



May 8, 2024

Ms. Karen Kayfetz  
Branch Chief, CalRecycle Product Stewardship Branch  
1001 I Street  
Sacramento, CA 95814

Emailed to [packaging@calrecycle.ca.gov](mailto:packaging@calrecycle.ca.gov) and uploaded to <https://calrecycle.commentinput.com/>

**Re: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations – Notice File Number Z2024-0227-04**

Dear Ms. Kayfetz,

On behalf of the undersigned organizations – Ocean Conservancy, The Nature Conservancy, Monterey Bay Aquarium, and Oceana – we appreciate the opportunity to comment on CalRecycle’s draft regulations for Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act. We are deeply grateful for the time and energy the Department invested in this rulemaking, as evidenced by the detailed and thorough proposed rules. Overall, the draft regulations represent a reasonable interpretation of statute, and incorporate months of public feedback provided during public workshops. We appreciate the comment period extension to allow for more thorough feedback from interested and affected parties. And we extend our deep gratitude to the Advisory Board members for agreeing to serve and leading thoughtful and diligent conversations while developing their comments. As proud negotiators of SB 54, we would like to emphasize a few key elements of this landmark law to clarify how the statute is structured and the requirements it places on producers.

First, the 25% source reduction mandate applies to all single-use plastic packaging and plastic food service ware and must be achieved collectively by all producers within the Producer Responsibility Organization (PRO) and independent producers. That does not mean that SB 54 requires that each individual producer must source reduce by at least 25%.

Second, SB 54 clearly prohibits “chemical recycling” from counting as recycling and precludes funding the development of these technologies with producer fees. This is reiterated in several places in statute including in the recycling definition under PRC §42041(aa)(2), which excludes incineration, energy generation, fuel production, and disposal. Disposal is further defined under PRC §40192(b) ensuring that transformation and engineered solid waste management conversion are not considered recycling, where ‘transformation’ is defined as including incineration, pyrolysis, distillation, or biological conversation other than composting under PRC § 40201. The definition of disposal is also referenced in the recycling rate definition under PRC §42041(ab) further supporting the prohibition of these technologies. Finally, the law mandates that the regulations include criteria to exclude technologies that generate significant hazardous waste under PRC §42041(aa)(5).

To ensure there could be no ambiguity on the express meaning of the statutory language, upon passage of SB 54, Senator Allen sent a letter to the Senate Journal to document the legislative intent behind the recycling definition in SB 54. Specifically, the letter states *“Technologies using pyrolysis, gasification, solvolysis, and similar technologies that involve combustion and*

*incineration, as well as the generation of hazardous waste, are . . . prohibited from being considered 'recycling' under SB 54."*

Third, producers joining the PRO early is critical for getting accurate data and sufficient funding for the program to get off the ground and be successful. It was the intent of the negotiators that producers join the PRO as soon as possible, with a cutoff date of no later than 2027. As such, we encourage CalRecycle to actively engage producers and strongly encourage them to join the PRO well before the 2027 program state date. Specifically, we support a PRO registration date in the timeframe of late 2024 for obligated producers to ensure adequate time for data and fee collection to support the development of the PRO plan.

Fourth, SB 54 requires the PRO to cover the costs of any and all improvements to the existing system (i.e., all improvements necessary to meet the newly established mandates of the law). The cost coverage does not include capital improvements made before the passage and implementation of SB 54. These costs are distinct from and in addition to the environmental mitigation funds required in PRC §42064.

Finally, SB 54 broadly outlines how the environmental mitigation funds should be allocated and that these dollars will be appropriated through the state's annual budget process. Effective allocation of these resources will require early and frequent communication with environmental justice communities and other key parties to further refine priorities to ensure that the funds are spent equitably and that they do not supplant existing funding for existing programs. The objective is for plastics producers' funds to meaningfully address long-standing plastic pollution harms to communities and the environment above and beyond current or past efforts paid for by taxpayers, bondholders, and philanthropy.

With respect to the draft regulations themselves, our comments focus on providing key insights from those who negotiated SB 54 to help ensure alignment of the regulations with the statutory intent and language. We offer detailed comments in the attached tables, but first want to underscore several key issues in the draft regulations that we believe are critical to the successful implementation of SB 54:

1. **Provide additional clarity on the definition of reuse and refill to support the development of a systemic approach.** The role of reuse and refill is critical in achieving the desired outcomes of SB 54. Given that reusable and refillable packaging and food service ware are exempt from the program, the definition of exempted packaging and products must require that the reusable and refillable packaging and products be part of a system that enables the reuse and refill of the product multiple times (i.e., to avoid the need for additional packaging). The intent of the drafters was to only exempt these packaging and products as a way to incentivize systems and avoid the unintended consequences of exempting packaging and products that could theoretically be used repeatedly, but in practice are not. The definition should also include "multiple" as meaning "several or numerous," and utilize industry standard terms for cleaning reusable and refillable packaging instead of washing.
2. **Remove source reduction adjustment factors.** We have serious concerns about the inclusion of a source reduction adjustment factor as part of the PRO Plan. We do not believe that SB 54 gives either the Department or the PRO the authority to utilize adjustment factors to determine its reduction obligation relative to a baseline.

