

May 8, 2024

California Department of Resources Recycling and Recovery (CalRecycle)
Post Office Box 4025
Sacramento, California 95812-4025
Submitted via the Public Comment Form:
<https://calrecycle.commentinput.com/?id=PFAQtV4pU>

RE: SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Draft Regulations

To Whom It May Concern:

The Flexible Packaging Association (FPA) is submitting these comments on CalRecycle's Draft Proposed Regulation Text for Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations (hereinafter referred to as "Proposed Regulations").

I. Introduction to FPA

I am John Richard, director, government affairs 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 packaging products and components.

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 and drugs 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 takeout food containers and e-commerce delivery, , 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 63% and \$26 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 and shelf life, resealability features, enhanced product evacuation, and the optimization of product-to-package ratios.

For another large segment of flexible packaging, the medical and pharmaceutical segment, 8% or \$3 billion, highly specialized sterilization processes are used for packaging in life-saving medical devices and pharmaceutical applications. Packaging requirements, methods, and standards for these medical products are rigorous and unwavering in order to provide consistency and reproducibility to the design and production of sterilizable flexible packaging to help ensure the quality and performance necessary to protect patient safety and health, both human and animal.

Thus, FPA and its members are particularly interested in ensuring that flexible packaging in the above segments and with all segments is provided solutions under SB54 and not obstacles to the vital products this category of packaging serves, FPA has identified several important gaps in this regard in the Proposed Regulations as outlined herein.

II. CalRecycle Must Prevent a Siloed Approach to the Recycling System in California

FPA recognizes that these comments are in response to SB 54, but strongly encourages CalRecycle staff to take a holistic view of California's recycling system and the modifications being made to it, particularly by SB 54 and SB 343.¹ Because CalRecycle has not determined how it will implement SB 343, it is impossible to make fully informed comments on SB 343 and vice versa. Despite this fact, these two laws must be considered and implemented practically and cohesively to ensure the recycling system is appropriate for modern materials.

As film and flexible materials begin to benefit from the end market development and recycling investment that SB 54 will provide, the Department of Resources Recycling and Recovery will need to provide an on-ramp for those materials to be considered "recyclable." Unfortunately, the language in the proposed regulation is not strict enough to ensure recyclable materials that are not currently widely recycled have a path to being considered "recyclable," stating in section 18980.3.1. that "the Department may identify covered material categories exempted from section 42355.51(d)(2) of the Public Resources Code for the purposes of this Act, provided they comply with all other restrictions on being considered recyclable set forth in section 42355.51 of the Public Resources Code."

Giving CalRecycle the option not to exercise this authority would prevent packaging that is trending toward full "recyclability" according to SB 343 from providing instructions to consumers on how to properly recycle the package. FPA requests the Department to amend this paragraph by replacing "may" with "shall" to ensure that CalRecycle will affirmatively pursue use of the on-ramp for modern packaging materials, like those used in flexible packaging. FPA also requests that the arbitrary time windows for a material to qualify for the "trending on-ramp" to be "before the next mandatory update to the material characterization study" be replaced with a requirement that allows CalRecycle to determine if a material is trending towards eventual compliance. There is nothing in statute that requires determinations be based on the next material characterization study, and materials that require new infrastructure will require as much flexibility as SB 54 allows to meet recyclability requirements.

III. FPA Strongly Supports CalRecycle's Criteria for Alternative Collection Programs

¹ For more information on FPA's SB 343 position, please see our April 2, 2024, letter regarding the Preliminary Findings of CalRecycle's SB 343 Material Characterization Study.

