

Department of Resources Recycling and Recovery
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act
Regulations

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Packaging, including food-related packaging, comprises an estimated 26 percent of the waste disposed in California, according to the Department of Resources Recycling and Recovery's (CalRecycle) 2014 waste characterization study.¹ In 2018, the statewide recycling rate was estimated at 40 percent.² Nationally, the plastic recycling rate has never surpassed 9 percent.³ Overall, the state has not yet achieved the policy goal, stated in Assembly Bill No. 341 (2011-2012 Reg. Sess.) (Stats. 2011, ch. 476) (AB 341), that at least 75 percent of solid waste be source reduced, recycled, or composted. Reducing the amount of single-use packaging and single-use plastic food service ware will greatly contribute to achieving that goal.

A major obstacle in recycling and composting of packaging and plastic food service ware is that they often contain materials that contaminate recycling and composting processes. Even materials that are permitted to be discarded into collection bins often include materials and discrete components that are difficult or impossible to recycle. The need to remove such contamination before materials can be processed significantly impairs the technical and economic viability of recycling and composting programs.

Improperly discarded single-use packaging and plastic food service ware contributes to environmental pollution, adversely impacts wildlife, and poses potential health risks to communities across the state. Efforts to increase the recovery of such materials will improve the statewide recycling rates, reducing litter and its negative environmental impacts. According to the National Oceanic and Atmospheric Administration (NOAA), approximately 80 percent of marine debris comes from land-based sources, with food and beverage packaging making up the largest component of that debris.⁴ Single-use items often enter the marine environment through inefficient or improper waste management, intentional or accidental littering, and through storm water runoff. Once in the environment, plastic degrades into tiny particles known as microplastics that are hard to detect and are now ubiquitous. Moreover, chemicals found in many single-use packaging and food service ware may pose public health and wildlife impacts through

¹ CalRecycle, 2014 Disposal-Facility-Based Characterization of Solid Waste in California. 2015. <https://www2.calrecycle.ca.gov/Publications/Download/1301>

² CalRecycle, State of Disposal and Recycling in California: Calendar Year 2018. 2018. Available upon request

⁴ National Oceanic and Atmospheric Administration Marine Debris Program. Preventing Marine Debris at the Source. 2020. <https://marinedebris.noaa.gov/prevention/rethink-disposable-preventing-marine-debris-source>

potential exposure risk to toxic ingredients that are released from packaging into soil, compost, and water.

Current solid waste and recycling programs in the state have failed to significantly mitigate these problems, which disproportionately affect disadvantaged and low-income communities. In 2021, only 5 percent of postconsumer plastic waste in the United States was recycled.⁵ Recycling remains frequently cost-prohibitive and an ineffective means to handle the end-of-life for plastic waste and other materials. Moreover, consumers often cannot accurately distinguish recyclable and compostable materials from non-recyclable and non-compostable ones, and they frequently lack access to recycling programs that collect materials that could be recycled or composted.

The proposed regulations address these problems by implementing the Plastic Pollution Prevention and Packaging Producer Responsibility Act, Senate Bill No. 54 (2021-2022 Reg. Sess.) (Stats. 2022, ch.75) (the Act). The Act's requirements generally impose responsibility on producers for the end-of-life management of single-use packaging and plastic single-use food service ware (covered materials). Producers of covered materials must achieve the goals of the Act by creating and operating an Extended Producer Responsibility (EPR) program. Producers of covered materials are required to form and participate in a Producer Responsibility Organization (PRO) to operate such an EPR program pursuant to a plan approved by CalRecycle. Producers may also choose to comply independently from a PRO and implement their own plans that meet the same standards that PRO plans must meet, provided they meet specific criteria.

The proposed regulations will give specific effect to the various requirements of the Act and ensure that the EPR program achieves producers generally satisfy the Act's new, stringent requirements on covered materials: that all covered materials sold or distributed in the state be recyclable or eligible for being labeled compostable by 2032; that plastic covered material achieves significant improvements in recycling rates; and 25 percent source reduction of plastic covered materials by 2032. The proposed regulations create procedures, interpret key statutory terms, and establish relevant criteria, including those concerning recyclability and compostability, as necessary to achieve the purposes of the Act.

The proposed regulations further address these problems by implementing a restriction on labeling items as "compostable," as provided in Assembly Bill No. 1201 (2021-2022 Reg. Sess.) (Stats. 2021, ch. 504) (AB 1201). The requirement is that items may only be labeled as compostable if they are certified to meet certain technical standards. This requirement directly relates to the Act because the Act's compostability requirement is determined by whether materials can lawfully be labeled compostable. The requirement, however, only becomes effective once CalRecycle has approved third-party certification entities to provide such certification. The proposed regulations establish the process and criteria that CalRecycle will use to grant such approvals.

⁵ Public Resources Code section 42040(b)(3)(A).

SPECIFIC PURPOSE AND NECESSITY OF THE PROPOSED REGULATIONS

As set forth in greater detail below, the overall purpose of the proposed regulations is to interpret and implement the requirements of the Act and to establish rules concerning CalRecycle's identification of third-party certification entities pursuant to AB 1201.

For example, the proposed regulations will establish specific conditions and requirements applicable to identification of producers, establishment of covered material categories and determination of which ones contain recyclable or compostable materials, calculation of recyclability rates, identification of responsible end markets, contents of PRO and Independent Producer plans, contents of annual reports and budgets, procedures for submitting documents to CalRecycle for its approval, and producers' reporting requirements.

The proposed regulations will also establish various specific elements of CalRecycle's exercise of its oversight and enforcement responsibilities. They detail, for example, procedures and criteria for corrective action plans, how the Act's penalty accrual provisions will apply to various types of violations, and the procedures applicable to administrative enforcement proceedings.

These and other provisions are necessary to ensure the successful implementation of the EPR program and CalRecycle's enforcement of the Act.

TITLE 14. NATURAL RESOURCES DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY CHAPTER 11.1. PLASTIC POLLUTION PREVENTION AND PACKAGING PRODUCER RESPONSIBILITY ACT

ARTICLE 1. DEFINITIONS

§ 18980.1. DEFINITIONS

Subsection (a)

The purpose of this subsection is to set forth the definitions for terms used in the Act and these regulations. This is necessary so that nonspecific or ambiguous terms in the Act are assigned a single meaning, and so that words used throughout these regulations are clearly understood.

Subsection (a)(1)

The purpose of this subsection is to define "Act," which these regulations use to refer to the entirety of the SB 54 statute, Senate Bill No. 54 (2021-2022 Reg. Sess.)(Stats. 2022, ch.75). This is necessary for readability and convenience.

Subsection (a)(2)

The purpose of this subsection is to define "alternative collection." This subsection is necessary because statute uses the term but does not define it. The proposed definition

is necessary because “collection” conventionally refers to curbside collection, so alternatives are necessarily not “curbside collection.” Also, whether a program is considered alternative collection necessarily cannot depend on whether the material has been “discarded” or is “solid waste,” because those concepts are not relevant to whether non-curbside collection successfully recovers products.

Subsection (a)(3)

The purpose of this subsection is to define “anaerobic digestion.” This subsection is necessary because statute uses the term but does not define it. To ensure consistency with state regulations otherwise applicable to composting, the definition provided is based on the definition in the California Code of Regulations, title 14 (14 CCR), section 17896.2(a)(7), which defines the term for purposes of permitting and minimum operating standards.

Subsection (a)(4)

The purpose of this subsection is to define “biogas.” This subsection is necessary to provide clarity by defining a key term used in these proposed regulations and to maintain consistency with other regulations (14 CCR section 17896.2(a)(3)), which use the term “biogas” to refer to a product generated through in-vessel digestion.

Subsection (a)(5)

The purpose of this subsection is to interpret portions of the statutory definition of “producer” by providing a definition for “brand or trademark” and specifying what section 42041(w)(1) and (2) of the Public Resources Code (PRC) mean with respect to a commercial activity being considered “under” a brand or trademark. Defining “brand or trademark” to incorporate the definitions provided in section 14202(a) through(c) of the Business and Professions Code (BPC) is necessary because those definitions are legally recognized under California law and comport with the common understandings of the term’s “brand” and “trademark.” Specifying that section 14202(h) of the BPC provides the meaning when commercial activity (*e.g.*, sale, offer for sale, distribution) is “under” a brand or trademark is necessary because that language might not be commonly understood but has a long-established understanding in the context of trademark law (*see, e.g., Max Factor & Co. v. Kunsman*, 5. Cal.2d 446, 454, 467 (1936); *Third Story Music, Inc. v. Waits*, 48 Cal. App. 4th 798, 801 (1995); section 20999.1 of the BPC; Cal. Code Regs., tit. 27 (27 CCR), section 25600.2(e)).

Subsection (a)(6)(A)

The purpose of this subsection is to interpret the statutory term “component.” What constitutes a “component” is a core feature of the Act, but it is not specifically defined in statute. Because the term itself is ambiguous, establishing a clear definition for it is necessary to resolve ambiguity in statute. The overall definition provided is necessary because it comports with the plain meaning of the word and provides a framework for understanding the term as it is used in statute, which uses it to refer to pieces or constituent parts of covered material.

Subsection (a)(6)(B)

The purpose of this subsection is to establish how detachable components will be categorized into covered material categories. In particular, each detachable component will be categorized independent of other components. This is necessary to ensure that such categorization will usefully distinguish between types of materials.

Subsections (a)(6)(B)(i) and (a)(6)(B)(ii)

The purpose of these subsections is to define “detachable component.” This is necessary to explain a key term used in these proposed definitions. The definition provided encompasses pieces of covered material that, because they are usually separated from other materials when discarded, need to be accounted for individually for purposes of the Act. To account for all such materials, it is necessary for the definition to cover components that are either intended to be detached, in which case they usually are detached, or are designed in a way that they are readily mechanically detached from other components.

Subsection (a)(6)(C)

The purpose of this subsection is to define “separable and distinct component” for purposes of section 42041(s) of the PRC. This is necessary because “separable and distinct” is ambiguous as used within the definition of another key term (“Packaging”). In particular, it could be confused with the concept of “detachable component,” as defined in these regulations. The word “packaging” is defined with respect to two types of physical materials: material associated with a physical good and the physical good itself. In the context of that definition, “separable and distinct” cannot reasonably mean that material must be detachable from any other material to be “packaging.” Rather, it must be separable and distinct from the physical good with which they are associated.

Subsection (a)(7)

The purpose of this subsection is to define “compost” by using the substantive portion of the definition of “stabilized compost,” which is defined in 14 CCR section 17852(a)(36), and adding the standards specified in subsections (a)(7)(A) through (a)(7)(D). This section is necessary to define a key term used in these proposed regulations and to ensure that implementation and enforcement of the Act does not conflict with regulations directly concerning composting operations and facilities.

Subsection (a)(7)(A)

The purpose of this subsection is to specify an objective standard for what these regulations refer to as “compost,” with reference to the pathogen reduction standards set forth in 14 CCR section 17886.3. This is necessary to ensure that implementation and enforcement of the Act does not conflict with other regulations directly concerning composting operations and facilities.

Subsection (a)(7)(B)

The purpose of this subsection is to define “active compost” by reference to the definition in 14 CCR section 17852(a)(1). This is necessary to define a key term used in these proposed regulations and to ensure that implementation and enforcement of the

Act do not conflict with other regulations directly concerning composting operations and facilities.

Subsection (a)(7)(C)

The purpose of this subsection is to specify an objective standard for what these regulations refer to as “compost,” with reference to the metal concentration limits set forth in 14 CCR section 17868.2. This is necessary to ensure that implementation and enforcement of the Act does not conflict with other regulations directly concerning composting operations and facilities.

Subsection (a)(7)(D)

The purpose of this subsection is to specify an objective standard for what these regulations refer to as “compost,” with reference to the contamination limits set forth in 14 CCR section 17868.3.1. This is necessary to ensure that implementation and enforcement of the Act does not conflict with other regulations directly concerning composting operations and facilities.