3. **Clarify the recycling rate calculations to ensure accurate and consistent data.** Given the significance of recycling rate determinations in the mandates laid out in SB 54, including the prohibition on EPS food service ware by January 1, 2025, and other plastics that fail to meet recycling rate mandates, it is critical to have the most accurate data possible. We have serious concerns that, as currently described, calculating the recycling rate at the end market (i.e., the remanufacturing of plastics) will compromise data quality as these remanufacturers have no statutory obligations to report. We therefore strongly recommend updating the recycling rate determination to be calculated as bales exiting the material recovery facilities (MRF) sent to a responsible end market as a proxy for what will ultimately be remanufactured. We also recommend adding language clarifying that the Department is responsible for calculating recycling rates to ensure consistent and accurate reporting.
4. **Ensure transparency throughout the implementation process.** Transparency, data, and public disclosures are essential to ensuring the success of SB 54 and to restore Californians' trust in the waste management system. We sincerely appreciate the added clarity provided around the length of and limits to various exemptions, assuaging many concerns around potential loopholes in reporting and/or compliance by producers.

The ability of the public to review producer plans and independently analyze data is critical to instilling public trust in allowing producers to play a leading role in advancing key elements within the success of SB 54. We encourage the Department to ensure the public has access to high-resolution producer data and is given the opportunity to review initial plans, plan renewals, and amendments at each stage. Although the regulations require the PRO to post these documents publicly, there is no guarantee that the public will have as meaningful an opportunity to comment as there is during public rulemaking procedures.

5. **Ensure consistent use of the terms throughout the regulations.** "A PRO, participating producer, or Independent Producer" should consistently be used as a phrase throughout for requirements that apply to all three entities. There are instances where the term "producers" is used and it is unclear if this refers to a "participating producer," an "independent producer," or both. Additionally, there are times where "the PRO or independent producer" is utilized and may make sense to broaden to "the PRO, and its participating producers, or an independent producer." Further, we recommend reconsidering the use of the terms "product," "component," "good," and "item" throughout the regulations to ensure they are logical and necessary. If each of these terms are kept in the regulations, we request they be used consistently throughout and defined with clear distinctions between their meanings and appropriate use.
6. **Provide clarity on criteria for the exclusion of recycling technologies that generate hazardous waste.** The draft regulations fail to specify "criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste" from the definition of "recycling" as required by §42041(aa)(5). While SB 54 prohibits the use of and funding for "chemical recycling" technologies, the Department must also identify criteria to exclude plastics recycling technologies that pose significant risks to public health or the environment.

We look forward to continuing to engage with the Department, the PRO, and other parties on the implementation of this groundbreaking law and stand ready to help as best we can to ensure

this law including the source reduction mandates, environmental mitigation fund, and extended producer responsibility (EPR) are successful.

If you have any questions about our comments, please reach out to Jennifer Fearing ([jennifer@fearlessadvocacy.com](mailto:jennifer@fearlessadvocacy.com)). Thank you again for all your work on the draft regulations and for the opportunity to comment.

Sincerely,

Anja Brandon, Ph.D.  
Associate Director, US Plastics Policy  
Ocean Conservancy

Tara Brock  
Pacific Legal Director and Senior Counsel  
Oceana

Alexis Jackson, Ph.D.  
Associate Director, Oceans Program  
TNC California

Amy Wolfrum  
Director, California Policy & Government Affairs  
Monterey Bay Aquarium

*Attachment*

Below we outline comments on specific sections in the draft regulatory package.

## **Chapter 11.1 Plastic Pollution Prevention and Packaging Producer Responsibility**

### **Article 1 - Definitions**

The definitions in SB 54 were negotiated with a great deal of care and intention. While some terms may need additional clarity, we recommend the Department streamline the regulatory definitions to cross reference the statute wherever possible and ensure consistency throughout the regulations. We note that some terms need to be removed, and others defined (including “environmental justice community”) or require a clearer definition (as is the case with “disposal or disposed”). Whenever possible, we recommend the Department cross reference terms to another definition in statute (e.g., PRC §40192 defining disposal) or use terms already defined under SB 54 (e.g., disadvantaged, rural, or low-income communities).

Section	Comments
§18980.1(a)	<p>(6)(A) &amp; (B): We recommend the definition be changed to mirror the statutory definition or be eliminated. PRC §42041(u) defines a “plastic component” as a separate or separable piece of the covered material,” it does not require that the piece be readily distinguishable in composition or function, merely that it be made of plastic and be separable. It also does not require that it be “readily mechanically detachable” as outlined under (6)(B). In limiting the scope of what may be considered a “component,” the department could lower the baseline number of plastic pieces that must be accounted for, and source reduced under PRC §42057.</p> <p>(A) “Component,” with respect to covered material, means a piece or subpart that is <b><i>readily distinguishable separate or separable</i></b> from other pieces or subparts <b><i>with respect to its composition or function</i></b>.</p>
	<p>(10) We recommend CalRecycle better clarify use of the terms “product,” “good,” and “item” in relation to covered material regulated under the Act as these terms are used interchangeably, are not well-distinguished, add confusion, and may not be necessary to carry out the statutory objectives that focus on packaging and food service ware, especially when “product” is defined to include the covered material that the product uses.</p>
	<p>(12) We recommend broadening the definition of food service ware by changing “and” to “or” in the definition so that the definition will encompass items “intended to be used to contain, serve, store, handle, protect, or market food <b><i>and-or</i></b> facilitate the consumption of food.”</p>
	<p>(13)(B)(ii) We request the Department clarify that although items described under this section would not be considered “food offered for sale or provided to customers by a food service establishment,” the material used to package such food would still be considered packaging under PRC §42041(s).</p>
	<p>(14) We recommend removing the definition of “incompatible material” and instead including a definition for “contamination” as that term is used more frequently throughout the regulatory package and is the term used in SB 54</p>

