilize technologies such as portion control, reclose features, perforated plastics, film toughness, and modified atmosphere packaging (MAP) to ensure the preservation of food. Flexible packaging's unique characteristics provide food loss and waste reduction benefits to every segment of the food supply chain, including after purchase by consumers. These characteristics include barrier properties of the materials used in flexible packaging which extend transport as well as shelf life, reclosability features, enhanced product evacuation, and the optimization of product-to-package ratios.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. While FPA greatly applauds the ongoing efforts by CalRecycle to implement CA SB 54, FPA has identified three important gaps in the proposed regulations.

I. Chemical Recycling Is Not Hazardous Waste Management

The proposed regulations incorrectly characterize chemical recycling as hazardous waste management instead of manufacturing, which creates a de facto ban on modern recycling technologies and leaves Californians wholly reliant on mechanical recycling – which is not always suitable for all products.¹ Chemical recycling technologies process plastics that do not have strong end markets, thus enabling a more circular economy for plastics. As the American Chemistry Council reports, projects valued at over \$7B in investment, potentially diverting nearly 21 billion pounds of waste from landfills per year are already being worked on throughout the United States.²

Flexible packaging is critical to all sectors of the economy, including the food and medical sectors. The challenges our industry faces are vast in meeting the recycling targets set by SB 54. SB 343 identified flexible acceptance at mechanical recycling facilities as between 11% and 30%.³ Mechanical recycling can effectively sort some plastic polymers, such as HDPE and clear or white PET, but is unable to address other categories of plastic waste.

To build the circular economy which SB 54 and producer organizations are collaboratively pursuing, one-size-fits-all policy approach to materials management is not going to be feasible in reaching the circularity and acceptance goals outlined in statute. FPA and its members request that chemical recycling be reclassified as manufacturing rather than as hazardous waste management – as it is in the majority of the United States.

¹ CalRecycle, "SB 54 15-Day Proposed Regulation Text" (Sacramento: CalRecycle, 2024). Section 18980.3.6.

² American Chemistry Council, "Advanced Recycling" (Washington D.C.: ACC, 2024).

<https://www.americanchemistry.com/better-policy-regulation/plastics/advanced-recycling>. Accessed 11/4/2024.

³ CalRecycle Staff, "SB 343 Material Characterization Study Preliminary Findings" (Sacramento: CalRecycle, 2024), Page 15.

II. Preserve the Trending On-Ramp for Modern Materials

Section § 18980.3.1, paragraph (b) states that for a material to qualify for the “trending on-ramp,” there must be a demonstrated “increase in the collection and sorting” of the material that “is more likely than not to continue” and “is more likely than not to result in the covered material category satisfying the requirements of section 42355.51(d)(2) of the Public Resources Code before the next mandatory update to the material characterization study.”

There is no time-requirement in statute for a material to demonstrate a likelihood to fully satisfy provisions of SB 343 before the next material characterization study update. Because flexibles are primarily recycled through alternative collection via store drop-off locations, the Hefty Energy Bag Program, and through chemical recycling, it will take time to inventory and provide data for the paths to flexible circularity. FPA is partnering with the Plastics Industry Association to launch a store drop-off locator that will verify collected material gets sent to a viable end market. This data should be useful to CalRecycle, once generated – but end market verification and making the proper recycling investments will take time. The arbitrary imposition of this time-limit will result in a material ban that goes against the legislative intent that the on-ramp was created to preserve. FPA recommends this time-limit be removed from the proposed regulations.

III. Technical Correction: “Products” Must Exclude “Compostable Plastic Bags”

FPA and its members request a technical correction where “compostable plastic bag” gets carved out of the definition of “product,” as it is intentionally established elsewhere in the code. Because both definitions conflict with one another in PRC 42357 and PRC 42357.5, FPA recommends an exemption in the “product” definition so that the term “product” in [California Code, PRC 42357](#). (a) (1) shall not include “compostable plastic bag” as referenced in [PRC 42357.5](#) (a) for purposes of compostable labeling.

While both code sections establish testing and labeling standards for compostable products, 42357.5 establishes a unique set for the subgroup of compostable plastic bags, which would not align with section 42357 and are unique due to product application. FPA believes that this change would provide clarity and make standards more implementable for its members.

IV. Conclusion & Next Steps

FPA appreciates the opportunity to weigh in on the most recent changes to CalRecycle’s Proposed Regulations for SB 54. FPA encourages CalRecycle to adhere as much as possible to widely adopted industry standards, establish accurate and reliable datasets that can be shared transparently before exploring materials bans, default to making

investments in the recycling system over materials bans as a general principle, and coordinate with industry to achieve circularity for all packaging types.

In addition, with the scope of these changes, FPA requests future rulemakings allot more time to gather feedback from industry for policy shifts of this size. FPA and its members look forward to collaborating with CalRecycle going forward.

In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive, slightly slanted style.

John J. Richard
Director, Government Affairs
Flexible Packaging Association