

Notice of Proposed Rulemaking

Recycling and Disposal Reporting System Regulatory Permanent Regulations

Affected Regulatory Sections

Title 14.	Natural Resources
Division 7.	Department of Resources Recycling and Recovery
Chapter 9.	Planning Guidelines and Procedures for Preparing and Revising Countywide and Regional Agency Integrated Waste Management Plans
Article 9.25.	Recycling and Disposal Reporting System
Sections	18815.1 – 18815.12, excluding 18815.10
Title 14.	Natural Resources
Division 7.	Department of Resources Recycling and Recovery
Chapter 9.	Planning Guidelines and Procedures for Preparing and Revising Countywide and Regional Agency Integrated Waste Management Plans
Article 9.	Annual Report Regulations
Section	18794.2

Proposed Regulatory Action

The Department of Resources Recycling and Recovery (CalRecycle) proposes to amend California Code of Regulations, Title 14, Article 9.25, sections 18815.1, 18815.2, 18815.3, 18815.4, 18815.5, 18815.6, 18815.7, 18815.8, 18815.9, 18815.11, and 18815.12 and Article 9, section 18794.2 in order to clarify existing language and implement new reporting requirements added by [Senate Bill \(SB\) 343 \(Allen, Chapter 507, Statutes of 2021\)](#) and [Assembly Bill \(AB\) 881 \(Gonzalez, Chapter 501, Statutes of 2021\)](#).

Public Hearing

CalRecycle will hold a hybrid public hearing starting at **1:00 pm, on March 15, 2023** and concluding upon submission of any public hearing comments. The public hearing will be accessible in person in the Byron Sher Room located on the 2nd floor of the CalRecycle headquarters at 1001 I Street, Sacramento, California. The Byron Sher room is wheelchair accessible. The public hearing will also be accessible virtually via Zoom. Instructions for how to access the Zoom public hearing,

including the specific Zoom link, can be found on CalRecycle's website (<https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>).

At the public hearing, any person may present statements or arguments, orally, in writing, or in the chat of the Zoom meeting, relevant to the proposed action. CalRecycle requests, but does not require, that any person who makes oral comments also submit a written copy of their testimony at the hearing. All comments in the virtual hearing will be collected and recorded.

Written Comment Period

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to CalRecycle. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. CalRecycle will only consider written comments sent to CalRecycle and received during the written comment period, which begins on January 27, 2023, and ends at the conclusion of the rulemaking hearing on March 15, 2023. Additionally, CalRecycle requests that written comments reference a subsection or section of the proposed action. Written comments received by CalRecycle after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to:

Donnet McFarlane
Recycling and Disposal Reporting System Regulatory Update
Department of Resources Recycling and Recovery, Regulations Unit, 1001 "I" St.,
MS-24B, Sacramento, CA 95814

During the 45-day comment period, written comments may also be e-mailed to: regulations@calrecycle.ca.gov

Authority and References

Public Resources Code sections 40502, 41781.4, 41821.5(c), and 42355.51(d)(1)(A) provide authority for the regulatory updates. The following is a list of references cited in the proposed regulations: Public Resources Code 41780, 41780.1, 41781.4, 41782, 41813, 41821, 41821.5, 41821.6, 41821.7, 41821.8, 41850, 42355.51(d)(1)(A), and 42652.5; Health and Safety Code 39730.6.

Informative Digest

Summary of Existing Laws and Proposed Regulations

Existing law, [AB 901 \(Gordon, Chapter 746, Statutes of 2015\)](#) expanded CalRecycle's authority to adopt regulations regulating the reporting of recycling and composting streams and disposal streams. After the enactment of AB 901, CalRecycle promulgated new reporting regulations and created the Recycling and Disposal Reporting System (RDRS) to gather information necessary to help the state accomplish various statewide waste and recycling mandates and goals, such as the 50% diversion mandate (AB 939, Sher, Chapter 1095, Statutes of 1989), a 75 percent reduction of disposal goal ([AB 341, Chesbro, Chapter 476, Statutes of 2011](#)), mandatory commercial organics recycling ([AB 1826, Chesbro, Chapter 727, Statutes of 2014](#)), and reducing short-lived climate pollutant emissions from landfills ([SB 1383, Lara, Chapter 395, Statutes of 2016](#)).

These proposed regulations improve and increase the data in RDRS that can be used towards those waste and recycling goals. For example, reporting in RDRS began in third calendar quarter of 2019. After a few years of this reporting, CalRecycle has determined several instances where existing regulations could be amended to either clarify the regulations or improve the quality of the collected data. These regulations will also be updated to reflect various non-substantive changes such as correcting obsolete references and citation changes. Additionally, building upon existing statutes, [AB 881 \(Gonzalez, Chapter 501, Statutes of 2021\)](#) and [SB 343 \(Allen, Chapter 507, Statutes of 2021\)](#) became effective in 2022. These statutes direct RDRS to collect additional information related to disposal and diversion. The proposed regulations also update references to the California Public Records Act as recodified in AB 473 (Chau, Chapter 614, Statutes 2021).