	<p>definition of “rate of inbound contamination.” A definition of contamination might simply reference the definition in PRC §42041(z) that “contamination” means nonrecyclable or noncompostable materials arriving at a MRF or other recycling or composting facility.</p>
	<p>(20) We recommend the definition of “nonplastic” be changed to clarify that the Department will use the definition of plastic under §42041(t).</p> <ul style="list-style-type: none"> <li>• “Nonplastic,” when used in these regulations to describe a component of covered material or other physical good, means the component or good is not considered plastic as set forth in <b><u>paragraph (24) section 42041(t) of the Public Resources Code.</u></b></li> </ul>
	<p>(24) We strongly recommend CalRecycle use the definition of plastic in PRC §42041(t). The proposed regulatory definition of plastic appears to be attempting to further clarify what it means to be a “plastic component” which is unnecessary because both “plastic” and “component” are already defined in statute and the proposed regulations. The proposed definition also creates an additional exemption for plastic single-use packaging not contemplated by the statute for “plastic present in components . . . that otherwise do not contain plastic as a result of contamination not caused by the producer.”</p>
	<p>(25) We are concerned about including two definitions of “plastic” in the regulations and encourage the Department to remove this definition as it is only used for a single purpose and adds confusion. If the Department must keep the definition, we recommend incorporating the elements included in the definition of “plastic” under PRC §42041(t) (e.g., that plastics are not chemically synthesized) and removing the term “polymer” as that can create additional confusion.</p>
	<p>(27) We recommend the Department reconsider the need for a definition of “product” to include the covered material used by the product. This creates confusion and a lack of clarity around several provisions throughout the regulations. It also appears that the term “item” is used interchangeably with “product” throughout the draft regulatory package and creates confusion around plastic food service ware and reusable and refillable packaging which are also products in many instances. We further recommend removing the phrase “caused to be associated with” under subsection (A) as follows:</p> <ul style="list-style-type: none"> <li>• “For a product that is physically provided to the consumer on the premises of a retail seller or other distributor, the product’s packaging does not include materials <b><u>caused to be associated with used to package</u></b> the product at the point of sale or distribution or after initial physical display of the product to the consumer.</li> </ul>
	<p>(34) While we appreciate the Department’s effort to clarify the definition of reusable and refillable packaging and food service ware, we are concerned that the proposed regulations relating to reuse and refill could limit the uptake of reusable and refillable packaging and food service ware by producers and fail to meet the statutory objectives.</p> <ul style="list-style-type: none"> <li>• First, the regulations do not define what it means to be “conveniently” reused or refilled under (34)(D). Instead, the regulations only attempt to</li> </ul>

	<p>clarify what it means to be “safely” reused or refilled within the meaning of the Act. We recommend the Department further define standards for convenient use and ensure producers set up systems for reuse and refill in enough locations for a high rate of return and refill by consumers.</p> <ul style="list-style-type: none"> <li>● Second, the proposed regulations hold reusable and refillable packaging and food service ware to a higher standard than covered material by requiring they not leach chemicals or shed microplastics under (34)(D)(i). Currently, many reusable and refillable packages and food service ware are made of plastics and may shed microplastics or leach chemicals. We fully support the goal that no packaging or food service ware would leach chemicals or shed microplastics, we recommend this language be removed (as suggested below) or that it be applied to all covered materials with a requirement for minimization in order to create a level playing field and ensure more rapid uptake of reusables and refillables. We recommend the following language change: <ul style="list-style-type: none"> <li>○ (D)(11) - “...and retains its form and function during reuse and washing by the consumer, without posing environmental or public health risks, <u>such as chemical leaching and microplastic shedding.</u>”</li> </ul> </li> <li>● Third, the regulations both under and overregulate the number of uses that packaging or food service ware must endure by only requiring reusables and refillables be used more than once while simultaneously setting a high number of uses (780). The plain meaning of “multiple” is “several” or “numerous” and certainly would not be understood to mean only two. Because it is difficult to pick a number of uses that is not arbitrary, we encourage the Department to consider other methods to determine sufficient reuse, such as a rate of return, instead of setting standards that are insufficient to implement the statutory objective (used at least once) or may be unattainable.</li> </ul> <p>Additionally, we support comments from reuse and refill experts regarding the requirement that packaging and food service ware be “sufficiently washable” and recommend the Department use the term “cleaned” or “sanitized” in order to better capture the processes that may be used to ensure reusable and refillables can be “safely” reused and refilled. We also recommend the Department consider including a process by which reusable and refillables could be verified by a third party as is done for postconsumer recycled content.</p> <p>Finally, we recommend the list of environmental impacts to be assessed under (34)(E)(ii) be expanded to include pollution, water usage, greenhouse gas emissions, and waste.</p>
	<ul style="list-style-type: none"> <li>● (37) We reiterate that metric tons are the preferred measurement for data collection and reporting in order to ensure easier comparisons to other jurisdictions outside the U.S.</li> </ul>



