

Department of Resources Recycling and Recovery
AB 793 Plastic Content Reporting and Compliance Regulations

FINAL STATEMENT OF REASONS

UPDATE TO INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR), published on February 3, 2023, is incorporated by reference herein. The ISOR contained a description of the rationale for the proposed regulations. On February 3, 2023, all Documents Relied Upon and identified in the ISOR were made available to the public.

Section 2250(d): In the ISOR, there is a misspelling that May 1st is the deadline to submit a petition. The deadline is December 1st.

Sections 2250, 2785(b)(9), and 2795(b)(9)-(12): In the ISOR, CalRecycle incorrectly cited paragraph (a)(4)(A) of Pub. Resources Code sec. 14547 instead of paragraph (a)(6)(A).

Sections 2780 and 2785: In the ISOR, CalRecycle incorrectly cites subsection (a)(34.3) in Section 2000 instead of subsection (a)(34.1) as the location of the proposed definition of “plastic material reclaimer”.

Section 2795(b): In the ISOR, CalRecycle incorrectly states that the “manufacturer of postconsumer recycled plastic **report**” is being named the “manufacturer of postconsumer recycled plastic **form**”. (Emphasis added.)

Section 2795(b)(13): In the ISOR, CalRecycle incorrectly cites subdivision (b) of Pub. Resources Code sec. 14549.3 instead of subdivision (c).

Updated Documents Relied Upon

The Economic and Fiscal Impact Statement (STD 399) form was re-uploaded to the [AB 793 Plastic Content Reporting and Compliance Permanent Regulations website](#) on May 9, 2023, to show the corrected version of the form. The STD 399 form was updated to correct mistakes that occurred during the PDF conversion published on February 3, 2023.

LOCAL MANDATE DETERMINATION

CalRecycle has determined that this regulatory action will not result in a mandate to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the ISOR, in CalRecycle’s summary and response to public comments, and in this FSOR, CalRecycle has determined that no alternative considered

by CalRecycle would be more effective in carrying out the purpose for which the regulatory action was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action taken by CalRecycle.

Statement Regarding Small Business Alternatives

No alternatives were considered by CalRecycle nor otherwise identified and brought to CalRecycle's attention that would lessen any adverse economic impact on small business, pursuant to Government Code section 11346.9(a)(5).

Statement Regarding Duplication with State or Federal Statute

The regulations duplicates or overlaps a state or federal statute or regulation which cited as "authority" or "reference" for the proposed regulation and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3).

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

Summary of Comments Received

Written comments were received by CalRecycle during the 45-day comment period which began on February 3, 2023, and ended on the conclusion of the rulemaking hearing on March 21, 2023, at 11:59 PM (PST). Written and oral comments were additionally received at a public hearing on March 21, 2023.

The comments received during the 45-day comment period and public hearing are displayed on the attached AB 793 45-Day Comment Period Matrix, which shows the corresponding comment code, California Code of Regulations (CCR) section that the comment is in reference to (if applicable), the commenter's name, their organization, and CalRecycle's response to the comment. Please refer to the AB 793 45-Day Comment Period Matrix for the list of 46 total comments received during the 45-day comment period and public hearing. The AB 793 45-Day Comment Period Matrix contains a key of comment codes, along with 10 categories of all 46 comments. The AB 793 45-Day Comment Period Matrix is incorporated by reference herein.

These 10 categories of comments are organized based upon the underlying regulatory concepts that the comments relate to:

- Beverage Manufacturing Industry
- Beverage Manufacturer Reporting Requirements
- Caps and Labels
 - Caps and labels are components of the plastic beverage container as sold in the state and the post-consumer recycled plastic material minimum

content standard applies to the plastic beverage container, which includes caps and labels.

