

## **Bulletin on new Public Contract Code requirements effective January 2023**

- I. **AB 661 adds new recycling-related requirements under the Public Contract Code**
- II. **SB 34 impacts contracts entered into through bribery**

The recent enactment of AB 661 and SB 34 add new Public Contract Code provisions effective January 1, 2023, that apply to judicial branch entities (JBEs).<sup>1</sup> AB 661 adds new requirements to the Public Contract Code, pursuant to California's State Agency Buy Recycled Campaign (SABRC), while SB 34 provides for the voidability of certain contracts entered into through acts of bribery of a public official. For a copy of the bills' text, statutory revisions, and legislative history, please refer to:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB661&firstNav=tracking](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB661&firstNav=tracking)  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB34](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB34)

For a redlined copy of the changes to statutory provisions enacted by AB 661, please see Attachment 1.

- I. **AB 661** (in updated Public Contract Code Section 12201(c)) requires that:

Beginning on January 1, 2023, a JBE shall purchase recycled products instead of nonrecycled products, if all of the following requirements are met:

- (1) Fitness and quality of the products are equal;
- (2) Recycled products are available at no more than 10 percent greater total cost than nonrecycled products; and
- (3) One of the following situations applies:
  - (A) A JBE uses a leveraged procurement agreement through which both recycled and nonrecycled products are available.
  - (B) A JBE is awarding a contract using the SB/DVBE option (the SB/DVBE option is pursuant to Government Code section 14838.5 and is discussed in Chapter 4C of the *Judicial Branch Contracting Manual* (JBCM)) and receives offers for both recycled and nonrecycled products.
  - (C) A JBE awards a contract without soliciting multiple offers based on a determination that the price is fair and reasonable.

In addition, AB 661 updates and/or adds Public Contract Code sections 12200(f), 12207, and 12209. These provisions require JBEs to maintain procedures to comply with SABRC, meet the minimum recycled content requirements established by CalRecycle, and includes new recycled product category definitions and descriptions. For a complete listing of these new provisions, including the new recycled product category definitions and descriptions please see Public Contract Code Sections 12200(f), 12207, and 12209 in Attachment 1, below.

Updated Public Contract Code Section 12209, provides a listing of products and the minimum recycled content percentages needed to qualify as a recycled product. Section 12209 also states that CalRecycle shall consider updating this list of products and the minimum recycled content percentages, beginning on January 1, 2026 and every three years thereafter. For a full description and listing of recycled products and the required

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<sup>1</sup> This Bulletin pertains to Public Contract Code requirements that JBEs are required to comply with, pursuant to the Judicial Branch Contract Law. With certain exceptions (e.g., PCC 19204(c)), the Judicial Branch Contract Law requires that JBEs comply with the provisions of the Public Contract Code that are applicable to state agencies and departments related to the procurement of goods and services.

minimum recycled content percentages, and a full description of when CalRecycle will determine whether the minimum recycled content percentages should be updated please see Public Contract Code Section 12209 in Attachment 1.<sup>2 3</sup>.

**II. SB 34**

Under SB 34, section 6102 is added to the Public Contract Code.

PCC 6102 provides that a contract executed on or after January 1, 2023 (including contracts negotiated prior to January 1, 2023) is voidable if it was entered into because of an act that would constitute a violation of a state or federal crime relating to bribery of a public official, including, but not limited to, a violation of Section 68 or 86 of the Penal Code.

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<sup>2</sup> As an example, recycled paper products (excluding toilet paper, facial tissue, toilet seat covers, paper towels, and general purpose paper wipes, which are subject to separate requirements in PCC 12209), such as printing and writing paper shall consist of at least 30 percent, by fiber weight, of postconsumer recycled content fiber.

<sup>3</sup> AB 661 (in updated Public Contract Code section 12217) also states that state agency procurement and contracting officers shall participate in CalRecycle’s annual mandatory training that shall provide a complete review of the benefits of SABRC purchases, how to locate qualifying products, and how to explain benefits and requirements to other employees making purchasing decisions. Although, JBEs are not required to comply with this Section 12217, a JBE may choose to participate to remain abreast of the latest SABRC laws and developments.