**Article 2 - Covered Material and Covered Material Categories**

Section	Comments
§18980.2	<ul style="list-style-type: none"> <li>We appreciate the clarity provided in (a)(2) that allows for the Department to determine if a material is covered material because it does not meet the definition of “reusable” or “refillable.”</li> <li>We also reiterate the need for additional clarity on the definition of reuse and refill, as outlined above in §18980.1(a)(34), to ensure a convenient and accessible reuse and refill system is developed to meet the mandates and objectives of SB 54.</li> </ul>
§18980.2.1	<ul style="list-style-type: none"> <li>(f) - For consistency with other determinations, we recommend updating the language to “Except as otherwise provided in §18980.2.5, <b><u>the Department, in its sole discretion, may approve an application and</u></b> if approved, the exemption shall apply...”</li> <li>We recommend adding clarity that the Department’s determination (approval or otherwise) of the exemption is also a public document subject to mandatory disclosure.</li> </ul>
§18980.2.2	<ul style="list-style-type: none"> <li>Additional clarity is needed in (a)(5) and in §18980.3.2 on who is responsible for calculating the recycling rate, given the significance of this calculation to determining compliance, we would like the Department to clarify that it will be responsible for all calculations. We recommended the following clarification to §18980.3.2 (a): “<b><u>The Department shall calculate the recycling rate</u></b> using data and the methodology as described below.”</li> <li>We also recommend the following clarity for (a)(5) of this section: “<b><u>The Department shall calculate the</u></b> recycling rate using the methodology...”</li> </ul>
§18980.2.3	<ul style="list-style-type: none"> <li>(c)(5)(A)(iv) - We recommend removal of the language “financial reasons.” All covered material under an EPR plan will face financial impacts to help cover the costs of the end-of-life of the material, and covered materials that are harder to recycle intentionally and appropriately will have to pay more as a means of incentivizing necessary changes in the market. Therefore, we do not support using financial reasons as a means to justify exemptions.</li> <li>(c)(5)(A)(v) - “environmental justice communities” must be defined and include frontline communities and those most impacted (see our comment in §18980.1).</li> <li>(c)(5)(A)(vii) - We recommend expanding this language to “A description of why the covered material cannot be recycled, <b><u>composted, reused,</u></b> or source reduced.”</li> </ul>
§18980.2.5	<ul style="list-style-type: none"> <li>(a) - We recommend adding a time-bound constraint for the PRO, participant producer, or Independent Producer to recommend changes to the CMC list, e.g., once a year as part of, or immediately following, the submission of their annual report.</li> <li>(b)(7) - We recommend adding “<b><u>reasonable</u></b>” to the language around</li> </ul>



	<p>“financial implications” as all covered materials and producers that are part of an EPR program will face financial implications.</p>
§18980.2.6	<ul style="list-style-type: none"> <li>• (b) - To ensure a robust public process around substantive decisions like the exemption of a class of products or covered materials, we recommend that the Department notify the Advisory Board and request their review of the exemption prior to a final determination in instances where the Department is interested in issuing an exemption to a class of products or covered material without an application requesting the exemption. We also request that, consistent with other determinations made by the Department, language be added to (b) that indicates that the decision and supporting materials relevant to the decision-making process are public documents subject to disclosure.</li> </ul>

### **Article 3 - Evaluations of Covered Material and Covered Material Categories**

Overall, we appreciate the additional detail provided in this section. However, we recommend clarification of the recycling rate methodology, including additional clarity on how the department will determine the denominator (i.e., total amount of covered material) in the calculation.

<b>Section</b>	<b>Comments</b>
§18980.3	<ul style="list-style-type: none"> <li>• (c)(2) - We recommend deleting PRC §42355.51(d)(6) from this section because it could be inferred that all covered materials are considered “recyclable” since they are part of a program governing recyclability, which is not the intent of the statute.</li> <li>• (f)(1)(C) - We support the inclusion of “All investigations and audits shall be conducted by an independent third-party” and that “The Department shall have full access to any results of an audit or investigation”.</li> </ul>
§18980.3.1	<ul style="list-style-type: none"> <li>• (c) - We support the inclusion of the opportunity for public engagement and public comment and submission of relevant information and evidence if the Department preliminarily identifies a covered material category pursuant to subdivision (b). However, we do not support limiting the scope and type of comments the Department will consider, particularly when the list of topics does not include impacts to communities or the environment.</li> </ul>
§18980.3.2	<ul style="list-style-type: none"> <li>• (a) - The recycling rate methodology calculation would benefit from additional clarity, including how the department will determine the denominator (i.e., the total weight of covered materials) for the calculation. See the suggestion in (c) below.</li> <li>• (a) - Additional clarity is needed in §18980.2.2 and in this section (18980.3.2) on who is responsible for calculating the recycling rate. We recommended the following clarification to §18980.3.2(a): “<b><u>The Department shall calculate the recycling rate using data and the methodology as described below.</u></b>”</li> <li>• (a)(2) - Rather than using the language “to ascertain,” we suggest consideration of “to determine” or “to calculate” or possibly “estimate.”</li> </ul>