Subsection (a)(8)

The purpose of this subsection is to identify a single “Covered Material Category List” or “CMC List” that will include all the list elements of section 42061 of the PRC. Section 42061 of the PRC identifies a variety of information that CalRecycle must publish: covered material categories pursuant to subsection (a), the recycling rate pursuant to subsection (b), whether a material is deemed recyclable pursuant to subsection (c), and whether it is deemed compostable pursuant to subsection (d). At times, section 42061 of the PRC refers to “lists” and at times it references multiple elements in a single “list.” This subsection is necessary to remove the ambiguity attendant to section 42061 of the PRC and to ensure that the regulated community knows where to find information that is relevant to them. Without this definition, the regulated community will not know where to look for section 42061 of the PRC information, nor will they understand the process for updating the various list elements. This subsection is necessary to define a key term used in CalRecycle’s proposed regulations and to maintain consistency between CalRecycle’s proposed regulations and the Act.

Subsection (a)(9)

The purpose of this subsection is to define “digestate for land application” by referencing 14 CCR section 17852(a)(13.5) and limiting it to digestate that meets the requirements of 14 CCR section 17852(a)(24.5). This is necessary to establish the meaning of a key term used in these proposed regulations and ensure that implementation and enforcement of the Act does not conflict with regulations directly concerning composting operations and facilities.

Subsection (a)(10)

The purpose of this subsection is to define “discrete,” which refers to a specific, physical instantiations of covered material, as opposed to the covered material in the abstract or general sense. This definition is necessary to avoid ambiguity and to promote readability.

Subsection (a)(11)

The purpose of this subsection is to define “food” by referencing section 113781 of the Health and Safety Code. The term is used throughout the Act but is not defined. The definition provided is necessary to resolve the ambiguity and to maintain consistency with laws that directly concern food.

Subsection (a)(12)

The purpose of this subsection is to define “food packaging.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition.

Subsection (a)(13)

The purpose of this subsection is to define “food service ware.” This definition is required because single-use food serve ware is one of the two categories within the definition of “covered material,” but it is not specifically defined in section 42041(e)(1)(B) of the PRC. Rather, section 42041(e)(1)(B) only provides examples of what constitutes food service ware. The definition provided encompasses those examples and the common types of items used in the handling and consumption of food. Consistent with the examples provided in statute, the definition covers items that contact food or are intended to contact food, and certain other items used by food service establishments. Defining food service ware with respect to items that are intended to touch food is necessary to align the term with the plain meaning of its constituent parts, some of which are clearly directed at food *service*, as opposed to, for example, items that serve the broader functions of “packaging” describe in the definition of that term (section 42041(s) of the PRC). However, because section 42041(e)(1)(B)(ii) does include items that are used as packaging by food service establishments, subparagraph (B) of this subsection broadens the definition to cover such items.

Subsection (a)(13)(A)

The purpose of this subsection is to include the specific examples provided in statute. These examples support the interpretation that items used in food service necessarily include items that are intended to touch food to facilitate its consumption. Including the examples here is necessary to provide clarity and context for the definition provided and to provide complete guidance as to the scope of “food service ware” in this section.

Subsection (a)(13)(B)

The purpose of this subsection is to interpret section 42041(e)(1)(B)(ii), which states that covered material encompasses “wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments.” This statutory language requires further definition because its scope is not apparent on its face. In particular, the term “food service establishment” is not defined, nor is what it means for a bag to be considered “used in the packaging of food.”

Subsection (a)(13)(B)(i)

The purpose of this subsection is to provide a definition of “food service establishment” for the purposes of section 42041(e)(1)(B)(ii) of the PRC. This is necessary because the scope of that term is not specifically addressed in statute. The definition provided comports with the most straightforward understanding of the term: essentially, a retail operation that handles and sells food. The definition encompasses restaurants, including takeout-only establishments, and any other operation that prepares and sells food or otherwise handles and distributes food. The definition provided is also appropriate because it is consistent with other California law regulating retail food facilities (Health and Safety Code section 113789). This ensures that those who are already aware that they are subject to such laws can readily self-identify as entities also subject to the Act.

Subsection (a)(13)(B)(ii)

The purpose of this subsection is to expressly limit the definition of food service establishment such that it does not encompass stores that merely sell prepackaged food that they do not themselves handle food (*i.e.*, remove it from packaging and distribute to customers). In other words, such food is not “served,” such that merely selling or distributing it does not render an operation a food service establishment. This limitation is necessary to give effect to the particular words used in statute. The statute specifically refers to the act of “packaging” food, as opposed to merely selling it, and also to the provision of food specifically by *food service* establishments, as opposed to “stores” or “retail establishments” that sell food. To give effect to those specific word choices, operations that provide food without packaging it or removing it from packaging cannot be considered food service establishments. Under that interpretation, section 42041(e)(1)(B)(ii) of the PRC would encompass the huge range of retail establishments that merely sell any prepackaged or mass-produced food items. Such an interpretation is untenable because encompassing businesses not typically viewed to be in the “food service” industry would be inconsistent with statute’s express reference to that industry. For example, it would encompass department stores, convenience stores, gas stations, and any other businesses that consumers would expect to find mass-produced, pre-packaged food but would not think of as “food service establishments.”

Subsection (a)(13)(B)(iii)

The purpose of this section is to expressly limit the scope of section 42041(e)(1)(B)(ii) of the PRC so that certain bags subject to a narrower, preexisting statute restricting their use are not considered “bags used in the packaging of food.” More specifically, bags that are “precheckout bags” or bags provided to customers at the point of sale by “stores,” as described in statutes applicable to those bags, are not the bags referred to in section 42041(e)(1)(B)(ii) and thus are not covered material. (*See, generally*, Chapter 5.3 of Part 3 of Division 30 of the PRC (Chapter 5.3), added by Senate Bill 270 (Stats. 2014, Ch. 850), governing single-use carryout bags, including section 42281.2, added by Senate Bill 1046 (Stats. 2022, Ch. 991), governing “precheckout bags”.) This interpretation is necessary because the Act must be read in a way that harmonizes it with Chapter 5.3, which contains its own definitions of “reusable” and “single-use” that

are inconsistent the Act's definitions and defines "recycled paper bag" inconsistently with how the Act defines "recycle" and "recycling." (Section 42280 of the PRC.) It also contains its own, narrower standards for precheckout bags, requiring them to either be compostable, under different standards than those in the Act, or a recycled paper bag. (Section 42281.2 of the PRC.) Chapter 3.5 also requires reusable grocery bags to be certified as "reusable" and, for plastic bags, as "recyclable" by third-party certification entities. CalRecycle, in turn, is required to publish a list of reusable grocery bags that are properly certified and therefore not prohibited. Grocery stores and convenience stores throughout the state depend on that mandatory list for identifying bags that they are permitted to distribute. However, if such bags could be considered covered material under the Act, that list would be misleading and possibly superfluous because CalRecycle lawfully must certify bags under the standards of Chapter 5.3, not the Act, so that a bag's presence on the list would not necessarily mean that distribution of the is lawful. Moreover, section 42287 of the PRC expressly provides that Chapter 3.5 "occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags" distributed by "stores," as those terms are used in Chapter 3.5.

Given the inconsistent restrictions imposed by the Act and these narrower laws, bags distributed by "stores" (e.g., grocery and convenience stores) in a manner subject to the latter must not be considered to be used in the packaging of food for purposes of section 42041(e)(1)(B)(ii).

Subsection (a)(14)

The purpose of this subsection is to define "incompatible material." This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition.

Subsection (a)(15)

The purpose of this subsection is to define the term "Independent Producer". This is necessary because the term, as used in these regulations, has a particular meaning related to the statutory concepts of "producer" and PROs, and that meaning would not be sufficiently clear without an express definition.

Subsections (a)(16), (a)(16)(A), (a)(16)(B), and (a)(16)(C)

The purpose of this subsection is to define "intermediate product." This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition.

Subsection (a)(17)

The purpose of this subsection is to define "intermediate supply chain entity." This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition.

Subsection (a)(18)

The purpose of this subsection is to interpret portions of the statutory definition of “producer” in section 42041(w)(1) of the PRC by providing a definition of the phrase “in the state.” The definition provided relies on whether service of process can be completed in the state directly on a person, as provided under the Code of Civil Procedure or Corporations Code. This subsection also limits “in the state” to refer to persons who are subject to the jurisdiction of California courts based on their commercial activity involving covered material. These provisions are necessary because “in the state” must have a readily applicable, unambiguous meaning for the Act to be implemented and enforced. The Act uses “in the state” as the fundamental requirement for whether a person is subject to it. On its face, however, the phrase is ambiguous with respect to any non-natural person (e.g., corporations). As such, giving effect to that criterion requires reference to legal concepts concerning how a person’s location relates to the reach of state law.

Subsection (a)(19)

The purpose of this subsection is to define “mixed material.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition. Moreover, the term is used in the context of determining whether material typically collected along with other materials for composting. Therefore, using the definition from 14 CCR section 17852(a)(26), the context of which is the regulation of composting operations, is necessary to maintain consistency between the Act and other laws.

Subsection (a)(20)

The purpose of this subsection is to define “nonplastic” when it is used to describe a component of covered material or other physical good. This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition and to establish the mutually exclusive relationship between “nonplastic” and “plastic,” as defined in subsection (a)(24) of this section.

Subsection (a)(21)

The purpose of this subsection is to define “organic waste.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition. Moreover, the term is used in the context of determining whether covered material is typically collected along with other materials for composting. Therefore, using the definition from 14 CCR section 18982(a)(46), the context of which is the regulation of organic waste collection statewide, is necessary to maintain consistency between the Act and other laws.

Subsection (a)(22)

The purpose of this subsection is to define the various terms used in these regulations to refer to producers that participate in a PRO plan. This is necessary because the terms used in these regulations have a particular meaning in context of the Act that might not be sufficiently clear without an express definition.

Subsection (a)(23)

The purpose of this subsection is to define “person.” It is necessary to clarify and define this key term, which is not defined in the Act, because logically it must apply to legal entities, not only natural persons. This is made clear throughout the statute, which uses the term in contexts where it necessarily applies to fictitious entities (*e.g.*, section 42064 of the PRC), or where limiting it to natural persons would have absurd results (*e.g.*, section 42041(w)) because the activities at issue are rarely conducted by persons in an individual capacity. This subsection also provides a broader definition for the purpose of identifying a producer pursuant to section 42041(w) of the PRC. Defining “person” to encompass both an entity and the entities that control it is necessary because subsidiary entities might otherwise be the sole producer despite not being the entity that conducts the activities relevant to compliance with the Act. For example, a subsidiary entity may have limited business activities but may own a trademark that is used by a parent company in the state. In such a scenario, the parent company may be the only one conducting activities relevant to certain obligations under the Act, such as ensuring that covered material satisfies the requirements of section 42050 of the PRC. Given the context of the obligations put on producers, the Act must be interpreted to consider such entities a single producer. Moreover, this interpretation is consistent with the reliance on ownership of a brand or trademark in the primary definition of “producer.” Where one business owns the business that directly owns the trademark, it partially or wholly owns the trademark indirectly, and the Act does not specify that ownership must be complete or direct. Finally, this definition is consistent with the definition of “person” in the Integrated Waste Management Act (Division 30, PRC, commencing with section 40000), which similarly defines this term at section 40170 of the PRC as “an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.”

Subsection (a)(24)

The purpose of this subsection is to interpret “plastic” when it is used to describe a component of covered material or other physical good. It does so by referencing the definition in section 42041(t) of the PRC and applying limitations on its scope when used as a descriptor. This is necessary because the Act only defines the term as the substance itself (*i.e.*, as noun) but also uses it as a descriptor related to that substance (*e.g.*, “plastic component”). Moreover, when the term is used as a descriptor, its scope is vague. For example, it could be interpreted as only encompassing items that are entirely plastic. That scope would fundamentally contradict the Act because the presence of plastic significantly constrains non-disposal options for managing a particular material, regardless of whether it incorporates any non-plastic material. Under such an interpretation, materials that are almost entirely plastic would not be described as “plastic,” even if they incorporate only a single, insignificant substance that is not plastic. It would similarly be problematic to interpret “plastic” to describe materials that are commonly understood not to be “plastic” but that contain microscopic plastic

contamination that could not reasonably have been avoided. Under this interpretation, it might be practically impossible for traditionally “non-plastic” materials to qualify as such because of the ubiquity of microplastic contamination. The definition provided harmonizes the Act’s definition of “plastic” (as a noun) while avoiding these unreasonable results, such that the use of the term “plastic” (as a descriptor) in both the Act and these regulations comports with its ordinary usage.