**Attachment 1: AB 661**

**The attached pages show AB 661 amendments (effective Jan. 1, 2023), in tracked changes, to existing statutes.**

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## AB-661 Recycling: materials. (2021-2022)

### As Amends the Law Today

**SECTION 1.** Section 10333 of the Public Contract Code is amended to read:

**10333.** (a) The department shall delegate purchasing authority, as specified in Section 10332, to any state agency that does all of the following:

- (1) Designates an agency officer as responsible and directly accountable for the agency's purchasing program.
- (2) Establishes written policies and procedures, including procedures for ensuring and documenting competitive purchasing, complying with purchasing standards established pursuant to Section 10307, inspecting acquired products for compliance with specifications, reporting contractor failures to deliver products as specified in contracts, ensuring that agency contracting personnel are free from conflict of interest, and complying with other provisions of law as the department may require.
- (3) Establishes procedures for complying with the provisions of the Small Business Procurement and Contract [Act-Act \(Chapter 6.5 \(commencing with Section 14835\) of Part 5.5 of Division 3 of Title 2 of the Government Code\)](#). The procedures shall include procedures for meeting the goals for the extent of participation of small businesses in state contracting as established by the department pursuant to subdivision (a) of Section 14838 of the Government Code.
- (4) Establishes policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.
- (5) Reports the data to the office that the department may require.

(b) The department shall conduct an audit of each state agency to which purchasing authority has been delegated at least once in each three-year period. The authority to acquire goods may be withdrawn by the department at any time that the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of this section.

*(c) The department shall maintain procedures for complying with the State Agency Buy Recycled Campaign (Chapter 4 (commencing with Section 12153)). The procedures shall include procedures for meeting the minimum recycled content requirements in state contracting as established by CalRecycle pursuant to Section 12209 and procedures for complying with reporting requirements as established by CalRecycle pursuant to Section 12211.*

**SEC. 2.** Section 12102.2 of the Public Contract Code is amended to read:

**12102.2.** (a) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of Technology shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a

single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed ~~prior to~~ *before* the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been ~~maintained~~ *maintained*, sealed and under lock and ~~key~~ *key*, until the time cost proposals are opened.

(b) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(c) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(d) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(e) Notwithstanding Section 12100:

(1) Acquisition authority may be delegated by the Director of General Services, in consultation with the Department of Technology, to any state agency that has been determined to be capable of effective use of that authority. This authority may be limited by the Department of General Services. A state agency shall not conduct an acquisition for information technology goods and services related to an information technology project under delegated acquisition authority pursuant to this section unless the Department of Technology has done one of the following:

(A) Delegated project authority to that state agency pursuant to Section 11546 of the Government Code.

(B) Authorized the state agency to conduct the acquisition.

(2) Acquisitions conducted under delegated acquisition authority shall be reviewed by the Department of General Services on a selective basis.

*(3) The Department of General Services shall maintain procedures for complying with the State Agency Buy Recycled Campaign (Chapter 4 (commencing with Section 12153)). The procedures shall include procedures for meeting the minimum recycled content requirements in state contracting as established by CalRecycle pursuant to Section 12209 and procedures for complying with reporting requirements as established by CalRecycle pursuant to Section 12211.*

(f) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

(g) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of Technology, or a person designated by the director, may consider and decide on initial protests of bids for information technology projects conducted by the Department of Technology and telecommunications procurement made pursuant to Section 12120. The Director of General Services, or a person designated by the director, may consider and decide on initial protests of all other information technology acquisitions. A decision regarding an initial protest shall be final. ~~If prior to~~ *If, before* the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that ~~his or her~~ *their* bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the Department of General Services has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the Department of General

Services a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(h) Consistent with the procedures established and administered by the Department of General Services, information technology goods that have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(i) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures that shall be maintained in the State Administrative Manual. This exclusion shall not exceed 36 months for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 36-month period, upon demonstrating to the Department of General Services' satisfaction that the problems that resulted in the supplier's exclusion have been corrected.

**SEC. 3.** Section 12200 of the Public Contract Code is amended to read:

**12200.** For the purpose of this article, the following definitions shall apply:

(a) "~~Board~~" "*CalRecycle*" means the ~~California Integrated Waste Management Board,~~ *Department of Resources Recycling and Recovery*, as defined pursuant to Section 40110 of the Public Resources Code.