- (a)(2)(C) - Clarify if the term “producers” is intended to mean participating producers within the PRO, producers outside the PRO, or both. (See our overall comment on the consistent usage of “A PRO, participating producer, or Independent Producer”).
- (b) - More clarification and detail are needed on what the Department will do if or when data is not available and how the recycling rate will be reported. We reiterate our suggestion that if a recycling rate cannot be determined for a covered material category, that covered material category should be considered out of compliance with the recycling rate requirements in PRC §42050(c) and §42057(i).
- (c) - We suggest that the recycling rate calculation be updated based on the following numerator and denominator. The numerator should be the weight of each covered material category, rather than volume or number, that are sent from material recovery facilities to a responsible end market. And the denominator should be the total weight of that covered material category sold, offered for sale, distributed, or imported in the state.
  - We have serious concerns that, as currently described, calculating the recycling rate at the end market (i.e., the remanufacturing of plastics) will compromise data quality as these remanufacturers have no statutory obligations to report.
  - Given the significance of recycling rate determinations in the mandates laid out in SB 54, including the prohibition on EPS food service ware by January 1, 2025, and other plastics that fail to meet recycling rate mandates, it is critical to have the most accurate data possible.
- (d)(3) - We suggest adding language such as “calculated for a group **of related** materials” to this section. We would also like to see clarity in this section that the Department has final approval over whether these materials can be grouped together for the purpose of calculating a recycling rate.
- (d)(4) - If the recycling rate is not known, we recommend the Department use the last recycling rate that was able to be determined and if no recycling rate has ever been accurately determined, then the recycling rate should be listed as “unknown.”
  - We strongly recommend adding clarity that for the purposes of meeting the recycling rate mandates in SB 54 (e.g., the 65% recycling rate of plastic covered materials by 2032 or the 25% recycling rate for EPS by 2025, pursuant to PRC §42050(c) and §42057(i)), an “unknown” recycling rate should be considered out of compliance and prohibitions on selling that material into the market shall go into effect.
- (d)(5) - For new covered materials where insufficient information exists to calculate the recycling rate, we strongly recommend using “unknown” (per the process outlined in (d)(4)) and calculating the recycling rate when information is available rather than assuming the covered material achieved the required rate.
- (e) - We recommend the “may” in this section be changed to a “shall” meaning that the Department ~~may~~ **shall** require the PRO or

	Independent Producers to provide the inputs and assumptions used in the calculations of estimated recycling rates.
§18980.3.3	<ul style="list-style-type: none"> <li>• (d)(4)(A) - We strongly support the requirement that “a complete listing of all substances” used as ingredients to produce the covered material be required.</li> </ul>
§18980.3.4	<ul style="list-style-type: none"> <li>• (a) - We strongly recommend that the Department require that any independent third parties seeking approval for validating postconsumer recycled content clearly outline its methodologies used for validation. Specifically, we recommend the Department require a chain of custody approach to verifiably track recycled content and prohibit any methodologies that use “free allocation” mass balance or plastic credit schemes.</li> <li>• (a)(2) - We support the requirement that an independent third party validating postconsumer recycled content be “independent, impartial, and not have any conflict of interest with respect to issuing the validations.”</li> <li>• (c) - We support an expiration of the accreditation.</li> <li>• (e) - We support the requirement that producers must use a third-party validation entity when seeking adjustments for eco-modulated fees or alternative source reduction credit.</li> </ul>
§18980.3.5	<ul style="list-style-type: none"> <li>• Pursuant to PRC §42041(ab), we strongly recommend the language below be added as additional criteria to be considered disposal: "<b><u>(e) other forms of disposal as defined in subdivision (b) of Section 40192 of the Public Resources Code.</u></b>"</li> </ul>

#### **Article 4 - Responsible End Markets**

Our comments under Article 4 focus on clarifying the authority of the Department to independently request records and audits in identifying responsible end markets, as well as concern about whether adequate reporting authority exists for entities operating beyond the waste management chain.

<b>Section</b>	<b>Comments</b>
§18980.4	<ul style="list-style-type: none"> <li>• (a)(2)(E) - Similar to the PRO and independent producers, the Department should be able to audit or inspect an entity under consideration to be deemed a responsible end market. Suggest amending the regulatory language to "<b><u>Be willing to be named, audited, and/or inspected by a PRO, an Independent Producer, or the Department.</u></b>"</li> <li>• (a)(2)(F) - In addition to receiving records through the PRO and independent producers, the Department should still have an independent pathway by which to request records directly from the entity under consideration to be deemed a responsible end market (as needed). We recommend the following clarification to §18980.4(a)(2)(F) - “The PRO or Independent Producer shall produce these records to the Department</li> </ul>