- Country of Origin for Postconsumer Recycled Feedstock
- Definitions
 - Comments were received to revise the definitions of Plastic Material Reclaimers, Manufacturers of Postconsumer Recycled Plastic, and Postconsumer Recycled Material.
- Manufacturers of Postconsumer Recycled Plastic Reporting
- Reduction of Administrative Penalties
- Plastic Beverage Container Virgin and Postconsumer Resin Report
- 35% Threshold
 - An association that petitions the Director to adjust the minimum postconsumer recycled plastic content standard must represent at least 35% of all registered beverage manufacturers that reported plastic beverage containers for the previous calendar year.
- Authority for 35% Threshold
- 3rd Party Certification
 - Third party certification is issued by the Container Manufacturer to the Beverage Manufacturer and may be permitted as supporting documentation under the proposed regulation 2235(e)(4).

CalRecycle's Response to Comments Received

CalRecycle would like to express its appreciation to the numerous organizations, agencies, and individuals that participated in the 45-day comment period and public hearing. CalRecycle concluded that no changes to the regulatory text were needed based on the comments received.

A summary of comments on the AB 793 regulation, as well as CalRecycle's responses, are categorized and provided below. Comment letters received during the public comment period, as well as the AB 793 45-Day Comment Period Matrix that includes CalRecycle's responses are posted on the [AB 793 Plastic Content Reporting and Compliance Permanent Regulations website](#).

Comments in Support

CalRecycle received general support from 6 organizations and interested parties. The following comments support the objectives and goals of the AB 793 Regulation:

Comment Code: (45-E-6) (45-E-6L)

Agency Response (to all comments in support): CalRecycle notes no changes are needed in the proposed regulations and acknowledges the general support of these two comments.

CalRecycle Response 1: Beverage Manufacturing Industry

Comment Code: (45-E-4)

Comment: One comment expressed concerns that the regulatory language provides little opportunity for associations that represent key beverage manufacturing sectors to represent the concerns of their memberships and instead use a qualifier that would identify associations supporting specific beverage sector manufacturers.

CalRecycle's Response 1: CalRecycle rejects this comment. Public Resources Code (Pub. Res. Code) section 14547(a)(4)(D) defines "beverage manufacturing industry" as an association that represents companies that manufacture beverages. At a minimum, this entity must represent more than one company that manufactures beverages. CalRecycle's requirement that an association represents 35% of beverage manufacturers ensures that the association will most likely represent the interests of all beverage manufacturers regardless of size.

CalRecycle Response 2: Beverage Manufacturer Reporting Requirements

Comment Code: (45-E-3), (45-E-3A), (45-E-3B), (45-E-3C), (45-E-3D)

Comment: Five comments recommended CalRecycle adding a new subsection of California Code of Regulations, title 14 (14 CCR) section 2240 to continue to allow beverage producers to submit combined plastic resin reports.

CalRecycle's Response 2: CalRecycle rejects these comments. AB 793 specifies that each beverage manufacturer must submit the report to CalRecycle per Pub. Res. Code section 14549.3(a). Additionally, AB 793 imposes standards to be met by each beverage manufacturer.

CalRecycle Response 3: Caps and Labels

Comment Code: (45-E-4C), (45-E-4D), (45-E-4E), (45-E-6A), (45-E-6B), (45-E-6C), (45-E-6D), (45-H-7), (45-H-7A), (45-H-7B)

Comment: Ten comments expressed concerns over the inclusion of cap and label weight used in CRV beverage containers and that collecting data on caps and labels is not a necessary component of the bill.

CalRecycle's Response 3: CalRecycle rejects these comments. Caps and labels are components of the plastic beverage container as sold in the state. The PCR plastic material minimum content standard applies to the plastic beverage container sold in the state per Pub. Res. Code section 14547(a)(1). When a plastic beverage container is sold in the state it has a cap and label.

CalRecycle Response 4: Country of origin for postconsumer recycled feedstock

Comment Code: (45-E-1), (45-E-1B), (45-E-5B), (45-E-5C), (45-E-7G)

Comment: Five comments recommended CalRecycle utilize its regulatory authority to incentivize the use of nonfood biomass-based materials in the regulations governing AB 793.

CalRecycle's Response 4: CalRecycle rejects these comments. Plastic, regardless of its feedstock origins, is treated as either virgin or post-consumer recycled material for purposes of reporting required by AB 793. AB 793 is clear in its purpose not to incentivize plastic based on its originating feedstock, its purpose is to encourage and make standard the use of post-consumer recycled plastic in plastic beverage containers.