(b) "Business" includes bidders, contractors, and other interested parties that provide services to, or sell products to, the state.

(c) "Department" means the Department of General Services.

(d) "Director" means the Director of General Services.

(e) "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.

(f) "Product categories" include paper products, ~~printing,~~ *printing* and writing papers, ~~compost, cocompost, or mulch, glass, oil,~~ *soil amendments and soil toppings, erosion control products, glass, lubricating oils,* plastic, paint, tires, tire-derived products, antifreeze, ~~and metal.~~ *metal, carpet, pavement surfacing, building finishes, and textiles.*

(g) "Purchase" means any contractual agreement that state agencies use to obtain goods or materials.

(h) "Recycled products" mean goods or materials that meet the requirements identified in Section 12209, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(i) "Reportable purchase" means the purchase of any goods or materials, with recycled content or not, that may be reported or categorized or classified within one of the product categories identified in Section 12207.

(j) "Reportable recycled product purchase" means the purchase of any goods or materials that meet the requirements identified in Section 12209, that may be reported or categorized or classified within one of the product categories identified in Section 12207, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(k) "SABRC" means the State Agency Buy Recycled Campaign.

(l) "Secondary material" means fragments of finished products or finished products of a manufacturing process, that has converted a resource into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process, such as fibers recovered from wastewater, trimmings of paper machine rolls, mill broke, plastic, or metal trimmings, or shavings, or other residue from a manufacturing process. Secondary material does not include postconsumer material, so that the secondary material plus the postconsumer material plus the virgin material adds up to 100 percent of the product.

(m) "State agency" means each entity identified in Section 11000 of the Government Code, and includes the California State University.

**SEC. 4.** Section 12201 of the Public Contract Code is amended to read:

**12201.** (a) The Legislature finds and declares that it is the policy of the state to conserve and protect its resources.

The Legislature further finds and declares that the use of recycled products produced as the result of the superior waste management efforts by the state and local governmental entities will help conserve ~~resources~~; *resources and reduce greenhouse gas emissions contributing to global warming pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).*

(b) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, *education and training of state agency purchasers and bid evaluation preferences for purchases made by the state.*

(c) ~~If fitness and quality are equal, each~~ A state agency shall purchase recycled products instead of nonrecycled products ~~whenever recycled products are available at the same or a lesser total cost than nonrecycled products.~~ *products, if all of the following requirements are met:*

*(1) Fitness and quality of the products are equal.*

*(2) Recycled products are available at no more than 10 percent greater total cost than nonrecycled products.*

*(3) One of the following situations applies:*

*(A) A state agency uses a leveraged procurement agreement through which both recycled and nonrecycled products are available.*

*(B) A state agency is awarding a contract using Section 14838.5 of the Government Code and receives offers for both recycled and nonrecycled products.*

*(C) A state agency awards a contract without soliciting multiple offers based on a determination that the price is fair and reasonable.*

**SEC. 5.** Section 12202 is added to the Public Contract Code, to read:

**12202.** *The University of California is not subject to the procurement requirements of this article but shall report, pursuant to Section 12211, on purchases of the products listed in Section 12207 and what percentage of those purchases meet the associated minimum recycled content requirements in Section 12209.*

**SEC. 6.** Section 12203 of the Public Contract Code is amended to read:

**12203.** Each state agency shall ensure each of the following:

(a) (1) Before January 1, 2020, at least 50 percent of reportable purchases are recycled products.

(2) On and after January 1, 2020, at least 75 percent of reportable purchases are recycled products, except for paint, antifreeze, and tires.

(3) On and after January 1, 2020, at least 50 percent of reportable purchases of paint, antifreeze, and tires are recycled products.

(b) The requirements specified in this article apply to all reportable purchases of *goods by* state agencies for product categories listed in this article.

(c) The reportable purchases of state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this article. The purchase of a recycled product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this article.

(d) Each state agency shall require the businesses with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled products.