	<p>upon the request of the Department <b><u>or the Department may request them directly from the entity, as needed.</u></b></p> <ul style="list-style-type: none"> <li>• (a)(4)(A)(ii) - As drafted, the language would provide the yield of the final remanufacturer, instead of the MRF or other steps along the process of being recycled in a responsible end market. The final yield from the MRF is an important consideration to the overall performance of the recycling system and one that the PRO can have the most influence over through investments, thus it is critical that it be reported along with the yield of other steps along the way to remanufacturing. We also have significant concerns about the ability to get data from remanufacturers as they are not obligated to report, which could significantly limit the availability and accuracy of data making it even more important to have data throughout the entire recycling process.</li> <li>• (b) - We are concerned about the definition of ‘end market’ in §18980.4(b) because it currently includes entities that are a step or two after the waste management industry and not yet producers (e.g., the final remanufacturers). These entities have no statutory obligation to share information either as a producer or waste management entity, which could ultimately create major data constraints in how we measure the amount of covered material going to end markets.</li> </ul>
§18980.4.1	<ul style="list-style-type: none"> <li>• (a)(1) - Clarify that the end market identification process must align with regulations established by the Department under PRC §42041(ad). We suggest the following language - “Describe how end markets will be identified, <b><u>including alignment with any regulations from the department.</u></b>”</li> <li>• (a)(2) - Clarify how the PRO or independent producers will receive needed information from a viable end market. We suggest the following language - “Describe the process by which a PRO or Independent Producer will evaluate how each end market meets the standards defined in §18980.4(a), <b><u>including how they would receive any necessary information from the end markets identified.</u></b>”</li> </ul>
§18980.4.3	<ul style="list-style-type: none"> <li>• (a) - We remain concerned about how entities such as end markets will or will not comply with any auditing requirements mandated of the PRO and independent producers given they are outside of the waste management industry, acknowledging they may be incentivized to participate as resources from the PRO can be leveraged for them to make improvements and/or achieve compliance.</li> <li>• (a) - We suggest adding clarifying language so that PRO and independent producers are only conducting annual audits and/or investigations of “responsible end markets that they <b><u>utilize.</u></b>”</li> <li>• (d) - It is unclear if the Department would require the PRO or independent producers to conduct an additional audit or investigation, beyond that of the annual requirement, or if the additional request is either to clarify missing information in the initial audit or investigation or initiate an additional off-cycle evaluation.</li> </ul>

§18980.4.4	<ul style="list-style-type: none"> <li>• (a)(3) - We recommend revising the language as follows: “...investing in <u>systems or shared</u> refill and reuse infrastructure to facilitate the phasing out of covered materials lacking responsible end markets.”</li> <li>• (a)(4)(A) - We suggest adding an additional requirement that the PRO or Independent Producer: “<u>Evaluate alternatives to the covered material type, including but not limited to elimination, transitioning to reuse and refill systems, or switching to a covered material that has a responsible end market.</u>”</li> <li>• (a)(4)(C) - The PRO or independent producer must provide evidence before stating that no viable end market exists. As such, we recommend revising language to “If a PRO or Independent Producer <u>determines</u> a viable responsible end market does not exist for such covered material...”</li> </ul>
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### **Article 5 - Requirements for Producers**

Comments in Article 5 are largely focused on consistent use of terms, adding greater clarity, and improving data resolution.

Section	Comments
§18980.5	<ul style="list-style-type: none"> <li>• (a) - We strongly recommend a deadline of late 2024 be added for producers to join an approved PRO or apply to become an Independent Producer. Producers joining the PRO early is critical for getting accurate data and sufficient funding for the program to get off the ground and be successful.</li> </ul>
§18980.5.1	<ul style="list-style-type: none"> <li>• (a)(1)(A) - Use of the parenthetical here is odd, however, would revise the language as follows: “<u>‘doing business as’</u> or <u>any other</u> fictitious business name is not sufficient”</li> </ul>
§18980.5.2	<ul style="list-style-type: none"> <li>• (a)(1)(A) - Use of the parenthetical here is odd, however, would revise the language as follows: “<u>‘doing business as’</u> or <u>any other</u> fictitious business name is not sufficient”</li> <li>• (a)(2) - This is the only instance in which “Proof” is used around providing documentation. Use “<u>Provide evidence</u>” instead for consistency.</li> <li>• (b) - We appreciate the language limiting the temporal scope of the approved exemption.</li> </ul>

### **Article 6 - Requirements for the Producer Responsibility Organization**

Section	Comments
§18980.6.1	<ul style="list-style-type: none"> <li>• (a) - The deadline to submit a plan on April 1, 2026 is before producers are required to join the PRO underscoring the need to require producers to join the PRO earlier (see our comment in §18980.5).</li> </ul>

	<ul style="list-style-type: none"> <li>• (d) &amp; (e) - We strongly support the requirement for the PRO to post the plan for public review and respond to any public comments received</li> </ul>
§18980.6.2	<ul style="list-style-type: none"> <li>• We recommend the Department include a public comment process as a part of the plan approval process.</li> </ul>
§18980.6.3	<ul style="list-style-type: none"> <li>• (c) - We suggest the Advisory Board have more than 60 days to provide comment on the proposed updated plan in order to allow for a thorough review and for the Advisory Board to hold a public meeting</li> </ul>
§18980.6.4	<ul style="list-style-type: none"> <li>• We recommend there be an opportunity for the public to comment on proposed plan amendments and that the PRO be required to respond to any comments received.</li> </ul>
§18980.6.6	<ul style="list-style-type: none"> <li>• (a)(2) - We request clarification that any information the PRO claims to be “non-disclosable because they contain financial, production, or sales data” shall still be disclosed by the Department in summary form as required by PRC §42063(c).</li> </ul>
§18980.6.7	<ul style="list-style-type: none"> <li>• (d)(1)(C) - We strongly support the requirement that moneys collected from fees on material categories that lack a responsible end market be used to implement source reduction measures or transition to reuse and refill systems.</li> <li>• (e)(1) - We strongly recommend adding language on the presence or absence of hazardous or toxic chemicals to the list of data sources for justifying malus fees.</li> <li>• (g) - Correct typo of “section 18980.8(<del>ef</del>)(1).”</li> <li>• (h) - To help meet the Department’s obligation to encourage recycling that minimizes generation of hazardous waste, environmental impacts, environmental justice impacts, and public health impacts pursuant to 42041(aa)(5), we suggest the Department consider adding more specificity to the eco-modulated fee schedule on covered material that contains a chemical listed pursuant to section 25249.8 of the Health and Safety Code to be set by the PRO in their plan. It is important the eco-modulated fee is set sufficiently high to incentivize producers to move away from these chemicals, which is why we would like to see additional clarity from the Department on the level of eco-modulation fee they would approve of in the PRO plan.</li> <li>• (j) - We recommend moving the definition of “renewable materials” to the definitions section (§18980.1) and adding text to ensure credits are not given for plastics that contain hazardous or toxic chemicals <ul style="list-style-type: none"> <li>◦(1) “Renewable materials,” for the purposes of section 42053(e)(7) of the Public Resources Code, means a material that is made of a natural resource that can be replenished and is not of petroleum origin <b><u>and does not contain hazardous or toxic chemicals or materials.</u></b> “Renewable material” includes but is not limited to materials derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat.</li> </ul> </li> </ul>