Existing law, AB 881 classifies the export of mixed plastic materials as disposal for the purposes of AB 939. Mixed plastic excludes polyethylene terephthalate (resin code #1), high-density polyethylene (#2), and polypropylene (#5), and certain countries are not considered export for the purposes of the statute. However, by requiring that the export of typically less recyclable plastics (i.e., 3, 4, 6, and 7) be considered disposal, AB 881 prevents California from assuming that such materials are diverted from disposal for the purposes of calculating the state's diversion goals and mandates.

These regulations update RDRS to collect the jurisdiction of origin for exported mixed plastics for assignment of disposed tons as disposal to that jurisdiction of origin in order to comply with AB 881.

Existing law, SB 343 also relates to recyclables, but to labeling rather than disposal calculations. Specifically, SB 343 regulates the use of the "chasing arrows" symbol on products and packaging. With some exceptions, SB 343 requires that products and packaging must be recyclable if they display the chasing arrows symbol or other labeling directing consumers to recycle the material. SB 343 does not

empower CalRecycle to determine whether an affected good is recyclable. Instead, SB 343 requires CalRecycle to gather information about materials: how the materials that are obtained or processed for recovery are collected (i.e., collection method) and what materials are recovered.

These regulations update RDRS to gather the collection method for the materials that are recovered as required by SB 343.

Policy Statement Overview

The objectives of the proposed regulatory amendments are two-fold.

First, SB 343 and AB 881 require CalRecycle to update RDRS to capture additional data. SB 343 requires more specific information about material collection and the types and forms of material that are actively recovered and not considered contaminants. AB 881 requires information regarding the jurisdictions of origin for certain exported mixed plastic wastes.

Second, CalRecycle wants to improve the quality of data already collected in RDRS by altering some existing regulations. The proposed updates will clarify how entities should register and report, as well as capture greater detail for certain reportable activities.

The proposed amendments will provide several benefits. New data collected pursuant to SB 343 will provide information that will improve understanding of the recyclability of various products. Data associated with AB 881 will help CalRecycle more accurately assess disposal in state. Likewise, improving the quality of existing datasets will help CalRecycle and local governments better devise strategies to achieve California's waste management and recycling goals and mandates, such as reducing waste (AB 939, AB 341, AB 1826) and increasing sustainability of the economy (e.g., [SB 1335, Allen, Chapter 610, Statutes of 2018](#); [SB 54, Allen, Chapter 75, Statutes of 2022](#)).

Existing Comparable Federal Regulation or Statute

There are no federal statutes or regulations that are comparable to the proposed regulations.

Consistency with State Regulations

After conducting an evaluation of any regulations relating to this area, CalRecycle has found that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations only amend existing requirements for RDRS.

Mandate on State Agencies, Local Agencies, or School Districts

CalRecycle has determined that the proposed regulations do not impose a mandate on state agencies, local agencies, or school districts.

Fiscal Impact

Costs or savings to any state agency

CalRecycle estimates that the proposed regulations will impose costs but not generate savings for the state. CalRecycle believes that these costs can be covered by normal operating expenses. These expenses may comprise a new Information Technology Associate position for one year (\$164,667, including overhead).

Reimbursable costs to local agencies or school districts

The proposed regulations may impose a cost on local agencies that operate facilities subject to the regulations. However, CalRecycle concluded that the costs of the proposed regulations are not reimbursable by the state. Reimbursable costs are those that mandate a new program or higher level of service. The proposed regulations do not mandate a new program or higher level of service, and the associated costs are not unique to local governments.

Non-discretionary cost or savings imposed upon local agencies

As mentioned above, the proposed regulations will impose a cost on government-run facilities and operations. CalRecycle estimates that the total cost to such entities in the first, second, and third years of the regulations will be, respectively, \$852,717, \$836,276, and \$836,276. The first year has a higher cost due to initial training required to understand the new regulations.

Costs or savings in Federal funding to the state

The proposed regulatory updates do not affect any federally funded State agency or program.

Effect on Housing Costs

CalRecycle has determined that the proposed regulations will not significantly affect housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including Ability to Compete

CalRecycle has determined that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The average cost to businesses is expected to be \$3,772 per year, which should not significantly affect California businesses. This result is discussed further in Appendix A to the Economic and Fiscal Impact Statement (STD 399).

Statement of the Results of the Economic Impact Assessment

CalRecycle determined that the proposed regulations do not constitute a major regulation according to Government Code section 11342.548. Thus, CalRecycle conducted an Economic Impact Assessment.

Creation or Elimination of Jobs

CalRecycle anticipates that the updated regulations will not significantly affect jobs within California. The economic analysis revealed that only approximately 70 new full-time positions would be necessary to satisfy the requirements of the regulations. Not all these positions may be created, since some businesses may satisfy the new requirements using existing staff. Regarding loss of jobs, since the new regulations are unlikely to cause business closure, the regulations will likely not eliminate positions within California.