**SEC. 7.** Section 12207 of the Public Contract Code is amended to read:

**12207.** This article applies to the purchase of goods and materials from the following product categories:

(a) Paper products, including, but not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, *paper food serviceware*, tissue, and toweling.

(b) Printing and writing papers including, but not limited to, copy, xerographic, watermark, cotton fiber, offset,

forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

~~(c) Mulch, compost, and cocompost products including soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation. *Soil amendments and soil toppings.*~~

~~(1) (d) "Compost" means a product that meets the following requirements: *Erosion control products.*~~

~~(A) It results from the controlled biological decomposition of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, or other source of organic materials.~~

~~(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.~~

~~(2) "Cocompost" means a product that meets the following requirements:~~

~~(A) It results from the controlled biological decomposition of a blend of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, and also including, but not limited to, biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues, or fish processing byproducts.~~

~~(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.~~

~~(3) "Mulch" means a product that meets the following requirements:~~

~~(A) It results from the mechanical breakdown (chipping and grinding) of materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility.~~

~~(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.~~

~~(d) (e) Glass products including, but not limited to, windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.~~

~~(e) (f) Lubricating oils including, but not limited to, any oil intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.~~

~~(f) (g) (1) Plastic products including, but not limited to, printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, *plastic food serveware*, and trays.~~

~~(2) For purposes of this subdivision, "printer or duplication cartridges" has the same meaning as described in paragraph (2) of subdivision (f) of Section 12209.~~

~~(g) (h) Paint, including, but not limited to, water-based paint, graffiti abatement, interior and exterior, and maintenance.~~

~~(h) (i) Antifreeze, including recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar nontoxic substance.~~

~~(i) (j) ~~Tires~~ *Retread tires*, including, but not limited to, truck and bus tires, and those used on fleet vehicles and passenger cars.~~

~~(j) (k) Tire-derived products including, but not limited to, flooring, mats, wheelchair ramps, playground ~~cover~~, *surfacing, sports surfacing*, parking bumpers, bullet traps, hoses, bumpers, truck bedliners, pads, walkways, tree ties, ~~road surfacing~~, wheel chocks, rollers, ~~traffic control~~ *traffic-related* products, mudflaps, ~~and accessibility ramps, paths and sidewalks, animal care products, including, but not limited to, horse arena~~~~

*surfacing, stall mats, cow mats, and equestrian barn and breezeway flooring, artificial turf, landscaping and rubber mulch, outdoor surfacing, pavers and tiles, and posts.*

~~(k) (l) Metal Metals, including, but not limited to, staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.~~

~~(m) Building finishes, including, but not limited to, open panel office systems.~~

~~(n) Carpet.~~

~~(o) Textiles, including, but not limited to, general purpose wipes.~~

**SEC. 8.** Section 12209 of the Public Contract Code is repealed.

~~12209. For purposes of this article, the following minimum content requirements apply:~~

~~(a) Recycled paper products shall consist of at least 30 percent, by fiber weight, postconsumer fiber.~~

~~(b) (1) Recycled printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer fiber.~~

~~(2) Printed newspapers that meet the requirements of Chapter 15 (commencing with Section 42750) of Part 3 of Division 30 of the Public Resources Code shall be considered in compliance with the requirements of this section.~~

~~(c) For recycled compost, cocompost, and mulch, at least 80 percent of the product shall consist of materials, including, but not limited to, the materials listed in subdivision (c) of Section 12207, that would otherwise be normally disposed of in landfills.~~

~~(d) For recycled glass, the total weight shall consist of at least 10 percent postconsumer material.~~

~~(e) Rerefined lubricating oil shall have a base oil content consisting of at least 70 percent rerefined oil.~~

~~(f) (1) For recycled plastic products, other than printer or duplication cartridges, the total weight shall consist of at least 10 percent postconsumer material.~~

~~(2) Recycled printer or duplication cartridges shall comply with either the requirements set forth in subdivision (e) of Section 12156 or the general requirement for recycled plastic products set forth in paragraph (1).~~

~~(g) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subdivision. If paint containing 50 percent postconsumer content is unavailable, or is restricted by a local air quality management district, a state agency may substitute paint with at least 10 percent postconsumer content.~~

~~(h) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.~~

~~(i) Retreaded tires must use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.~~