CalRecycle Response 5: Definitions

Comment Code: (45-E-6), (45-E-6I), (45-E-6J), (45-E-6K), (45-E-6L)

Comment: Five comments expressed concerns over the definitions from CCR section 2000 regarding Plastic Material Reclaimers, Manufacturers of Postconsumer Recycled Plastic, and Postconsumer Recycled Material.

CalRecycle's Response 5: CalRecycle rejects these comments. The reporting for postconsumer recycled material by beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic is set forth in Pub. Res. Code section 14549.3. CalRecycle's proposed definitions in proposed sections 2000(a)(29.9), (34.1), and (34.3) are consistent with statute.

CalRecycle Response 6: Manufacturers of Postconsumer Recycled Plastic Reporting

Comment Code: (45-E-6E), (45-E-6F), (45-E-6G), (45-E-6H), (45-E-6M), (45-H-7C)

Comment: Six comments were received recommending that there should not be any additional burden on Manufacturers of Postconsumer Recycled Plastic to report to the state.

CalRecycle's Response 6: CalRecycle rejects these comments. Pub. Res. Code section 14549.3(c) requires a report to be submitted to CalRecycle by a manufacturer of postconsumer recycled plastic and it is unique to the state and is the governing statute for this regulation. CalRecycle's proposed definition in proposed sections 2000(a)(29.9) are consistent with statute.

CalRecycle Response 7: Plastic Beverage Container Virgin and Postconsumer Resin Report

Comment Code: (45-E-2)

Comment: One comment recommended CalRecycle add the language "to the best of my knowledge" to the Plastic Beverage Container Virgin and Postconsumer Resin Report form.

CalRecycle's Response 7: CalRecycle rejects this comment. Pub. Res. Code section 14549.3 requires the report to be submitted under penalty of perjury. To incentivize beverage manufacturers and other reporting entities to report accurately, CalRecycle's statutory duties require the reports be submitted without any putative diluting language of the duty to report accurately.

CalRecycle Response 8: Reduction of Administrative Penalties

Comment Code: (45-E-1A), (45-E-1C), (45-E-1D), (45-E-1E), (45-E-1F)

Comment: Five comments suggested that beverage manufacturers using recyclable materials derived from nonfood biomass should be reduced or exempt from administrative penalties.

CalRecycle's Response 8: CalRecycle rejects these comments. No changes to the proposed regulatory text are needed for the director to make a decision to reduce administrative penalties based on the mitigating use of other types of plastic. CalRecycle contemplates that there may be supply constrained situations where use of such plastic may constitute a mitigating factor to lessen administrative penalties.

CalRecycle Response 9: 35% Threshold

Comment Code: (45-E-4A), (45-E-4B)

Comment: Two comments received recommended that any trade association wishing to represent beverage manufacturers on any petition be registered with the Secretary of State as a lobbyist employer.

CalRecycle's Response 9: CalRecycle rejects these comments. While CalRecycle already incorporates this requirement in its proposed regulations, it also establishes a threshold of more than one company that manufactures beverages. Relying only on registration at the Secretary of State as a criterion for qualifying as a beverage manufacturing industry, would not meet the requirements of Pub. Res. Code section 14547(a)(6)(D).

CalRecycle Response 10: Authority for 35% Threshold

Comment Code: (45-E-4D)

Comment: One comment received stated that CalRecycle does not authority to further make specific Pub. Resources Code section 14547(a)(6)(D).

CalRecycle Response 10: CalRecycle rejects this comment. The proposed definition is consistent with statute.

CalRecycle Response 11: 3rd Party Certification

Comment Code: (45-E-5), (45-E-5A), (45-E-6G), (45-H-7D), (45-H-7E), (45-H-7H)

Comment: Six comments recommended considering third party certification for post-consumer resins and products containing post-consumer recycled content.

CalRecycle's Response 11: CalRecycle rejects these comments. Third party certification may be permitted as supporting documentation under proposed regulation 14 CCR section 2235(e)(4) and is contemplated as something issued by the Container Manufacturer to the Beverage Manufacturer.