Subsection (a)(25)

The purpose of this subsection is to interpret “plastic or polymers,” as that term is used in section 42356.1(d) of the PRC. This definition clarifies that the use of the term “or polymers” in section 42356.1(d) of the PRC does not encompass naturally occurring polymers. This is necessary because section 42356.1(d) of the PRC, which exempts “fiber products” from certain requirements for being labeled “compostable,” would be internally inconsistent under any other interpretation because fiber is a type of polymer. Because the exemption concerns whether products must comply with American Society for Testing and Materials (ASTM) standard specifications concerning the rate of composting, the only logical interpretation of “plastic or polymers” is that it refers to compounds that, in contrast to unmodified compounds that occurred naturally, would typically be expected to present challenges to composting processes.

Subsection (a)(26)

The purpose of this subsection is to define “processor.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition. Moreover, because “processing” is already defined in statute, defining “processor” with respect to “processing” is not merely circular. Rather, it gives effect to statute and ensures consistency with it.

Subsection (a)(27)

The purpose of this subsection is to interpret the word “product” and related terms used throughout the Act. Defining “product” as provided is necessary because the Act defines a producer with respect to a product that “uses covered material,” and “packaging” is defined with respect to products associated with it “for” certain purposes. Taken together, these definitions logically require that a “product” is a physical good but not necessarily all of the covered material with which it is associated. This subsection further interprets the Act’s references to covered material being “used by” or, with respect to packaging, “for” a product. In the overall context of the Act, covered material must be understood to be “used by” a product when it is made of covered material because section 42041(w) of the PRC uses that phrase to identify the persons who are responsible for covered material (*i.e.*, are “producers” of it).” Lastly, because “product” includes a good’s packaging, covered material packaging “used for” a product necessarily means that the product is at least partially made of covered material.

Subsection (a)(27)(A)

The purpose of this subsection is to establish when materials that become associated with a physical good can be considered the good’s packaging and thus part of the “product.” It is necessary to exclude materials associated with a product only after

physical presentation or at the point of sale because such material is not logically being used by a producer for the purposes enumerated in the definition of packaging (section 42041(s) of the PRC).

Subsection (a)(27)(B)

The purpose of this subsection is to interpret the Act's definition of "producer" such that there can only be one producer for specific, discrete covered material. This is accomplished by limiting section 42041(w)(3) of the PRC so that it is only applied at the various times a product is sold, offered for sale, or distribution, with a new producer identified only with respect to covered material for which there is not already a producer. This is necessary because, in the overall context of the Act and for its enforcement, there can only be one producer for every item of discrete covered material. Otherwise, there would be a potentially infinite number of persons who could be the "producer" for any particular covered material.

Subsections (a)(27)(B)(i) through (a)(27)(B)(iii)

These subsections provide examples of how the limitation set forth in subsection (a)(27)(B) applies in particular scenarios. Given the complexity of the Act's definition of "producer," the practical difficulty in applying it in real-world scenarios, and centrality of the definition to implementation and enforcement of the Act, providing examples is necessary to ensure that persons understand how and when they might become subject to the Act.

Subsection (a)(27)(C)

The purpose of this subsection is to interpret section 42041(w)(5) of the PRC use of the phrase "sale of covered material" in a way that harmonizes it with section 42041(w)(1) of the PRC and the use of the term "product" in the Act and these regulations. Section 42041(w)(1) of the PRC refers to commercial activity with respect to a "product that uses covered material," but section 42041(w)(5) of the PRC refers to the "sale of covered materials." Logically, however, given that the product is the combination of a physical good and the covered material associated with it, commercial activity involving a product necessarily simultaneously involves the covered material it uses. Therefore, the sale of products that use covered materials necessarily entails the sale of covered materials.

Subsection (a)(28) and subsections (a)(28)(A) through (a)(28)(E)

The purpose of these subsections is to define "ratepayer." This is necessary because the Act uses this term but does not provide a specific definition. The definition provided ensures that the term encompasses the full breadth of entities identified by it in the context of ratepayer costs and education in the Act.

Subsection (a)(29)

The purpose of this subsection is to define “recycled organic product.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition. The term is used in proposed section 18980.4 to establish criteria for what constitutes a “responsible end market.”

Accordingly, the definition provided limits the term so that materials may be considered “recycled organic product” only if they are proposed as such in an approved plan. It also provides types of materials that are considered recycled organic products in order to make specific what types of materials already meet these criteria. This subsection is also necessary for CalRecycle to exercise its authority to adopt regulations concerning how to identify responsible end markets.

Subsection (a)(30)

The purpose of this subsection is to incorporate the statutory definition of “recycling rate,” but refer to proposed section 18980.3.2 in lieu of the methodology included in the statutory definition. This is necessary because, pursuant to the authority expressly given to CalRecycle under section 42041(ab) of the PRC, CalRecycle has adopted the methodology provided in proposed section 18980.3.2.

Subsection (a)(31)

The purpose of this subsection is to define “reporting entity.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition.

Subsection (a)(31)(A)

The purpose of this subsection is to establish that an Independent Producer and certain PRO participants are reporting entities. Independent Producers are necessarily reporting entities because they are independent from PROs, which cannot act on behalf of non-participants. Participant producers also necessarily are reporting entities if they choose to report activities themselves (*i.e.*, voluntarily choose to be a reporting entity). A producer also necessarily becomes a reporting entity when its failure to provide information to the PRO causes the PRO not to report the producer’s reportable activities because such failure is tantamount to the producer opting not to have the PRO report those activities on its behalf. Effective implementation and enforcement of the Act require such producer to be a reporting entity because the PRO necessarily cannot report on its behalf.

Subsection (a)(31)(B)

The purpose of this subsection is to establish participant producers’ obligation to notify its PRO that it has reported or will report certain activities directly to CalRecycle. This is necessary because the producer has the ability to report such activities, but the PRO would not necessarily know of its election to do so unless it is provided notice. The PRO must know that certain activities of its participants are separately reporting activities so that it can account for those activities for purposes of implementing its plan and otherwise fulfilling its obligations under the Act. This subsection also provides that a PRO is not required to report activities that a participating producer reports directly to

CalRecycle. This is necessary because the PRO can only report data to CalRecycle if the data is provided to it, and, even if the PRO did receive data that was also provided directly to CalRecycle, the data would be duplicative if the PRO provided it to CalRecycle.

Subsection (a)(31)(C)

The purpose of this subsection is to specify that all reporting entities are required to register with CalRecycle as specified in proposed section 18980.10. This is necessary because including reference to the section of these regulations concerning substantive reporting requirement aids the reader in identifying all the regulatory provisions directly related to being a reporting entity.

Subsection (a)(32)

The purpose of this subsection is to define “responsible end market” by referencing the express definition in the Act and the criteria provided in proposed section 18980.4. This is necessary to make clear that, because CalRecycle has exercised its authority specified in section 42042(ad) of the PRC to adopt regulations for how responsible end markets will be identified, the term has a more specific meaning in these regulations than provided in statute.

Subsection (a)(33)

The purpose of this subsection is to add context for the definition of “retailer” or “wholesaler,” as those terms relate to whether a person is a “producer.” This is necessary because neither the Act’s definition of “producer” nor its definition of “retailer” or “wholesaler” expressly addresses that relationship, resulting in ambiguity regarding a major concept implemented under the Act. In particular, this subsection clarifies that retailers and wholesalers are not necessarily producers of all covered material that they sell. Rather, they are only the producer of specific covered material when the definition of “producer” applies with respect to the covered material. This is necessary because, without interpreting statute in this way, there would be multiple producers for covered material any time there is producer pursuant to section 42041(w)(1) or (w)(2) of the PRC. Expressly stating this necessary interpretation will avoid confusion and aid in compliance among producers, thereby facilitating the implementation and enforcement of the Act.

Subsection (a)(34)

The purpose of this subsection is to interpret and make specific the statutory definition of the term’s “reusable”, “refillable”, “reuse”, and “refill.” Doing so is necessary because terms within the statutory definition are themselves undefined and susceptible to a range of interpretations, and a single interpretation is required to clearly explain how packaging or food service ware will be determined not to be covered material because they are reusable or refillable. This ensures that key terms are defined and that these terms are applied consistently throughout the proposed regulations and with the Act.

Subsection (a)(34)(A)

The purpose of this subsection is to interpret the usage of “reuse” and “refill” in section 42041(af) of the PRC and harmonize that section with these regulations. In particular, section 42041(af) of the PRC includes these terms, which are verbs or nouns, in a definition that technically applies to the descriptors “reusable” and “refillable,” without directly addressing the verb and noun forms. Moreover, the definition in statute provides criteria for what constitutes reusable or refillable in a partially circular manner: It states that items are “reused” or “refilled,” but section 42041(af) of the PRC purports to define those terms in the first place. As such, this subsection clarifies that “reuse” and “refill” refer to usage of items that satisfy the criteria provided in section 42041(af) of the PRC for items to be “reusable” or “refillable,” with such usage being after the initial use of the items. The latter requirement is necessary because, without additional usage, there would just be a single use, which necessarily cannot qualify something as having been reused or refilled. This ensures that key terms are defined and that the proposed regulations are consistent with the Act.

Subsection (a)(34)(B)

The purpose of this section is to set forth the mutual exclusivity of the terms defined in section 42041(af) of the PRC and “single use,” which is defined in section 42041(ai) of the PRC. Clarifying the relationship between these two concepts is necessary because statute does not expressly state it. Mutual exclusivity between the terms is necessary because the definition of “single use,” by its terms, cannot encompass items that are typically used more than once, whereas “reusable” and “refillable” expressly only apply to items that are reused or refilled. Setting forth this relationship in this subsection ensures that key terms are clearly defined and are used in these regulations consistently with how they are used in the Act.

Subsection (a)(34)(C)

The purpose of this subsection is to interpret the term “designed or durability,” which appears in both section 42041(af)(1)(B) and (af)(2)(B) of the PRC. Providing this definition is necessary because these terms are ambiguous on their face, meaning that the overall definition provided in section 42041(af) of the PRC is not sufficiently specific. One reason for ambiguity is that “designed for” could refer to the intent behind a design or the that the actual design achieves a particular purpose. This subsection adopts the latter meaning because, in context of the Act, only the consequences of the design, rather than the intent of the design, have relevant effect. The Act is expressly concerned with whether items are single-use, which depends on whether items are recyclable, compostable, reusable, or refillable, because those ultimate characteristics, not the intent behind their design.

The definition provided in this subsection also incorporates the concept of usage “multiple times,” which is further defined in subparagraph (F), for items’ “original intended purpose.” This is necessary for at least three reasons. First, an item’s durability necessarily is a measure of whether it can be used multiple times. Second, incorporating the definition of “multiple times” is necessary for the definition provided in this subsection to be unambiguous and consistent with the meanings of the various

other terms used in the Act and these regulations related to reusing and refilling materials. Finally, the requirement that the multiple uses be for the original intended purpose logically must apply because it is the only interpretation consistent with the purpose of the Act and, otherwise, the results would be absurd because there would be no meaningful limit on how producers could claim that packaging or food service ware is reusable. For example, an otherwise single-use cardboard box could be claimed to be reusable because it could be used to make a sign, or an otherwise single-use cup could be used as a pencil holder. These outcomes are clearly inconsistent with the usage contemplated in the Act.

Subsection (a)(34)(D)

The purpose of this subsection is to interpret the term “conveniently and safely,” which appears in both section 42041(af)(1)(C) and (af)(2)(C) of the PRC. Subsections (a)(34)(D)(i) and (a)(34)(D)(ii) of this subsection sets forth minimum standards for applying this term, which is necessary because these key statutory terms are ambiguous on their face, meaning that the overall definition provided in section 42041(af) of the PRC is not sufficiently specific.