§18980.6.8	<ul style="list-style-type: none"> <li>(a) - We support the requirement that data be disaggregated by each participant producer to determine compliance of each individual producer as needed.</li> </ul>
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**Article 7 - Requirements for Independent Producers**

Section	Comments
§18980.7.5	<ul style="list-style-type: none"> <li>(a)(2) - We request clarification that any information that a producer claims to be “non-disclosable because they contain financial, production, or sales data” <b>shall</b> be disclosed by the Department in summary form as required by PRC §42063(c).</li> </ul>
§18980.7.7	<ul style="list-style-type: none"> <li>(b) - We appreciate clarity on the unit measurement that will be used but encourage the Department to specify metric tons be used for all data collection and reporting in order to allow comparison to geographies outside the U.S.</li> </ul>

**Article 8 - Producer Responsibility Plan Requirements**

Overall, we have serious concerns about the inclusion of a source reduction adjustment factor in the PRO plan. We do not believe that SB 54 gives either the Department or the PRO authority to make adjustments to the source reduction obligation relative to the baseline. On the plan generally, we'd like to see additional clarity added to the Producer Responsibility Plans to detail how the PRO will disburse financial resources to reimburse local jurisdictions, recycling service providers, and responsible end markets.

Section	Comments
§18980.8	<ul style="list-style-type: none"> <li>(b)(7) - Update language to read “An assessment of potential <b>public health</b> and environmental impacts...”</li> <li>(b)(10) - It is essential that the technologies meet the conditions specified in the definition of “recycle” (PRC §42041(aa)) AND the criteria laid out in the definition of “recycling rate” (PRC §42041(ab)), which include additional restrictions. We therefore recommend updating that language to “...meet the conditions specified in the definition of “recycle” or “recycling” pursuant to §42041(aa) <b>and the definition of “recycling rate” pursuant to section 42041(ab).</b>”</li> <li>(c)(1) - language should be updated to “A description of performance <b>metrics...</b>”</li> <li>Additional clarity is needed in this section to outline expectations and guide the source reduction plan to be developed by the PRO. Specifically, we recommend adding: <ul style="list-style-type: none"> <li>How the PRO is going to fund and operate shared reuse and refill systems (pursuant to PRC §42051.1(b)(7)).</li> <li>The formula the PRO proposes for alternative compliance to source reduction (PRC §42057(a)(2)(B)(i)).</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>■ We would also like to see details on how the Department will review and determine approval for the alternative compliance formula as part of the plan review and approval.</li> <li>■ Specifically, we would like to see a formula that starts at 1% alternative compliance credit for 10% postconsumer recycled content (PCR) incorporation and caps out at 8% alternative compliance credit for 50% PCR incorporation.</li> <li>● We recommend the Department clearly outline in this section expectations for how the PRO will disperse funding to local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter (pursuant to PRC §42051.1(g)(1)) to guide the PRO in developing their plan.</li> </ul>
§18980.8.1	<ul style="list-style-type: none"> <li>● Additional information specific to the PRO that should be added to this section includes how the PRO will aggregate participating producers' individual source reduction plans to ensure the mandates of PRC §42057 are ultimately met. <ul style="list-style-type: none"> <li>○ We suggest adding an additional (4) to this section:</li> <li>○ <b><u>“(4) Pursuant to section 42057(a)(1) of the Public Resources Code, the plan shall include a description of how the PRO will establish enforceable agreements with the participating producers to accomplish source reduction as well as details of how the PRO will aggregate individual producer plans and work with participating producers to ensure the source reduction mandates are achieved.”</u></b></li> </ul> </li> </ul>
§18980.8.2	<ul style="list-style-type: none"> <li>● The closure and transfer plan laid out in SB 54 is a novel and critical approach to holding the PRO accountable and ensuring that the mandates of the law can be met even if the PRO dissolves. We appreciate the thoughtful additions the Department made to this section.</li> <li>● (e)(5) - We recommend amending the language to “the PRO’s most recent <b><u>ly approved</u></b> PRO plan...”</li> </ul>
§18980.8.3	<ul style="list-style-type: none"> <li>● We have serious concerns over and do not support the inclusion of adjustment factors as part of the source reduction plan developed pursuant to PRC §42057. We do not believe that there is statutory authority for the Department or the PRO to utilize adjustment factors with respect to meeting the plastic source reduction mandate and thus we recommend removing this entire provision from the regulations.</li> <li>● As the source reduction baseline remains static once set (barring updates based on best available data, which we support as detailed in §18980.9) any adjustments could result in bias with respect to the amount of source reduction mandated under PRC §42057.</li> <li>● In particular, the term “economic conditions” is overly broad and vague. If any source reduction adjustment factors remain part of the regulations, we strongly recommend removing “economic conditions”</li> </ul>

	as a consideration for adjustment as the reduction mandate was never meant to be conditioned on economic circumstances.
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**Article 9 - Annual Report and Program Budget**

We are grateful for the inclusion of language allowing for the Department to update the source reduction baseline based on the initial PRO and independent producer reporting to ensure the most accurate baseline and ultimately the success of this provision. However, the update to the baseline must only occur once, upon initial receipt of data from the PRO and individual producers.