FPA and its members recognize that alternative collection programs are a vital tool in the proverbial toolkit for preventing plastic pollution and reducing waste. FPA is encouraged by the proposed regulation's inclusion of these programs and for verification of end markets to be a consideration. One of the reasons FPA objected to the SB 343 preliminary study was that it did not account for nor provide any information about alternative collection infrastructure. FPA strongly supports store drop-off programs for flexible film and has partnered with several like-minded organizations to launch the Flexible Film Recycling Alliance (FFRA) to support the verification of these programs and their end markets.²

Much of the information collected by FFRA's verification system, once established, could assist with the required recordkeeping requirements contained in the draft regulations. In a similar vein as the above section, CalRecycle should ensure that SB 343 correctly accounts for these programs in their reports and rulemaking in order to effectively implement the preliminary SB 54 regulations.

IV. Investment Should be Prioritized for Materials Without End Markets

Flexible packaging is the second largest and fastest-growing segment of the packaging industry because it uniquely contributes to sterile packaging, reduces food waste and the overall environmental impact of the items it protects, and can tailor its chemistry based on the needs of the item's manufacturer. Any substitute in this area will have substantial effects on the environment, food safety, and people's health – particularly in areas without direct access to fresh food, which are often underserved.

Section 18980.6.7 indicated that "A PRO [Producer Responsibility Organization] shall set higher base fee rates for covered material categories that lack a responsible end market. Monies collected from this fee will be used to fund the necessary investments to develop viable responsible end markets for such covered material categories, implement source reduction measures for such covered material categories, or transition to reuse and refill systems to replace such covered material categories." While all these categories are valid, CalRecycle should alter the proposed regulations to require the PRO to prioritize developing viable end markets for existing sustainable materials of choice to prevent unintended impacts on Californians.

V. CalRecycle Must Recognize, Distinguish, and Define Medical Products From Medical Devices and Prescription Drugs

SB 54 exempts medical products **and** products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)), PRC § 42041(e)(2)(A)(i) (emphasis added). But the Proposed Rule only speaks to the second half of the bill language with only devices and prescription drugs addressed; and entirely omits "medical products," which improperly limits the exclusion. This leaves stranded a myriad of medical products that may not fall within the narrow definition of devices and prescription drugs, including over the counter medications, animal medications and treatments, and even some immunizations for both people and animals. These products are heavily regulated and require specific packaging to ensure safety, quality, and sterility. To comport with the plain language and intent of the SB54, CalRecycle must define "medical products," broadly for the numerous products that fall into this segment, and in distinction from devices and prescription drugs.

² Plastics Industry Association, 2024, "Plastics Industry Association (PLASTICS) Launches Flexible Film Recycling Alliance to Improve Recycling Rates, Access, and Education." Press Release, March 13, 2024. <https://www.flexpack.org/publication/RG93bmxcvYWQ6MTI1NQ==/download>

VI. FPA Supports the Proposed Regulation's Covered Material Exemption Assessment of Impacts on Environmental Justice Communities

Proposed § 18980.2.3 outlines that applications requesting an exemption for a covered material based on unique challenges in complying with SB 54 include a discussion on the “potential impacts of the covered material on environmental justice communities from exempting or not exempting the covered material.” FPA strongly supports this criterion and encourages CalRecycle to take as holistic view of the impact analyses as possible. In addition to traditional environmental metrics, FPA suggests a broad evaluation based on elements of the United Nation’s Sustainable Development Goals for identified communities, with particular attention on SDG 2 (Zero Hunger), 3 (Good Health and Well-Being), 6 (Clean Water & Sanitation), 7 (Affordable and Clean Energy), 12 (Responsible Consumption and Production), and 13 (Climate Action). As CalRecycle develops this process, more information and standard evaluation criteria should be provided to the PRO and made public so this information can be collected.

FPA is pleased to provide these comments on the proposed regulation and reiterates our and our members' eagerness to work with CalRecycle to make the necessary investments to ensure modern packaging is properly recycled. Please do not hesitate to contact me with any questions or for more information.

Respectfully,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive style. To the right of the signature is a vertical yellow line, and below the signature is a horizontal yellow line, forming an L-shape.

John J. Richard
Director, Government Affairs
Flexible Packaging Association