Subsection (a)(34)(D)(i)

The purpose of this subsection is to establish a minimum standard for applying the phrase “conveniently and safely reused” for purposes of section 42041(af)(1)(C) of the PRC. This is necessary because this is a key statutory term that is ambiguous on its face, meaning that the definition of reusable, in the context of packaging that is reused or refilled by producers, is not sufficiently specific. This subsection provides multiple requirements that packaging, or food service ware must meet.

First, it requires packaging or food service ware to be “sufficiently washable,” which is a term used in section 42041(ai) of the PRC and is interpreted in these regulations in proposed section 18980.1(a)(35)(C). This standard must apply, for two primary reasons: The concept of “safely” encompasses issues of hygiene and contamination, which are addressed by washing, and an item would be single-use pursuant to section 42041(ai) of the PRC, in any event, if it were not sufficiently washable. By incorporating the sufficient washability concept from the definition of “single-use,” the standards set forth in this subsection achieve consistency with that definition. The inclusion of “conveniently” section 42041(af)(1)(C) of the PRC also supports such incorporation because, if an item cannot conveniently be washed, it would be perceived by many as not actually washable.

Second, this subsection requires that packaging or food service ware must retain its form and function during reuse and washing. This logically must apply because, if a product fails to retain its form and function during reuse and washing, it necessary cannot be conveniently reused. This requirement is stated with only respect to reuse and washing by the producer because section 42041A(af)(1) of the PRC, by its terms, only applies to packaging and food service ware “reused or refilled by a producer.”

Third, this subsection requires that packaging or food service ware must not pose environmental or public health risks. This logically must apply because, if a product poses environmental or public health risks, it cannot be considered safe. Inclusion of this requirement and two clear examples of such risks (chemical leaching and microplastic shedding) provides additional clarity to the contours of what may be considered “reusable” or “refillable” under the criteria set forth in section 42041(ai)(1) of the PRC.

Subsection (a)(34)(D)(ii)

The purpose and necessity of this subsection are identical to the purpose and necessity stated with respect to subsection (a)(34)(D)(ii), with one exception: This subsection requires packaging or food service ware to retain its form and function during reuse and washing by the consumer, not the producer. This difference is necessary because section 42041(af)(2) of the PRC, by its terms, only applies to packaging and food service ware “reused or refilled by a consumer.”

Subsection (a)(34)(E)

The purpose of this subsection is to interpret and make specific the statutory definition in section 42041(af) of the PRC, by defining the phrases “multiple times,” “multiple cycles,” and “multiple uses.” This subsection is necessary because these phrases within the statutory definition are undefined and susceptible to interpretations at odd with the Act. In particular, the literal definition of “multiple” is any amount greater than one. For several reasons, that cannot reasonably be the standard contemplated under the Act. First, items would not need to be designed specifically for durability if merely being used more than once could be sufficient to be considered used multiple times. Second, merely reusing or refilling a plastic item twice would not significantly the period before the item is discarded but would result in “source reduction” under the Act if it were considered reusable. Third, and more fundamentally, allowing material that quickly ends up in landfills to be considered reusable would severely interfere with the purpose of the Act and the policy goals established in sections 40051 and 41780.01 of the PRC, which set ambitious goals for the reduction of all waste, with source reduction being the highest priority. Section 42060(a) of the PRC expressly requires CalRecycle to adopt regulations in furtherance of these goals. For these reasons, as set forth in subsections (a)(34)(E)(i) and (a)(34)(E)(ii), this subsection interprets “multiple” to require more rigor than merely “more than one.”

This subsection requires compliance with these requirements to be established according to criteria and methodology contained in a PRO or Independent Producer plan. This is necessary because the Act places responsibility for achieving the goals, including establishing the specific means of doing so, on PROs and producers.

Subsection (a)(34)(E)(i)

The purpose of this subsection is to establish a minimum standard for what when packaging or food service ware can be considered to be reused multiple times or for multiple cycles for purposes of section 42041(af) of the PRC. The minimum standard is

that the item is more likely than not to be used on more than one occasion and not discarded or disposed within 5 years of the initial use. Requiring uses to occur on more than one occasion also avoids single uses that involve repetitive actions, such as repeatedly cutting food with a plastic knife during a moving a single cardboard container multiple times without removing its contents, from being misconstrued as one use. Requiring there to be a minimum period of usage before an item is expected to be discarded is necessary because, without such a requirement, an item could be considered reusable even though it never is reused, or is only used very small number of times, before being disposed in a landfill, in which case considering the item to have been reused would directly contradict the purpose and goals of the Act. Furthermore, the five-year period is consistent with the exclusion of packaging used for at least five years from the definition of covered material, as set forth in section 42041(e)(2)(F) of the PRC. That exclusion reflects the intent for the Act to consider a period of five years before items are discarded or disposed to be sufficient to serve the policy goals it embodies.

This subsection includes a limited exception for reusable food service ware and food packaging from the five-year requirement. If such items, on average, are cleaned and sanitized 780 times over a period of less than five years, the five-year requirement is reduced to such period. This is necessary because whether such items qualify as “washable” under proposed section 18980.1(a)(35)(C)(ii) only requires them to withstand 780 cleaning and sanitation cycles, and that threshold is based on an estimate of the usage of the item by a food service establishment for a single year. Moreover, this exception, by its terms, only applies to items whose usage potentially replaces at least 780 single-use items. Therefore, the source-reduction effect of using the items is far more certain, regardless of the period over which the use occurs, than the effect of using it would be for items that are reusable but may not be used as intensively. Therefore, requiring that the item not be expected to be discarded for five years is less important for ensuring that its usage serves the purpose and goals of the Act.

Subsections (a)(34)(E)(ii)

The purpose of this subsection is to establish a minimum standard for what when packaging or food service ware can be reused multiple times or for multiple cycles for purposes of section 42041(af) of the PRC. This subsection incorporates reduction in the actual, observable environmental impact as a requirement for the uses of an item to be considered to have constituted use multiple times or for multiple cycles. That reduction necessarily depends on the number of times an item is refilled or reused. This subsection incorporates that necessary element by allowing entities to determine, through methods set forth in an approved plan, the average number of times the item is refilled or reused. Alternatively, entities may rely on estimates of average uses, which may be according to product type, established under a PRO plan or an applicable Independent Producer plan. Allowing entities to rely on estimates in this fashion is

necessary because it will not always be practical for individual entities to determine the average number of reuses or refills with precision.

Requiring consideration of the actual environmental impact of packaging or food service is necessary so that these regulations further the policy goal established in section 41780.01 of the PRC, as required under the Act (section 42060(a) of the PRC). Those policy goals cannot be achieved without directly considering the actual environmental impact. For example, if an item is considered to have been used multiple times but is still widely disposed of quickly or littered onto land or into waterways, the fact that it was physically robust enough to have been used many more times will not have had any benefit. To the contrary, the durability of such items makes the environmental impact of quick or improper disposal significantly worse because they typically contain more material than their less-robust counterparts. So, for example, plastic items that contain more plastic because they were intended to be reused would, if they are not actually reused enough times, end up releasing more microplastics into the environment than similar items that are only used one time but contain significantly less plastic. This phenomenon has been observed as the result of other programs, most notably California's legislation requiring grocery bags to be "reusable (sections 42280 through 42288 of the PRC).

Subsections (a)(34)(E)(ii)(I) through (a)(34)(E)(ii)(IV)

These subsections provide four specific phases of a product's lifecycle that must be considered when evaluating whether uses are sufficient to be considered multiple uses, reuse multiple times, or reuse for multiple cycles: raw material extraction, manufacturing, transportation, and end-of-life management. Evaluating resource usage during these phases is necessary because an item's overall environmental impact is directly related to the resource usage over an item's entire lifecycle, which is typically defined to include those four phases.

Subsection (a)(34)(F)

The purpose of this subsection is to establish that a PRO, through its plan or otherwise, can require plan participants to demonstrate that packaging and food service ware is reusable or refillable. Empowering the PRO to require such a showing is necessary so that the PRO can implement its plan, including by accurately assessing source reduction.

Subsection (a)(34)(G)

The purpose of this subsection is to establish that CalRecycle may, in a notice of violation, require any producer, retailer, wholesaler, or PRO to demonstrate that packaging or food service ware it claims to be reusable or refillable satisfies the requirements of this section and section 42041(af) of the PRC. This is necessary because, for its authority to enforce the Act's requirements effectively, it must be able to challenge claims that items are reusable or refillable and thus not covered material. Moreover, while CalRecycle may be able to preliminarily determine that certain items fail to satisfy the requirements to be deemed reusable or refillable, those claiming that items

are reusable or refillable necessarily have the most direct access to information to substantiate the claims. For example, only those involved in the sale or distribution of items have complete, reliable information about the supply chain, how items are marketed, the degree to which end users reuse or refill packaging and food service ware, and details regarding items' lifecycles.

Subsection (a)(35)

The purpose of this subsection is to interpret and make specific the statutory definition of the term "single use." Doing so is necessary because terms within the statutory definition are themselves undefined and susceptible to a range of interpretations, and a single interpretation is required so that covered material has a precise definition that can be applied consistently. This subsection includes "single-use" within the definition, which is necessary solely to account for the grammatical context in which the term is applied.

Subsection (a)(35)(A)

The purpose of this subsection is to interpret the phrase "conventionally disposed of after a single use." Doing so is necessary because the phrase is ambiguous and cannot be consistently applied unless its relation to other concepts related to the use of covered material is established. This subsection interprets the phrase in two different contexts—packaging and food service ware—because the nature of how material is used, and thus what constitutes more than one use, is different in each context.

Subsection (a)(35)(A)(i)

The purpose of this subsection is to interpret the phrase "conventionally disposed of after a single use" in the context of packaging. The first part of the phrase ("conventionally disposed of") has a plain meaning, and therefore must be interpreted accordingly. As such, the interpretation incorporates the concept of the "average consumer" and what they "commonly" do with an item or are expected to do with an item (*i.e.*, the action for which the item is "designed"), because the ordinary usage of the word "conventionally" refers to something typical or expected.

The final part of the phrase ("after a single use") is ambiguous and requires interpretation with respect to the context of the Act. For one, what constitutes the "use" must be established. For packaging, the use is interpreted to occur when the packaging serves any of the purposes identified in section 42041(s) of the PRC with respect to a particular physical good. This interpretation is necessary because section 42041(s) of the PRC establishes the definition of packaging, so it follows that its description of the functions of packaging are the way it gets "used" for purposes of what constitutes a "single use."

This subsection also gives more specific meaning for what makes a use a "single use." In context of the overall phrase being interpreted, "single use" refers to the use (as interpreted above) of the packaging with respect to the original physical good associated with it. This is necessary because the concept of using packaging is inextricably, physically linked to a specific physical good. It follows, then, that when

packaging becomes disassociated with one good and subsequently never gets associated with any additional goods, it was used only one time.

This subsection also addresses the circumstance where packaging serves its defined purposes intermittently or continuously. An example of packaging that intermittently or continuously serves its purpose is a single box being transported and stored in multiple different locations before it is opened and the goods inside it removed. Another example is food packaging that is opened multiple times before the food it contains is fully consumed. These are multiple instances of packaging being useful but are not reasonably considered to be more than one “use” (in context of “single-use” versus “reusable”). This subsection, therefore, accounts for these circumstances by incorporating their defining feature: that it remains only a single use of packaging where the packaging is only associated with the original goods associated with it, regardless of whether it may be intermittently or continuously be useful for the stated purposes of packaging.

Subsection (a)(35)(A)(ii)

The purpose of this subsection is to interpret the phrase “conventionally disposed of after a single use” in the context of food service ware. The first part of the phrase (“conventionally disposed of”) is interpreted in the same manner, and for the same reasons, as stated above (subsection (a)(35)(A)(i)) with respect to packaging.

