



January 20, 2022

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Subject: Justification of Changes Without Regulatory Effect – Title 14, California Code of Regulations Sections 17988.2 and 17988.3

The Department of Resources Recycling and Recovery (CalRecycle) requests that Office of Administrative Law (OAL) approve the enclosed changes without regulatory effect pursuant to California Code of Regulations, title 1, section 100. The proposed regulatory changes are appropriate under section 100 because, as described below, it is required for a regulation to be consistent with a recent change to the statute that the regulation implements. As required by section 100, CalRecycle has no discretion to adopt a change that differs in substance from the one proposed.

Statutory Change Necessitating Change Without Regulatory Effect

Chapter 5.3 of Part 3 of Division 30 of the Public Resources Code (PRC) (commonly referred to by its bill number, SB 270) concerns single-use carryout bags (PRC sections 42280 – 42288). Among other things, SB 270 created a program for verifying that such bags are certified to have certain characteristics, including prescribed levels of postconsumer recycled content.

On October 9, 2021, the Governor signed Assembly Bill No. 1570 (AB 1570). That omnibus bill modified PRC section 42282(c), which describes the types of entities that qualify to be a “third-party certification entity” that can issue the certification required under SB 270. Previously, only laboratories holding an ISO/IEC 17025 accreditation could be such an entity. The amendment broadened the requirement so that a certification body holding the ISO/IEC 17065 accreditation could also be a third-party certification entity. AB 1570 made no other substantive changes to PRC section 42282.

Explanation of Change

Pursuant to SB 270, CalRecycle promulgated regulations in 2019 to establish the program for bag manufacturers to periodically submit proofs of certification to CalRecycle for bags distributed in California. CalRecycle then reviews the proofs for completeness and publishes a list of all the bags for which a current proof of certification is on file.

As originally enacted, PRC section 42282(c) provided:

(c) A third-party certification entity *shall be an independent, accredited (ISO/IEC 17025) laboratory*. A third-party certification entity shall certify that the producer's reusable grocery bags meet the requirements of Section 44281.

AB 1570 modified subdivision (c) as follows:

(c) A third-party certification entity shall be an independent, accredited (ISO/IEC 17025) ~~laboratory~~ laboratory or a (ISO/IEC 17065) certification body. A third-party certification entity shall certify that the producer's reusable grocery bags meet the requirements of Section 44281. 42281.

(Note: The change to the section number referenced was non-substantive. It corrected a typo in the original text.)

CalRecycle adopted regulations to implement the requirements of SB 270. At issue here are California Code of Regulations, title 14, sections 17988.2 and 17988.3 (the Regulations). California Code of Regulations, title 14, section 17988.2, which defines various terms, including "ISO/IEC 17025" (subd. (g)) and "third-party certification entity" (subd. (l)), used in subsequent provisions. Currently, in subdivision (l) that definition only includes laboratories identified in subdivision (g): those with the ISO/IEC 17025 accreditation. It thus has a narrower scope than the amended statute PRC section 42282(c), which added ISO/IEC 17065 certification bodies as a category of entities that can be third-party certification entities.

To conform section 17988.2 of title 14 of the California Code of Regulations to the expanded scope of PRC section 42282(c), CalRecycle proposes to amend this regulation to add a new subdivision (h) after subdivision (g), and modify subdivision (l) (which will become subdivision (m)), of the Regulation, as follows:

(h) "ISO/IEC 17065" means the International Organization for Standardization/International Electrotechnical Commission requirements for bodies certifying products, processes and services.

...

~~(l)~~(m) "Third-party certification entity" means an entity that is either an independent laboratory that is having an ISO/IEC 17025 accreditation accredited, or a certification body having an ISO/IEC 17065 accreditation, and that performs applicable testing and certifies that a reusable grocery bag meets the requirements of section 42281 and 42281.5 of the Public Resources Code.

The definition in (h) is a non-discretionary change because it merely states the title of the accreditation unambiguously incorporated in statute, added to point out to the public the type of entity that that accreditation concerns. CalRecycle is enclosing a copy of the

tile page of the International Standard 17065 to demonstrate that the new definition merely recites, verbatim, that document's descriptive title and reflects the similar use of ISO 17065 in subsection (a) of section 66387.2 of title 22 of the California Code of Regulations.

California Code of Regulations, title 14, section 17988.3 adds "or an ISO/IEC 17065 certification body." This is a non-substantive change to make the regulatory provision consistent with the changes described by AB 1570, above.

These proposed changes are appropriate pursuant to section 100. Given the new scope of the statutory term "third-party certification entity," the Regulations must include that term in a way that encompasses ISO/IEC 17065 certification bodies. The specific proposed changes are proper because CalRecycle lacks the authority to use any definition of "third-party certification entity" that differs from PRC section 42282(c), as amended. Therefore, CalRecycle has no discretion to adopt changes that differ in substance from the ones proposed.

Other than corresponding reordering to accommodate this amendment, CalRecycle is not proposing any other changes to the Regulations.

Sincerely,

Daniel Zlatnik  Digitally signed by Daniel Zlatnik
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Daniel Zlatnik
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