~~(j) For tire-derived products, the total content shall consist of at least 50 percent recycled used tires.~~

~~(k) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.~~

~~(l) For reused or refurbished products, there is no minimum content requirement.~~

**SEC. 9.** Section 12209 is added to the Public Contract Code, to read:

**12209.** (a) (1) CalRecycle, with the concurrence of the department and in consultation with impacted agencies, shall update the list of products identified in this section and update the minimum recycled content percentages, as determined to be appropriate, commencing January 1, 2026, and every three years thereafter. In updating the list of products identified, CalRecycle shall take into consideration the standards in the United States Environmental Protection Agency Comprehensive Procurement Guidelines for Paper and Paper Products. CalRecycle and the department shall incorporate the updated list of products and minimum recycled content requirements into the State Contracting Manual, the Financial Information System for California, and the financial system of any department not utilizing the Financial Information System for California. CalRecycle shall maintain an internet website with current SABRC products and minimum recycled content requirements.

(2) In determining whether the minimum recycled content percentages should be updated pursuant to paragraphs (1) and (3), CalRecycle shall consider, at a minimum, all of the following factors:

(A) Market conditions, including supply and demand for the postconsumer recycled materials, collection rates, and bale availability both domestically and globally.

(B) Recycling rates.

(C) The availability of the recycled material suitable to meet the minimum recycled content requirements.

(D) The capacity of recycling or processing infrastructure.

(3) CalRecycle, with the concurrence of the department, may set a higher minimum recycled content standard for white 20 pound printing and writing paper and white wove envelopes, either during the triennial review pursuant to paragraph (1) or at any other time after January 1, 2024.

(b) For purposes of this article, effective January 1, 2023, and until updated pursuant to subdivision (a), the product categories and minimum content and recyclability requirements identified in subdivisions (c) to (r), inclusive, shall apply:

(c) (1) Recycled paper products shall consist of at least 30 percent, by fiber weight, of postconsumer recycled content fiber, as specified below. Printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer recycled content fiber, provided that printed newspapers that meet the requirements of Chapter 15 (commencing with Section 42750) of Part 3 of Division 30 of the Public Resources Code shall be considered in compliance with the requirements of this section.

(2) Other paper products shall consist of at least 30 percent, by fiber weight, of postconsumer recycled content fiber, except as specified below:

(A) Toilet paper shall consist of at least 45 percent, by fiber weight, postconsumer recycled content fiber.

(B) Paper towels shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber.

(C) Facial tissue shall consist of at least 10 percent, by fiber weight, postconsumer recycled content fiber.

(D) Toilet seat covers shall consist of at least 20 percent, by fiber weight, postconsumer recycled content fiber.

(E) General purpose paper wipers shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber.

(F) Food serviceware, including, but not limited to, napkins, plates, bowls, food trays, takeout boxes, placemats, etc. shall consist of at least 40 percent, by fiber weight, postconsumer recycled content fiber.

(d) (1) For recycled soil amendments and soil toppings, at least 80 percent of the product shall consist of compost or mulch materials, or both, that would otherwise be normally disposed of in landfills.

(2) As used in this subdivision:

(A) "Compost" means a product that meets the following requirements:

(i) It results from the controlled biological decomposition of organic materials, including, but not limited to, yard trimmings, green materials, food materials, biosolids and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, or other source of organic materials.

(ii) It is produced by a public or private supplier that is in compliance with CalRecycle's composting operations regulatory requirements.

(B) "Mulch" means a product that meets the following requirements:

(i) It results from the mechanical breakdown by chipping and grinding of materials, including, but not limited to, yard trimmings, untreated lumber, and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility.

(ii) It is produced by a public or private supplier that is in compliance with CalRecycle's composting operations regulatory requirements.

(iii) It results from the mechanical breakdown by chipping and grinding of dead and dying trees removed to reduce wildfire risk.

(e) (1) For recycled erosion control products, the recycled products shall be derived to the greatest extent possible, from no less than 100 percent California recycled organic materials diverted from the solid waste stream or from forest health management that consists of trees generated from the removal of dead and dying trees to reduce wildfire risk, and hydraulic mulch that includes compost made from 100 percent California recycled organic materials or recycled paper, or both, with 100 percent California content, as practicable and feasible.