As with packaging, the final part of the phrase “after a single use” is ambiguous and requires interpretation with respect to the context of the Act. For one, what constitutes the “use” must be established. For food service ware, as with packaging, “use” is interpreted with respect to an item’s purpose. Accordingly, this subsection incorporates the purposes identified in the definition for “food service ware” provided in these regulations (subsection (a)(13)). This interpretation is necessary because it is the only reasonable understanding of what it means to “use” food service ware.

This subsection also clarifies that usage is still a “single use” as long as it continues to be used with food goods, such that it does not get washed and used again with respect to additional food goods. This clarification is necessary to avoid the unreasonable interpretation that the repetitive actions involved when using food service ware on a single occasion of consuming food (e.g., sipping from a cup or picking up pieces of food with a fork during the same meal) constitute multiple uses.

Subsection (a)(35)(B)

The purpose of this subsection is to interpret the phrase “sufficiently durable” for purposes of the definition of “single use.” The phrase is interpreted in the same manner as the phrase “designed or durability” is interpreted in proposed section 18980.1(a)(34)(C) with respect to whether items are reusable or refillable. This is necessary because “sufficiently durable” provides the same meaning in the definition of “single use” as the phrase “designed for durability” provides in the definition of “reusable”: It refers to the degree of durability that enables multiple uses. Logically, therefore, the definition of the phrases must be the same.

Subsection (a)(35)(C)

The purpose of this subsection is to interpret the phrase “washable,” as that phrase is used in the definition of “single use.” Doing so is necessary because the term is not specific and cannot be consistently applied without additional guidance. This subsection also defines the term “sufficiently washable” for purposes of these regulations. Those terms are logically and colloquially interchangeable: If one refers to an item simply as “washable,” it necessarily is understood to mean that it is “sufficiently” washable. Also, the definition of single use in section 42041(ai) of the PRC expressly uses the term “sufficiently” to modify “washable” along with “durable” where it refers to an item being “not sufficiently durable or washable to be...reusable or refillable”.

The purpose of this subsection is to add specificity to the definition in section 42041(ai) of the PRC, by defining the phrases “washable” or “sufficiently washable.” This subsection is necessary because this phrase within the statutory definition is undefined and susceptible to a range of interpretations, and to describe the differences in application between packaging and food service ware. This subsection is necessary to define a key term used in the statute and CalRecycle’s proposed regulations and to maintain consistency between CalRecycle’s proposed regulations and the Act.

This subsection interprets the phrases in two different contexts—the food and non-food context—because the food context raises special safety concerns requiring sanitization.

Subsection (a)(35)(C)(i)

The purpose of this subsection is to define “washable” and “sufficiently” washable in the context of packaging other than food packaging. The terms are defined to mean that an item can be cleaned such that the packaging can be safely and hygienically refilled or reused. A definition that is flexible with respect to safety and hygiene in this way is necessary because packaging of non-food items does not raise any specific safety or hygiene concerns. Rather, whether the degree to which packaging can be cleaned is sufficient depends on the context. For example, filler material used to package appliances or office supplies might require no cleaning to be safely and hygienically used with.

Subsection (a)(35)(C)(ii)

The purpose of this subsection is to define “washable” and “sufficiently” washable in the context of food service ware and food packaging. In this setting, rigorous, specific standards are required because of the risks involved in food consumption. For example, food could become contaminated by contact with unsanitary materials. Another risk is that structural failures could cause safety hazards, such as burn injuries, spoilage, intrusion of pests or chemicals, exposure to allergens, or spills.

This subsection establishes two main requirements. First, to address usability and physical safety risks, an item must maintain its shape, structure, and function through at least 780 cycles of cleaning and sanitization. In determining that this standard is appropriate, CalRecycle considered the setting where a food service establishment uses reusable or refillable food service ware or food packaging. Although not all food

service ware or food packaging is used in such a setting, the ultimate circumstances of use for any particular product cannot be known in advance. Therefore, the only practical way to ensure that all food service ware and food packaging will be sufficiently washable in various settings is to consider a rigorous use case as the basis for a universally applicable standard. Moreover, setting a single standard is necessary because allowing different standards for different circumstances or product types would be impractical and impede implementation and enforcement of the Act.

CalRecycle arrived at 780 cycles as the appropriate washability requirement based on the number of times food service establishments might serve food in a single day (three) and the number of business days in one year (260).

Lastly, this subsection incorporates the requirements from the Health and Safety Code (chapter 5 of part 7 of division 104, commencing with section 113700) applicable to the retail food setting to establish what constitutes acceptable washing and sanitization methods. Incorporating those requirements is logical and appropriate because, as the standards already applicable to how food service businesses must ensure the safety of food they serve, it results in consistency with established laws that are known to protect consumers and ensure food safety.

This subsection also requires that these requirements be demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory. This is necessary so that any claims that a food service ware or food service packaging item meets this standard can be verified by an independent third party with the proven ability to verify such a standard.

Finally, all of these requirements are consistent with those in existing laws in the Sustainable Packaging for the State of California regulation's requirement that food service packaging maintain its shape, structure, and function after 780 cycles in a cleaning and sanitizing process defined in the Health and Safety Code and as demonstrated by test results from an ISO/IEC 17025:2017 accredited laboratory. (Cal. Code Regs., tit. 14, § 17989.3, subd. (a)(1).)

Subsection (a)(36)

The purpose of this subsection is to define the term "Small producer". This is necessary because the term is used to refer to a specific statutory concept implemented in section 18980.5.2 (exemption for small businesses pursuant to section 42060(a)(5) of the PRC).

Subsection (a)(37)

The purpose of this subsection is to define "ton" and "tons." Defining these terms is necessary to clarify that those terms, as used in these regulations, refer to the short ton (2,000 pounds) and not the metric ton (1,000 kilograms).

Subsection (a)(38)

The purpose of this subsection is to define “viable responsible end market.” This is necessary because the term, as used in these regulations, has a particular meaning that would not be sufficiently clear without an express definition. End market definition and specific regulatory provisions are discussed at length in Article 4.

Subsection (b) and subsections (b)(1) and (b)(2)

The purpose of these subsections is to incorporate two technical standard documents into the chapter and establish how they are referred to elsewhere in the chapter. Incorporation by reference is required pursuant to section 20 of title 1 of the California Code of Regulations. The two documents, identified as ISO/IEC 17025:2017 and ISO/IEC 17065:2012, must be incorporated because sections 18980.3.3 and 18980.3.4, respectively, rely on them to provide substantive requirements.

ARTICLE 2. COVERED MATERIALS AND COVERED MATERIAL CATEGORIES

§18980.2. CATEGORICALLY EXCLUDED MATERIALS

The purpose of this section is to clarify certain terms identifying items that would otherwise be covered material, e.g., medical products and refillable and reusable packaging, but are excluded from being covered material by statute. Due to statutory ambiguity or the Legislature’s leaving of the matter to CalRecycle to sort out the details, these terms require clarification.

Statute exempts certain items that would otherwise be covered material only after having gone through an evaluative process administered by CalRecycle; one purpose of this section is to specify that these evaluative processes are addressed in a different section of the proposed regulations. This is necessary for clarity on the part of the producer; as a result of these provisions, they will be able to see whether there is further departmental review needed in the exemption.

Subsection (a)

The purpose of this section is to introduce the idea of categorically exempt items, i.e., items that statute exempts as a category and without needing a case-by-case analysis by CalRecycle. Non-categorically excluded items would be exempted only after having gone through an evaluative process administered by CalRecycle.

This provision is necessary for clarity on the part of the producer; as a result of these provisions, they will be able to see the categorically excluded items. CalRecycle does this by a list. The rationale for beginning a list of required components for an application is that this organizational method will be clearer to the regulated public as opposed to a more narrative subsection. An applicant will be able to go through the list and determine whether they have all the required components.

Subsection (a)(1) and subsections (a)(1)(A) and (a)(1)(B)

The purpose of this subsection is to set forth the exclusion from covered material stated in section 42041(e)(2)(A)(i) of the PRC in a manner that more clearly describes the

three categories of packaging to which it applies: packaging used for “drugs,” as defined by section 321(g) of Title 21 of the United States Code, packaging used for “devices,” as defined by section 321(h) of Title 21 of the United States Code, and packaging used for “prescription drugs,” as described in section 353(b)(1) of Title 21 of the United States Code.

As stated in statute, packaging used for “medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. sections 321(g), 321(h), and 353(b)(1))” is excluded from the definition of covered material (section 42041(e)(2)(A)(i)). That exclusion is subject to multiple readings, however, depending on which terms are qualified by “as specified.” This provision resolves the ambiguity by interpreting “as specified” as establishing the scope of the exemption overall, such that it covers all products that are “drugs” (including prescription drugs) or “devices” under the federal statutes cited. This interpretation is necessary because, under any other reading, “medical products” would have no identifiable bounds. Given the extremely broad, ambiguous nature of that term, the only reasonable interpretation of statute is that the phrase “as specified in the Federal Food, Drug, and Cosmetic Act” was intended to limit all the terms preceding it in section 42041(e)(2)(A)(i).

Subsection (a)(2)

The purpose of this subsection is to better explain how “reusable” or “refillable” items, as defined in proposed section 18980.1(a)(34), are exempt from being considered “covered material.” While it is implied that material deemed reusable or refillable would not be considered covered material because it is not single use, this subdivision explicitly states such. Furthermore, the subsection states that if CalRecycle finds that a material does not meet the criteria of the definition in proposed section 18980.1(a)(34), it is the responsibility of the producer to demonstrate why such an item should be considered reusable or refillable. This is necessary as it makes clear that material that can legitimately be claimed as reusable or refillable is not subject to this program and these regulations. Furthermore, it is necessary for producers to understand what they are responsible for substantiating if they believe that their products are reusable and refillable.

Subsection (a)(2)(A)

The purpose of this subsection is to specify that a producer or a PRO are responsible for establishing upon demand that a packaging or food service ware item that they claim to be reusable or refillable satisfies the requirements of this section and section 42041(af) of the PRC when a producer or PRO is issued a notice of violation pursuant to sections 42080 and 42081(a) of the PRC and proposed section 18980.13.4. Furthermore, a producer may use, if they choose, criteria and methodology contained in an approved PRO plan to establish that their items meet the reusable or refillable standards.

This is necessary to ensure that reusable and refillable packaging and food service ware meet the specified standards. Refillable or reusable packaging or food service ware is inherently not covered material and producers who use refillable or reusable packaging or food service ware would not be considered a producer of covered material for those items. However, a producer or PRO is still required to ensure that whatever they deem as being reusable or refillable still meets the criteria that are specified in the Act and these proposed regulations.

This section requires producers to demonstrate how their packaging or food service ware item meets the reusable and refillable standards only when given a notice of violation. This is because it would be too onerous for each producer to demonstrate to CalRecycle that each of their packaging or food service ware item meets the standards and too onerous for CalRecycle to have to approve each item. Rather, allowing producers to identify their materials without approval minimizes burden to the producers and allowing CalRecycle an opportunity to request information allows CalRecycle to conduct checks to ensure compliance.

Subsection (a)(3)

The purpose of this subsection is to state that all other materials listed in section 42041(e)(2) of the PRC, except for sections 42041(e)(2)(F) and 42041(e)(2)(H) of the PRC, are categorically excluded from being covered material. By statute, material subject to section 42041(e)(2)(F) or section 42041(e)(2)(H) of the PRC require departmental determinations that make the exclusion of a particular item apparent only when CalRecycle's process has been carried out. Items subject to those exclusions cannot be considered categorically exempt. This is necessary to maintain completeness and consistency in CalRecycle's regulations. If potential producers did not see the distinction between categorically excluded items and items that required departmental determinations based on the facts and circumstances of or surrounding those items they have made, they might improperly omit the review process required by statute and fail to comply with the Act.