Creation or Elimination of Businesses

The regulatory changes will neither create nor eliminate businesses. For business creation, the regulatory updates do not incentivize the creation of businesses. Rather, the changes alter and increase reporting for operations within the waste and recycling industries. Regarding the elimination of businesses, the estimated annual cost of the regulations for an average operation was \$3,772. This cost is small enough that it should not cause any affected businesses to cease operations.

Expansion of Businesses

Other than facilities that hire more staff to meet the additional requirements that the updated regulations create, the new regulations should likely not expand existing businesses in California. The new regulations change data collection and reporting requirements for businesses. The regulations do not incentivize businesses to increase their operations, or require businesses to acquire, process, and transfer more materials.

Benefits of the Proposed Action

The proposed changes to the RDRS regulations will improve the state's environment and the health and welfare of California residents. The updates will improve the quality and increase the detail of data collected within RDRS, particularly regarding the material type of recycled or otherwise recovered materials, jurisdiction of origin for solid waste and exported mixed plastic, and source sector. These datasets will help the public evaluate products pursuant to the labeling requirements of SB 343, improve the information available to jurisdictions regarding their disposal and progress towards disposal mandates, and provide enhanced granularity of the source sector of solid waste. In combination, these datasets will also help CalRecycle create strategies for reducing statewide disposal and moving the state towards a circular economy. There are no anticipated benefits to worker safety.

Description of Costs that a Representative Person or Business Will Incur

The proposed regulations will require reporting entities to gather, transfer, and submit to CalRecycle disposal and recycling information, including the types, quantities, and destinations of materials that are disposed of, sold, or transferred inside or outside of the state. The cost impacts of the regulations will stem from the time needed for: 1) training on how to comply with the regulations, 2) collecting the new data required by the regulations, 3) sharing new data among entities, and 4) reporting new data to CalRecycle within RDRS.

Finding on Necessity of Reports

California Government Code section 11346.3(d) provides that regulations that require reporting behavior "shall not apply to businesses, unless the state agency...[finds] that it is necessary for the health, safety, or welfare of the people of the state." While the proposed regulatory updates do address reporting requirements, the proposed regulations do not create these requirements. Rather, sections 41821.5(c) and 42355.51(d)(1)(A) of the Public Resources Code create the reporting requirements and direct CalRecycle to adopt regulations to implement them, including by prescribing the practices and procedures for creating a reporting system. Neither the existing regulations nor the proposed updates require additional reporting beyond what is reasonable and necessary to implement statutory requirements. Moreover, the proposed regulations add specificity and detail, which will enable CalRecycle to fulfill its various statutory mandates as well as to create strategies to accomplish the state's waste diversion and circular economy goals. Accordingly, even if the proposed regulations constitute a reporting requirement pursuant to Government Code section 11346.3(d), they satisfy the requirement that they are necessary for the health, safety, and welfare of the people of the state.

Effect on Small Business

CalRecycle has determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. However, the Department has also determined the proposed regulations will not have a significant, statewide adverse impact on small businesses and will not impede the ability of small businesses to compete in other states.

Consideration of Alternatives

CalRecycle must determine that no reasonable alternative considered by CalRecycle, or that was otherwise identified and brought to the attention of CalRecycle, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed action.

Contact Person

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Donnet McFarlane
1001 I Street, MS-24B
Sacramento, CA 95812
E-Mail: Regulations@calrecycle.ca.gov
Telephone: (916) 327-0089

The backup contact person is:

Craig Castleton
1001 I Street, MS-24B
Sacramento, CA 95812
E-Mail: Regulations@calrecycle.ca.gov
Telephone: (916) 327-0089

Availability of Statement of Reasons and Text of Proposed Regulations

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, the Initial Statement of Reasons, the Economic Impact Statement, the Fiscal Impact Statement, and the appendices to the impact statements. The rulemaking file and all information that provides the basis for the proposed regulation will be available for inspection and

copying throughout the rulemaking process at the following address: 1001 I Street, Sacramento, CA 95814.

Availability of Changed or Modified Text

CalRecycle may adopt the proposed regulations substantially as described in this Notice. If CalRecycle makes modifications that are sufficiently related to the originally proposed text pursuant to Government Code section 11346.8(c), it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle will transmit the modified text to anyone who testifies at the public hearing, submits a written comment at the public hearing, provides a comment during the comments period, or otherwise requests to be notified. CalRecycle will accept written comments on the modified regulation for at least 15 days after the date on which they are made available.

Final Statement of Reasons

The Final Statement of Reasons will be available at 1001 I Street and the rulemaking website, <https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>.

Internet Access

For more timely access to the rulemaking file, and in the interest of waste prevention, interested parties are encouraged to access the Department's Internet webpage for the rulemaking at <https://calrecycle.ca.gov/laws/rulemaking/rdrsupdates/>. All rulemaking files can be downloaded directly from the website.