(2) As used in this subdivision:

(A) "Recycled erosion control products" mean compost filter socks, compost blankets, and other compost-related erosion products:

(i) Compost filter socks are a three-dimensional tubular sediment control and stormwater runoff filtration device consisting of a mesh covering and a filtration medium made of fully composted materials. Compost filter socks come in 5, 8, and 12 inches in diameter. A 5-inch compost filter sock may be considered the functional equivalent of a 12-inch straw wattle.

(ii) A compost blanket is a layer of compost protecting bare soil surfaces with slope less than 1.5:1 from wind and water erosion that provides water conservation, weed control, and nutrients for long-term, sustainable vegetation. The blanket may or may not contain a tackifier or be seeded. The blanket may be spread by hand or using a blower truck.

(B) "Hydraulic mulch" means an erosion control process that uses a fiber slurry and a tackifier. The slurry is transported in a tank, either truck- or trailer-mounted, and sprayed on prepared ground. The slurry may also contain compost and seeds.

(3) When considering the costs of compost-based erosion control measures, state agencies may also consider performance, pollution prevention, and cost of deployment, although when pollutants are present, control of pollutants shall take precedence over cost.

(f) For recycled glass, not including glass food and beverage containers, the total weight shall consist of at least 25 percent postconsumer material, except for fiberglass, which shall consist of 30 percent cullet, consistent with Section 19511 of the Public Resources Code.

(g) Rerefined lubricating oil shall have a base oil content consisting of at least 70 percent rerefined oil.

(h) (1) For recycled plastic products, the total weight shall consist of at least 20 percent postconsumer material.

(2) Recycled printer or duplication cartridges shall be remanufactured such that they adhere to specifications equal to or exceeding original equipment manufacturer (OEM) cartridge specifications and approved remanufactured toner cartridge industry standards established by the Standardized Test Methods Committee, or comply with the general requirement for recycled plastic products set forth in paragraph (1). All printer or duplication cartridges shall comply with the requirements set forth in Section 12156.

(i) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subdivision.

(j) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.

(k) Retreaded tires must use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.

(l) For recycled tire-derived products, such as crumb rubber (as a singular, intermediate product), rubber mulch or bark, rubberized sidewalks or tree wells, loose-fill or pour-in-place playgrounds, tiled or rolled recreational flooring, floor and agricultural mats, sports tracks, or synthetic turf infill, the total content shall consist of at least 50 percent recycled used waste tires and the recycled products shall be derived from no less than 100 percent California recycled materials diverted from the solid waste stream.

(m) (1) Rubberized pavement surfaces, such as rubberized asphalt concrete and chip seal, the binder shall contain at least 15 percent recycled waste tires by weight and the recycled products shall be derived from no less than 100 percent California recycled materials diverted from the solid waste stream.

(2) Recycled asphalt pavement shall contain a minimum of 25 percent reclaimed asphalt pavement by weight, as permitted by specifications and standards developed by the Department of Transportation for recycled paving materials pursuant to Sections 42700 and 42701 of the Public Resources Code, to the extent that the use of such

*materials meets the Department of Transportation's performance standards and that the use of such materials is practicable and feasible without impacting the lifespan and durability of the pavement containing the materials.*

*(n) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.*

*(o) For reused or refurbished products, there is no minimum content requirement.*

*(p) For building finishes, open office panel systems shall meet the middle range requirements of department state contracts.*

*(q) Carpet shall contain a minimum postconsumer recycled content that shall be determined by the department and published in the State Contracting Manual by July 1, 2018, and subsequently updated by the department. The department shall include carpet recycling requirements for state buildings in the State Contracting Manual.*

*(r) For textiles in general, there is no minimum content requirement. For general purpose textile wipes, the total content shall consist of 100 percent recycled content.*

**SEC. 10.** Section 12211 of the Public Contract Code is amended to read:

**12211.** (a) A state agency shall report annually to ~~the board~~ *CalRecycle* its progress in meeting the recycled product purchasing requirements *and, if necessary, an explanation of circumstances beyond the state agency's control that prevented the state agency from meeting the recycled product purchasing requirements for specified product categories* using the SABRC report format provided by ~~the Department of Resources Recycling and Recovery~~ *CalRecycle*.