Subsection (b)

The purpose of this subsection is to prevent this section from being interpreted to mean that CalRecycle lacks authority to conduct inspections and audits to determine whether, as a threshold matter, materials are covered materials, and to take enforcement action against any producer who claims not to be subject to the Act. This clarification is necessary to ensure that regulated entities are aware that they are subject to CalRecycle's authority to conduct investigations and audits, as expressly provided in section 42080 of the PRC, and to issue notices of violation, as expressly provided in section 42081 of the PRC, based on such investigations or audits. Without this clarification, CalRecycle would not be able to effectively implement and enforce the Act. This is necessary to allow CalRecycle to conduct proper verification and enforcement of producers.

§18980.2.1. EXEMPTION FOR LONG-TERM STORAGE MATERIALS

The purpose of this section is to establish an exemption process for single-use packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, pursuant to section 42041(e)(2)(F) of the PRC. Section 42041(e)(2)(F) of the PRC explicitly entrusts CalRecycle with the responsibility of determining whether something is or is not packaging but does not fully specify the substance of the exemption, nor does it identify a specific process for making this determination.

In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the substance of this exemption. Based on CalRecycle's past experience, it is not possible to determine categorically that an item meets the definition of a long-term storage material; instead, it is a fact and circumstance-dependent, item-specific analysis that requires the identification of evidence that might explain the relevant features of the item, including the lifespan and intended use of the item, the actual or expected typical usage, and the item's design and capability. All of these are factors that inform whether the item is actually long-term storage material.

In order to implement and enforce the Act, it is also necessary for CalRecycle to further specify the process for this exemption. Based on CalRecycle's past experience, an application process is the format that will best achieve the purposes of the Act. Unless the entity responsible for the item presents item-specific information to CalRecycle, CalRecycle will be unable to make the determination of whether the item qualifies for the exemption or not. Furthermore, the application process is necessary to give the regulated community certainty about whether they are or are not responsible for compliance as covered material.

Subsection (a)

The purpose of this subsection is to specify that exemptions pursuant to section 42041(e)(F) of the PRC only apply to items that have been presented to CalRecycle and have been determined by CalRecycle to meet the standard. Section 42041(e)(2)(F) of the PRC explicitly entrusts CalRecycle with the responsibility of determining whether something is or is not packaging but does not identify a specific process for making this determination.

In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the process for this exemption. It is not possible to determine categorically that an item meets the definition of a long-term storage material; instead, it requires fact and circumstance-dependent, item-specific analysis (e.g., analysis of the relevant features of the item, including the lifespan and intended use of the item, and the actual or expected typical usage). Furthermore, based on CalRecycle's past experience, an item-specific application process is the format that will best achieve the purposes of the Act. Unless the entity responsible for the item presents item-specific information to CalRecycle, CalRecycle will be unable to make the determination of whether the item qualifies for the exemption or not. Furthermore, the application process is necessary to

give the regulated community certainty about whether they are or are not responsible for compliance as covered material.

Subsection (b)

The purpose of this subsection is to specify that the exemption may only apply to packaging that is associated with a good that is typically used for at least five years in association with the packaging and not partially or wholly discarded within five years of being sold or distributed. Furthermore, this subsection specifies that the exemption is limited to a “non-consumable good”: one that is not ingested, irreversibly used, destroyed, or expended when subject to ordinary use.

Section 42041(e)(2)(F) of the PRC explicitly entrusts CalRecycle with the responsibility of determining whether something is packaging but does not fully specify the substance of the exemption, nor does it identify a specific process for making this determination. Therefore, to implement and enforce the Act, it is necessary for CalRecycle to further specify the substance of this exemption. In particular, it is necessary to interpret what is meant by a “lifespan of not less than five years.”

As a general matter, CalRecycle interprets this exemption to be directed at packaging materials that typically do not become solid waste until a significant period (i.e., five years) has elapsed. Even if such materials are technically “single use,” the policies served by the Act have significantly diminished application to them because they remain in use for an extended period, rather than quickly becoming waste after purchase. Moreover, even if such materials are not reusable, recyclable, or compostable, they still do not undermine the Act, and perhaps even serve the source reduction goals the Act more effectively than many reusable, recyclable, or compostable materials, because of how long they remain in use and out of the solid waste stream. As such, this general interpretation is consistent with the overall intent and purpose of the Act.

More specifically, the rationale for excluding consumable goods (i.e., those that may be ingested, irreversibly used, destroyed, or expended under ordinary use) or goods that typically get discarded within five years through their ordinary use relates to the necessary interpretation of the concept of a product’s “lifespan.” In the context of this exemption, a product’s lifespan cannot be the *maximum* possible period of its use (i.e., the time before it spoils or otherwise necessarily becomes unusable). Rather, it must be the *minimum* period during which a product will necessarily remain useful, such that it reasonably is expected not to be discarded or disposed of until after such period. Under this interpretation, as described above, the effect of the exemption is to exclude from the Act only materials that are not expected to become solid waste for at least five years. This interpretation is consistent with the fundamental purpose of the Act and the state’s stated policy of reducing solid waste.

This interpretation is necessary to avoid an absurd, unintended result: If “lifespan” simply referred to how long a product could theoretically remain useful (as opposed to how long it *necessarily* is expected to be used and not discarded), the exemption would

entirely subvert the Act. Merely being *capable* of being used over a period of more than five years does not mean that the product *will* actually be used for any particular duration. For example, even where ingestible products remain consumable over extraordinarily long or even infinite periods (e.g., salt, citric acid, honey), so that they *could* remain in use for more than five years, they also could be used up practically immediately after purchase.

The same problem applies to any other good that is used up (i.e., ingested, irreversibly used, destroyed, or expended) or partially discarded (e.g., a roll of paper towels that is depleted over time) under ordinary usage. Regardless of whether such products remain usable over very long periods or even infinitely (e.g., paper towels wrapped in plastic; small hardware items packaged in a clamshell; distilled vinegar or water packaged in a plastic jug; cleaning powder in a fiber-based canister; polish remover in a plastic bottle; rechargeable batteries in a blister pack), the product could be used up, or merely used in a manner that renders the packaging no longer useful, very quickly after purchase.

For these reasons, exempting products based on their *maximum* theoretical lifetime, as opposed to the *minimum* period before which they are expected to be discarded, is the exact opposite of the intended effect of the Act and would exempt an enormous range of packaging that the Act was intended target.

Subsection (c)

The purpose of this subsection is to tell the producer applicant that the application must be submitted to CalRecycle electronically and to set forth a list of requirements of what must be included in the application. The information that CalRecycle will require in the application is specified in subsections (c)(1) through (c)(4).

Section 42041(e)(2)(F) of the PRC explicitly entrusts CalRecycle with the responsibility of determining whether something is or is not packaging but does not identify a specific process for making this determination.

In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the process for this exemption. CalRecycle has determined an application process would be the most effective way to implement this as it would allow a producer to provide an explanation of the reasons why their covered material is exempt.

The rationale for this subsection is that electronic submission of the application will allow for an efficient means for CalRecycle to receive, assign, and evaluate the application. Additionally, the rationale for beginning a list of required components for an application is that this organizational method will be clearer to the regulated public as opposed to a more narrative subsection. An applicant will be able to go through the list and determine whether they have all of the required components.

Subsection (c)(1) and subsections (c)(1)(A) through (c)(1)(E)

The purpose of this subsection is to specify the contact information (i.e., name and title of applicant and company name, address, phone number, and physical and email

address) for the entity applying for this exemption. The types of contact information are specified in list form in subsections (c)(1)(A) through (c)(1)(E).

The rationale for requiring specific types of an applicant's contact information is so that CalRecycle will have the means to contact the applicant. CalRecycle must be able to communicate with applicants so that CalRecycle can carry out its statutory mandate to make determinations on these applications. Further, the rationale for listing them out in subsections (c)(1)(A) through (c)(1)(E) is to provide the information in an organizational manner that is clear for an applicant to follow so they can ensure they are providing the correct information.

Subsection (c)(2)

The purpose of this subsection is to ensure that CalRecycle has adequate information to identify the product for which the applicant is seeking an exemption. The type of information CalRecycle is seeking includes information such as information that can identify the product, which includes information such as stock keeping units, and unique properties of the product, such as the material and dimensions of the product. The determination being made is product-specific; if CalRecycle cannot clearly identify the product in question, it cannot grant a meaningful exemption.

In order to implement the exemption contemplated by the Act, it is necessary to identify the item being exempted. In section 42081(a)(2) of the PRC, the Legislature decided that packaging size, material category, and package form were relevant to determining the number of violations; features like material, dimension, and form help to distinguish one product and package combination from others for the purposes of exemption just as they do for identifying violations. Additionally, in CalRecycle's experience, stock keeping units and universal product codes are methods of distinguishing products which are conducive to the actual practice of industry. Finally, CalRecycle recognizes that there are circumstances wherein there is some other means of identifying a product not listed; thus, opportunity is left for the identification of such a feature.

In order to implement the exemption contemplated by the Act, it is necessary to identify the item being exempted; this specific information is necessary to clearly distinguish the subject of the exemption. Moreover, this is necessary in order for CalRecycle to better understand the relationship between the product and the packaging for that product.

Subsection (c)(3)

The purpose of this subsection is to specify the type of information CalRecycle is seeking to collect regarding the packaging in which that product is packaged. This information would include the form and material, size, and other types of information regarding the packaging's life span that demonstrate that the packaging's life span is at least as long as the life span of the product. In order to implement the exemption contemplated by the Act, it is necessary to identify the packaging being exempted; this specific information is necessary to clearly distinguish the subject of the exemption. In section 42081(a)(2) of the PRC, the Legislature decided that packaging size, material

category, and package form were relevant to determining the number of violations; these features help to distinguish one product and package combination from others for the purposes of exemption just as they do for identifying violations.

Additionally, these features and others that might be provided by the entity seeking the exemption will help CalRecycle to determine if the packaging's life span matches the criteria for storage over a period of five years. For example, a material might not be sufficiently durable to last over five years and knowing that would indicate that the product does not qualify for the exemption. In order to determine the determination with which CalRecycle was tasked, CalRecycle needs to collect this information to understand the properties of the packaging as it relates to packaging lifespan.

Subsection (c)(4)

The purpose of this subsection is to specify the type of information and evidence CalRecycle is seeking to collect to justify why a particular product-package combination merits an exemption. The specific information is specified in subsections (c)(4)(A) through (c)(4)(D). In order to make the determination that the Legislature assigned to CalRecycle, CalRecycle needs to collect this information to understand whether the packaging is really used for the long-term protection or storage of a product that has a lifespan of not less than five years.

Subsection (c)(4)(A)

The purpose of this subsection is to specify that the application will seek information from the applicant regarding the lifespan and intended use of the product, which may include information about any warranties the product may have. Furthermore, it specifies the conditions in which a warranty is sufficient to establish the lifespan of the product. By statute, the exemption only applies to products that have a lifespan of five or more years. In order to reach the determination with which the Legislature tasked CalRecycle in section 42041(e)(2)(F) of the PRC about the product's life span, CalRecycle needs information that corroborates the claimed lifespan. The producer's intended use of the product is a component in determining lifespan; if the product is not intended by the producer to be used for more than five years, that would be evidence that the exemption is inapplicable. Additionally, the provision concerning the substantiation of the criterion by warranty is based in part on CalRecycle's past experience, as evidenced by 14 CCR section 17989.3, that warranties can help to demonstrate certain facts about a product.

Subsection (c)(4)(B)

The purpose of this subsection is to specify that the application will seek information from the applicant regarding the actual or typical usage of the packaging in association with the product or similar products.

In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the substance of this exemption. To reach the determination with which the Legislature tasked CalRecycle in section 42041(e)(2)(F) of the PRC about the product's

life span, CalRecycle needs to know whether to consider merely the theoretical lifespan of the product or to also consider the practical lifespan. Section 42041(e)(2)(F) of the PRC does not explicitly specify whether the lifespan of five years or more is purely theoretical or if it must take into account how the product is used in practice. Nevertheless, the definition of covered material in section 42041(e)(1)(A) of the PRC demonstrates the Legislature's concern for practical use and not merely theoretical use by focusing on what is happening "routinely" or "typically." Granting exemptions for products with theoretical lifespans of five years or more but with verifiably shorter actual or typical lifespans would thus frustrate intention of the Legislature; this provision is necessary to avoid that result.