Section	Comments
§18980.9	<ul style="list-style-type: none"> <li>(c) - We are deeply grateful that the Department has incorporated our feedback (along with others) and has included a pathway for the source reduction baseline to be updated based on the best available data directly from producers and the PRO. This is absolutely critical to ensuring accuracy of the baseline, accuracy of future reporting, and ensuring that SB 54 is ultimately successful in achieving its goal to source reduce single-use plastics. However, we recommend the Department clarify that the update to the baseline will only occur once, after the initial data reporting by the PRO and Individual Producers.</li> </ul>
§18980.9.1	<ul style="list-style-type: none"> <li>(b) - We recommend ensuring that the annual report also includes the total dollars taken in annually by the PRO, the total dollars dispersed through the PRO, and where and how those dollars were distributed.</li> </ul>

**Article 10 - Data Reporting Requirements**

Section	Comments
§18980.10	<ul style="list-style-type: none"> <li>(a) - We recommend the Department include language to the effect of “<b><u>by date X</u></b>” for all producers to register electronically. Specifically, we recommend the Department set a timeframe of late 2024 as producers joining the PRO early is critical for getting accurate data and sufficient funding for the development and launching of the PRO plan.</li> <li>(a)(2) - In statute it was not stated that a producer participating within the PRO could report separately from the PRO (i.e. as a reporting entity). We strongly suggest revising this language to read: “A PRO shall register on behalf of each of its participant producers, except for those <b><u>independent</u></b> producers who choose to be reporting entities”.</li> </ul>
§18980.10.2	<ul style="list-style-type: none"> <li>(a) - While the definition and scope of ‘reporting entity’ feels broader than originally conceived in statute, given earlier comments, there may be an opportunity encompass other entities beyond the waste management chain who may need to report to the Department directly to aid in compliance and identification of end markets.</li> </ul>

### Article 11 - Requirements for Local Jurisdictions and Recycling Service Providers

Section	Comments
§18980.11	<ul style="list-style-type: none"><li>• Environmental justice is used several times in the regulations. We suggest this be defined under §18980.1 or cross referenced to another section of the PRC if defined elsewhere by CalEPA.</li></ul>

### Article 12 - Requirements for the Advisory Board

Section	Comments
§18980.12	<ul style="list-style-type: none"><li>• (b) - We recommend the Department include language clarifying that the term for Advisory Board members is 3 years pursuant to PRC §42070(b).</li></ul>

### Article 13 - Enforcement Oversight by the Department and Administrative Civil Penalties

Overall, we recommend additional clarity on how the Department will notify the PRO and independent producers, as well as the public, when mandates are not met and what steps the Department will take to *immediately* take action to prohibit the sale of items that are out of compliance. This is critically important both for the treatment of EPS food service ware under SB 54, which is subject to an earlier recycling rate mandate because of its disproportionate impacts on the environment and communities.

Section	Comments
§18980.13	<ul style="list-style-type: none"><li>• (g) - We would like to see the following language updated to ensure consistent enforcement across violations of any of the recycling rate mandates in SB 54: “that does not meet the recycling rate requirements of section 42050(c) <b><i>or section 42057(i)</i></b> ...”</li><li>• (i) - While we appreciate the detailed approach to enforcement and penalties outlined in the regulations to ensure compliance and we support penalties accruing for each violation per day for producers or a PRO (h), we recognize that local governments may not have the capacity or budget to respond to violations as quickly. Therefore, we would support a flat fee per violation on local governments rather than a penalty fee that accrues per day.</li></ul>

## Article 14 - Additional Producer Responsibility Organizations

Section	Comments
§18980.14	<ul style="list-style-type: none"><li>• (a) - We strongly recommend adding a language outlining how the Department will outline and establish a coordination plan between an existing PRO and additional PRO's that may be approved pursuant to PRC §42060(a)(7) "The department shall establish a process to require coordination between a PRO and a producer that is not a participant of the PRO's approved plan and between multiple PROs as necessary."</li><li>• In addition to the language request above, we would also support the following additional language to require an application from a prospective PRO to outline how they will coordinate with existing PROs:<ul style="list-style-type: none"><li>○ "(a)(3) <b><u>How the organization will coordinate with existing PRO(s) and independent producers to effectively implement this chapter.</u></b>"</li></ul></li></ul>

## Article 15 - Public Records

Section	Comments
§18980.15	<ul style="list-style-type: none"><li>• (c)(1) - Given the importance of public transparency to the objectives of SB 54, we would like the Department to outline a process by which the Department can contest the designation of information as "trade secret" if it deems the information to not be a trade secret and important for public transparency.</li></ul>