(b) On or before October 31 of each year, the department shall provide to ~~the Department of Resources Recycling and Recovery~~ *the CalRecycle* the following information:

(1) A list, by category, of individual reportable recycled products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule during the previous fiscal year.

(2) A list, by category, of all reportable products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule, including contract, agreement, or schedule tracking numbers, during the previous fiscal year.

**SEC. 11.** Section 12215 of the Public Contract Code is amended to read:

**12215.** Each state agency may, at the discretion of the individual agency director or ~~his or her~~ *their* designee, print a statement on recycled products selected by the agency director. This statement shall be determined by the department, in consultation with ~~the board~~ *CalRecycle*, and shall be similar to the following: "Contains at least \_\_\_\_ percent postconsumer material."

**SEC. 12.** Section 12217 of the Public Contract Code is amended to read:

**12217.** (a) ~~If at any time a requirement has not been met, the department, in consultation with the board, shall review purchasing policies and shall make recommendations for immediate revisions to ensure that the recycled product purchasing requirements are met.~~ *State agency procurement and contracting officers, or their designees, from all agencies shall participate in annual mandatory training that is conducted by CalRecycle. The training may be web-based and shall provide a complete review of the benefits of SABRC purchases, how to locate qualifying products, how to report information, and how to explain benefits and requirements to other employees making purchasing decisions.*

*(b) If a state agency does not meet SABRC purchasing requirements in each product category, CalRecycle shall report the state agency to the department.*

~~(b)~~ *(c)* In determining purchasing specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state purchasing specifications shall be established in a manner that results in the maximum state purchase of recycled products.

~~(e)~~ *(d)* *(1)* If a recycled product, as defined in subdivision (h) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

*(2) If a recycled product, as defined in subdivision (h) of Section 12200 has special performance requirements necessary for the protection of public safety, as defined by the Department of General Services, the state agency may purchase that product made with virgin material. For the purposes of this paragraph, public safety includes, but is not limited to, structural steel coatings, traffic paint applications, and roadway safety devices.*

~~(d)~~ (e) Each state agency shall establish purchasing practices that ensure the purchase of goods and materials that may be recycled or reused. Each state agency shall continue activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section. *Alternatively, a state contract may require that the vendor take back the product for proper management after it has been used. Upon request by a state agency, CalRecycle shall offer advice and recommendations regarding products and situations in which a take-back requirement is appropriate.*

~~(e)~~ (f) To assist the state in meeting the requirements of this article, each state agency, and the department, in consultation with ~~the board,~~ *CalRecycle,* may also establish recycled product-only bids, cooperative purchasing arrangements, or other mechanisms to meet the requirements for recycled products and to encourage the maximum state purchase of recycled products.

~~(f)~~ (g) The department, in consultation with ~~the board,~~ *CalRecycle,* shall review and revise the purchasing specifications *and contract documents* used by state agencies in order to eliminate restrictive specifications and discrimination against the purchase of *remanufactured or* recycled products and to ensure that they are drafted in a manner that results in the maximum state purchase of *remanufactured* recycled products. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards. *Remanufactured products shall conform to performance standards to ensure they are essentially equivalent to new products that perform the same function.*

*(h) (1) In order for state agencies to easily procure SABRC-compliant products, ensure their success in the program, and support the recycled content industry, the department and the Prison Industry Authority shall prioritize the use of recycled content products.*

*(2) The department shall continue to make products that meet the SABRC postconsumer minimum percentage requirements available through statewide contracts, and provide information to state agencies regarding contracted products that meet these requirements.*

*(3) The Prison Industry Authority, in collaboration with CalRecycle, shall make every attempt to procure parts that meet the SABRC postconsumer minimum percentage requirements for the products it creates and sells to state agencies.*

~~(g)~~ (i) Any state agency that is required to submit an SABRC report to ~~the board,~~ *CalRecycle,* pursuant to Section 12211, is subject to a review conducted by ~~the board~~ *CalRecycle* or its designee.