Subsection (c)(4)(C)

The purpose of this subsection is to specify that the application will seek information from the applicant regarding how the packaging is designed to protect or store a product for the entire lifespan of the product. In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the substance of this exemption. To reach the determination with which the Legislature tasked CalRecycle in section 42041(e)(2)(F) of the PRC about the packaging's ability to provide long term protection and storage over the lifespan of the product, CalRecycle needs to know about design features that make the packaging more or less able to serve that goal.

Subsection (c)(4)(D)

The purpose of this subsection is to specify that the application will seek information regarding the length of time the packaging is capable of storing or protecting a product under typical usage.

In order to implement and enforce the Act, it is necessary for CalRecycle to further specify the substance of this exemption. To reach the determination with which the Legislature tasked CalRecycle in section 42042(e)(2)(F) of the PRC about the packaging's ability to provide long term protection and storage over the lifespan of the product, CalRecycle needs to know whether to take into account merely the theoretical ability to provide long term storage or protection or whether it is actually used this way in practice. Section 42041(e)(2)(F) of the PRC does not give explicit direction on this matter and requires the filling in of details. Nevertheless, the definition of covered material in section 42041(e)(1)(A) of the PRC demonstrates the Legislature's concern for practical use and not merely theoretical use by focusing on what is happening "routinely" or "typically." Granting exemptions for packaging that only theoretically store or protect the packaging for five or more years but with verifiably shorter actual or typical periods of protection would thus frustrate intention of the Legislature; this provision is necessary to avoid that result.

Subsection (d)

The purpose of this subsection is to explain that the California Public Records Act (Division 10 of Title 1 of the Government Code) applies to applications materials and to direct parties to section 18980.15, which addresses the Public Records Act in greater

detail, including with respect to trade secret protections. This is necessary because, while the Public Records Act applies regardless of this regulation, parties may not understand how that law applies or how to identify records they claim to be exempt from its mandatory disclosure provisions.

Subsection (e)

The purpose of this subsection is to clarify that the PRO can submit an application on behalf of a participant producer. The Act contemplates that the PRO will act on behalf of participant producers, but section 42041(e)(2)(F) of the PRC does not give explicit direction on this matter. In CalRecycle's experience with extended producer responsibility statutory regimes, the PRO is often better suited to seek an exemption for a product that might otherwise be covered because the PRO will be most familiar with the requirements of the statute and able to provide the information that CalRecycle needs to make its determination. In order to ensure that the Act is implemented and enforced, it is necessary to unambiguously state that the PRO has the ability to file for exemptions on behalf of a participant producer. If the PRO's ability to do this is not clarified, plan participants might not avail themselves of the PRO's help in filing applications and, due to their lesser familiarity with the requirements of the Act, provide incomplete or otherwise deficient applications.

Subsection (f)

The purpose of this subsection is to specify that any exemption granted pursuant to this section applies only to specific packaging that is associated with a particular product. This subsection also specifies that CalRecycle, when approving the exemption, may supplement or modify the producer's description of the packaging and associated product and that the effective date of the exemption is the date the application is approved. Furthermore, this subsection specifies that an exemption is valid for one year from the approval date, with the applicant being able to reapply pursuant to subsection (g). In order to implement the exemption contemplated by the Act, it is necessary to identify the item being exempted. The determination being made is product-specific; if CalRecycle cannot clearly identify the product in question, it cannot grant a meaningful exemption. In particular, if this specificity is not provided, producers of similar but not identical materials might believe that their products are also exempt and overlook important distinctions that would result in the rejection of an application for exemption if the producer submitted their applications for the exemption of their items. Moreover, the producer's description of the item or packaging may be insufficient to satisfactorily identify the item, and CalRecycle will need to supply that specificity to make clear what it is actually exempted.

The exemption is reviewed each year to allow CalRecycle to consider whether the exempted packaging continues to meet the criteria of the exemption. The one-year time frame is necessary to ensure consistency with other annual reporting and review processes, such as a PRO's annual report or a PRO's annual data reporting. Additionally, an annual review is necessary to avoid missing changes that would void the exemption

but not be caught in time with a longer review period; it also avoids a shorter time period that would be unduly burdensome on the producer. Since CalRecycle has not established a separate process for updating information in the application, less frequent evaluation could lead to gaps in information regarding the producer and their materials. More frequent evaluation would be too onerous on the applicant.

Subsection (g)

The purpose of this subsection is to introduce the two ways in which an exemption may be maintained. Where information from the prior, approved application has not changed, the exemption would be extended under subsection (g)(2) because the underlying basis for the exemption remains the same. Where information from the prior, approved application has changed, the applicant will provide the changed and unchanged information in the same form as done previously so that CalRecycle can ensure that the changes do not void the basis for the exemption or change any other pertinent features of the exemption (e.g., the name of the recipient or the description of the product). It is necessary to explain that there are two ways of maintaining an exemption in order to ensure that producers know how to maintain their exemption and can identify the relevant process for doing so.

Subsection (g)(1)

The purpose of this subsection is to specify the process for producers whose information has not changed since their prior application to maintain their exemption. These producers are required to electronically submit to CalRecycle a certification that states that the information has not changed, and the certification is to be signed by the producer under penalty of perjury. Exemptions awarded or maintained based on false or misleading information would directly undercut the Act's purposes and its implementation and enforcement. Furthermore, this subsection specifies that the timeline for the process, including stating that the producer shall file the certification at least 90 days prior to the expiration and that, if approved, the new expiration date would be a year from the original expiration date.

This is necessary to provide clarity to producers who receive an exemption and who would like to maintain their exemption. The rationale for having such a process for applicants whose information has not changed is that the underlying basis for the exemption remains the same and relevant issuance information (e.g., the name of the exemption holder and description of the product) remains unchanged. The ninety-day period is necessary to provide sufficient time for CalRecycle to ascertain that the product meets the exemption and to ensure that the exemption for a qualifying product does not lapse. The specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, and allows for the appropriate departmental personnel to review the documentation. In order for a previously granted exemption to remain valid, the information on which it was based must not have

changed. Requiring the written certification to be provided at least 90 days prior to the exemption's expiration date is necessary to ensure that CalRecycle has a reasonable opportunity to consider the submission before the exemption expires.

Another purpose is to specify that the one-year life of the renewed exemption starts on what would have been the expiration date. The rationale for selecting this date is to ensure that the initial period of the exemption is a full year for all applicants, regardless of when CalRecycle reviews the request.

Subsection (g)(2)

The purpose of this subsection is to specify the process in which producers who received an exemption through this article are able to maintain their exemption if the information has changed from that provided in their previous application. This subsection specifies that if information in the producer's original application has changed, the producer is required to submit a new application. Reapplication is necessary because CalRecycle has not developed a mechanism for a producer to update specific sections of their application information. Reapplying is the most efficient way to ensure a producer's information is up-to-date, including having updated contact information. Additionally, reapplication is necessary to ensure that the product can be evaluated where changed facts affect the basis of the exemption. In order to implement and enforce the Act, it is necessary to identify where changes to previously exempted products void the exemption.

§18980.2.2. EXEMPTION FOR SPECIFIC MATERIALS WITH DEMONSTRATED RECYCLING RATES

The purpose of this section is to establish an exemption process for covered material that meets the criteria specified in section 42041(e)(2)(H) of the PRC. Section 42041(e)(2)(F) of the PRC tasks entities seeking the exemption with demonstrating certain criteria to CalRecycle. Since the exemption may be granted for covered material at a more specific level of detail than the covered material category, CalRecycle will need specific information about the covered material, much of which the applicant is uniquely suited to provide. In order to receive this information and implement the statutory exemption, CalRecycle needs an application process that would allow producers to submit data and a justification for why their covered material should be subject to an exemption.

Subsection (a)

The purpose of this subsection is to specify the type of information that CalRecycle seeks through the application that will allow CalRecycle to make a determination of whether a particular covered material would qualify for an exemption pursuant to section 42041(e)(2)(H) of the PRC.

In order to implement this exemption, it is necessary for CalRecycle to further specify the process by which CalRecycle will grant these exemptions. CalRecycle has

determined an application process would be the most effective way to implement this as it would allow a producer to provide explanations as to why their covered material should be exempt.

The rationale for this subsection is that electronic submission of the application will allow for an efficient means for CalRecycle to receive, assign, and evaluate the application. Additionally, the rationale for beginning a list of required components for an application is that this organizational method will be clearer to the regulated public as opposed to a more narrative subsection. An applicant will be able to go through the list and determine whether they have all of the required components.

Subsection (a)(1) and subsections (a)(1)(A) through (a)(1)(E)

The purpose of these subsections is to specify the contact information (i.e., name and title of applicant and company name, address, phone number, and physical and email address) for the entity applying for this exemption. The types of contact information are specified in list form in subsections (a)(1)(A) through (a)(1)(E).

The rationale for requiring specific types of an applicant's contact information is so that CalRecycle will have the means to contact the applicant. CalRecycle must be able to communicate with applicants so that CalRecycle can carry out its statutory mandate to make determinations on these applications. Further, the rationale for listing them out in subsections (a)(1)(A) through (a)(1)(E) is to provide the information in an organizational manner that is clear for an applicant to follow so they can ensure they are providing the correct information.

Subsection (a)(2)

The purpose of this subsection is to collect the name and description of the material for which the applicant is seeking an exemption. This is necessary to provide CalRecycle with basic information about the material. In order to make an exemption, CalRecycle needs to be able to name and accurately describe the material. In order to ensure it is evaluating the right material, and not some other material, it needs an accurate name and description. Since the exemption may be granted for covered material at the covered material category or a more specific level of detail, CalRecycle needs a name and description of the material. With that name and description, CalRecycle can further analyze whether the item meets the exemption criteria or not. In order to issue the exemption,

In order to implement the exemption contemplated by the Act, it is necessary to identify the item being exempted; this specific information is necessary to clearly distinguish the subject of the exemption.

Subsection (a)(3)

The purpose of this subsection is to specify that the application will collect information regarding how material is collected and processed. The type of information is further specified in subsections (a)(3)(A) through (a)(3)(C). This is necessary so CalRecycle

can collect information that helps it determine if the material meets the criteria specified in section 42041(e)(2)(H)(i) of the PRC.

Subsection (a)(3)(A)

The purpose of this subsection is to specify that the application will collect information on the list of entities the material is collected. If CalRecycle has a list of collecting entities, it can ensure that none of them are residential recycling collection services. This is necessary so CalRecycle can verify if the material meets the criteria specified in section 42041(e)(2)(H)(i)(I) of the PRC.

Subsection (a)(3)(B)

The purpose of this subsection is to specify that the application will collect information on the list of entities that process and recycle the collected material. If CalRecycle has a list of processing entities, it can ensure that none of them are separating the materials at a commingled recycling processing facility. This is necessary so CalRecycle can verify if the material meets the criteria specified in section 42041(e)(2)(H)(i)(II) and section 42041(e)(2)(H)(i)(III) of the PRC.

Subsection (a)(3)(C)

The purpose of this subsection is to specify that the application will seek to collect information on how the treatment of material is consistent with article 4 of these proposed regulations. This is necessary so CalRecycle can verify if the material meets the criteria specified in section 42041(e)(2)(H)(i)(III) of the PRC. All materials must be recycled at a responsible end market to qualify for this exemption. In order for an entity to be deemed a responsible end market, this means that the material must be handled in a way that is consistent with the requirements specified in article 4. Article 4 of these proposed regulations specify the standards for a responsible end market.

Subsection (a)(4)

The purpose of this subsection is to specify that the application will seek to collect a list of responsible end markets where the covered material is recycled and proof that the covered material is recycled at those specified responsible end markets. Furthermore, it specifies that “recycled” has the same meaning stated in proposed section 18980.3.2(a)(1). A material is deemed “recycled” when it is accepted at a responsible end market, as specified in proposed section 18980.3.2(a)(1). This specification is necessary, as “recycled” does not have the same meaning as “recycling.”

In order to qualify for the exemption, the covered material must be recycled at a responsible end market; if no documentation is provided, CalRecycle cannot verify that the material is being recycled at a responsible end market. This subsection is necessary so CalRecycle can verify if the material meets the criteria specified in section 42041(e)(2)(H)(i)(III) of the PRC.

Subsection (a)(5)

The purpose of this subsection is to specify that the application will collect data pertaining to recycling rates. This subsection clarifies that any three-year period of

attainment prior to January 1, 2027, may be used to meet the requirements in section 42041(e)(2)(H)(i)(IV) of the PRC. This is necessary because the statute only states that the recycling rater must be demonstrated for three consecutive years prior to January 1, 2027, but doesn't specify any specific three-year period. This subsection seeks to offer applicants the greatest amount of flexibility by allowing them to use any consecutive three-year period prior to January 1, 2027. This subsection also specifies that any recycling rate calculated using the data provided should use the methodology specified in proposed section 18980.3.2. This is necessary so CalRecycle can verify if the material meets the recycling criteria specified in section 42041(e)(2)(H)(i)(IV) of the PRC. To qualify for the exemption, the covered material must meet the recycling rate requirement; if no documentation is provided, CalRecycle cannot verify that the rate is being met. Use of CalRecycle methodology is necessary in order to ensure that applicants are calculating recycling rates consistently and prevents the possibility of an applicant using a different methodology that skews their recycling rate. This will ensure a level playing field amongst producers.

Subsection (b)

The purpose of this subsection is to explain that the California Public Records Act (Division 10 of Title 1 of the Government Code) applies to applications materials and to direct parties to proposed section 18980.15, which addresses the Public Records Act in greater detail, including with respect to trade secret protections. This is necessary because, while the Public Records Act applies regardless of this regulation, parties may not understand how that law applies or how to identify records they claim to be exempt from its mandatory disclosure provisions.

Subsection (c)

The purpose of this subsection is to clarify that the PRO can submit an application on behalf of a participant producer. The Act contemplates that the PRO will act on behalf of participant producers, but section 42041(e)(2)(H) of the PRC does not give explicit direction on this matter. In CalRecycle's experience with extended producer responsibility statutory regimes, the PRO is often better suited to seek an exemption for a product that might otherwise be covered because the PRO will be most familiar with the requirements of the statute and able to provide the information that CalRecycle needs to make its determination. In order to ensure that the Act is implemented and enforced, it is necessary to unambiguously state that the PRO has the ability to file for exemptions on behalf of a participant producer. If the PRO's ability to do this is not clarified, plan participants might not avail themselves of the PRO's help in filing applications and, due to their lesser familiarity with the requirements of the Act, provide incomplete or otherwise deficient applications.

Subsection (d)

The purpose of this subsection is to explain what CalRecycle will do with the information provided; specifically, CalRecycle will review and evaluate the application if it meets the criteria for an exemption. The Act requires that the applicant demonstrates certain

things to CalRecycle; implicit in the demonstration requirement of section 42041(e)(2)(H)(i) of the PRC is that CalRecycle has a role in ascertaining whether something meets the standard or not. Moreover, for the reasons set forth above, the best method for implementing an exemption at a level that may be more granular than the covered material category is an individual application process, and consideration of an applicant's information is an implicit part of an application process. It is implicit, but not explicit in the Act, that CalRecycle will review and evaluate the information; this regulatory provision is necessary to ensure that the process is clear.

Subsection (e)

The purpose of this subsection is to specify that, absent changes at the covered material category level, any exemption granted pursuant to this section applies only to a specific packaging that is associated with a particular product. Where the information a producer provides pursuant to the application warrants a change at the covered material category level, the exemption is unlikely to be product-specific; thus, a reference to that section is necessary to ensure that the producer understands the breadth of the exemption. However, where the exemption is given at a level lower than the covered material category level, the exemption may need to specify the product and packaging combination; in such a case, the exemption will be given with regard to that product and packaging combination.

This subsection also specifies that CalRecycle, when approving the exemption, may supplement or modify the producer's description of the packaging and associated product and that the effective date of the exemption is the date the application is approved. If CalRecycle cannot clearly identify the subject of the exemption, it cannot grant a meaningful exemption. Given that the producer's description may be insufficient to satisfactorily identify the item, CalRecycle will need to supply that specificity to make clear what it is actually exempted.

Furthermore, this subsection specifies that an exemption is valid for two years from the approval date. CalRecycle has specified two years as the Act, pursuant to section 42041(e)(2)(H)(IV) of the PRC, requires the applicant to demonstrate to CalRecycle their recycling rate every two years. Re-applying every 2 years would allow the producer to report their updated recycling rate consistent with the requirements in statute. This is necessary as it provides specificity to the terms of the exemption.

Subsection (f)

The purpose of this subsection is to specify the process in which producers who receive an exemption through this article are able to maintain their exemption. In order to maintain an exemption, the proposed process would include two parts. The first portion is described in subsection (f)(1) and the second portion is described in subsection (f)(2). Furthermore, this subsection specifies that the timeline for the process, including stating that the producer shall file the certification at least 90 days prior to the expiration and that, if approved, the new expiration date would be two years from the original expiration

date. This is necessary to establish a process by which producers are able to maintain their exemption. Requiring the written certification to be provided at least 90 days prior to the exemption's expiration date is necessary to ensure that CalRecycle has a reasonable opportunity to consider the submission before the exemption expires.

Subsection (f)(1)

The purpose of this subsection is to specify the first portion necessary for a producer to complete in order for the producer to maintain their exemption. CalRecycle has already processed an exemption for the applicant; so long as there are no changes to that information and the metrics specified by statute continue to be met, the basis for the original exemption remains. In this part of the process the producer electronically submits a certification to CalRecycle that states that the information has not changed and the certification; it is signed by the producer under penalty of perjury. The specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, and allows for the appropriate departmental personnel to review the documentation. In order to maintain an exemption, it is necessary that the information not change. It is necessary to require a statement under penalty of perjury to avoid false reporting; exemptions awarded due to false or misleading information could hinder the achievement of the Act's purposes.

Accurate information in an application is necessary in order for CalRecycle to verify whether or not a producer is compliant. Accurate contact information is necessary in the event CalRecycle needs to take an enforcement action against a producer if they are in violation. CalRecycle has not developed a mechanism for a producer to update their application information. If the applicant's information has changed, including the producer contact information, reapplying pursuant to subsection (g) is the most efficient way to ensure a producer's information is up to date.

Subsection (f)(2)

The purpose of this subsection is to specify the second portion necessary for a producer to complete in order for the producer to maintain their exemption. By statute, the exemption holder is required to demonstrate the achievement of section 42041(e)(2)(H)(i)(IV) of the PRC criterion every two years. In this regulatory provision, the producer is required to submit recycling data to justify that producer continues to meet the required recycling rates to maintain this exemption, using the methodology specified by CalRecycle. Use of CalRecycle methodology is necessary in order to ensure that applicants are calculating recycling rates consistently and prevents the possibility of an applicant using a different methodology that skews their recycling rate. This will ensure a level playing field amongst producers.

It is implicit in section 42041(e)(2)(H)(i) of the PRC that a process is needed for the demonstration of this information, but one is not provided in statute. This subsection is

necessary to obtain the information that will verify whether or not the exempted material continues to meet the requirements specified in section 42041(e)(2)(H)(i)(IV) of the PRC.

Subsection (g)

The purpose of this subsection is to state that if a producer is unable to meet the certification requirements of subsection (f), the producer will be required to submit a new application pursuant to subsection (a). This is necessary to ensure that the product can be evaluated for the exemption in light of the changed facts. If the changes do not affect the basis for the exemption, the exemption can be maintained. In order to implement and enforce the Act, it is necessary to identify where changes to previously exempted products void the exemption. Furthermore, since CalRecycle has not developed a mechanism for a producer to update their application information, reapplying is the most efficient way to ensure a producer's information is up to date, including having updated contact information.

§18980.2.3. EXEMPTION FOR CERTAIN COVERED MATERIALS

The purpose of this section is to establish a process to exempt particular covered material pursuant to section 42060(a)(3) or section 42060(a)(4) of the PRC. Section 42060(a)(3) of the PRC requires CalRecycle to establish a process to identify covered material that would present unique challenges in complying with these proposed regulations. Section 42060(a)(4) of the PRC requires CalRecycle to establish a process to identify covered material that cannot comply with the statute due to health and safety reasons or because the covered material is unsafe to recycle. This section is necessary to implement these statutorily mandated processes. CalRecycle has determined that the most effective process for such implementation is to create an application, requiring certain information relevant to whether an exemption is appropriate, that a PRO or producers can use to request specific exemptions.

Subsection (a)

The purpose of this subsection is to specify that CalRecycle has sole discretion when exempting particular covered material from the requirements of the Act and the chapter, pursuant to section 42060(a)(3) and section 42060(a)(4) of the PRC. This is necessary to avoid interpretations of this chapter or the Act under which a PRO or any other entity might have a role in determining whether covered material qualifies for any exemption addressed in this section. Section 42060(a)(3) and 42060(a)(4) of the PRC expressly, directly authorize CalRecycle, rather than the PRO or any other party, to grant such an exemption.

Subsection (b)

The purpose of this subsection is to specify that a PRO or a producer are the entities authorized to submit an application as part of the process established pursuant to section 42060(a)(3) or section 42060(a)(4) of the PRC. This is necessary because the statute does not expressly specify which entities can initiate such processes. The

process logically concerns applications by producers and the PRO because they are the parties who are directly responsible for ensuring that covered materials comply with the act and who benefit from the exemptions to be considered.

Subsection (c)

The purpose of this subsection is to specify the information CalRecycle will collect through the application of the exemption and that the information is to be submitted electronically to CalRecycle. The information that CalRecycle will require in the application is specified in subsections (c)(1) through (c)(5). As further described below, requiring the information is necessary because it is directly relevant to the administration of the processes required by statute and for assessment of whether covered material should be granted an exemption.

Subsection (c)(1) and subsections (c)(1)(A) through (c)(1)(E)

The purpose of these subsections is to specify the contact information required to be included in the application. Requiring an individual's name and title (subsection (c)(1)(A)), business name (subsection(c)(1)(B)), business address (subsection (c)(1)(C)), phone number (subsection (c)(1)(D)), and email address (subsection(c)(1)(E)) is necessary to ensure CalRecycle and identify and communicate with the entity.

Subsection (c)(2)

The purpose of this subsection is to require that an application uniquely identifies the covered material relevant to the exemption. This is necessary to ensure that the application unambiguously identifies the distinct covered material to which the exemption will apply. Without such information, the application would not reasonably convey the scope or ultimate, practical effect of the requested exemption.

Subsection (c)(3)

The purpose of this subsection is to require that the application identify the statutory basis (sections 42060(a)(3) and 42060(a)(4) of the PRC, or both) for the exemption sought. Requiring such information is necessary because, as further set forth in subsection (c)(5) of this subsection, it determines what information is required to be included in the application and guides CalRecycle's consideration of whether to permit an exemption.

Subsection (c)(4)

The purpose of this subsection is to require that the application describe the current and potential products that use, or will use, the covered material for which the exemption is sought. Requiring such disclosure is necessary because, to effectively consider whether an exemption is appropriate, CalRecycle must understand the products and types of products that the packaging is used for. Without such information, the application would not reasonably convey the scope or ultimate, practical effect of the requested exemption.

Subsection (c)(5)

The purpose of this subsection is to specify the information required to be included in an application. As detailed further in subsections (c)(5)(A) through (c)(5)(D), such information will vary depending for the basis for which an exemption is sought. The information requirements will enable CalRecycle to determine whether requested exemptions are justified and are thus necessary for the implementation of the process's statute mandates CalRecycle to establish.

Subsection (c)(5)(A)

The purpose of this subsection is to specify the information required to be included in an application for an exemption based on section 42060(a)(3) of the PRC. The specific information required is detailed in subsections (c)(5)(A)(i) through (c)(5)(A)(viii) and relates to the “unique challenges” asserted in the application. Such information requirements will enable CalRecycle to determine whether an exemption is justified and are thus necessary for the implementation of the process statute mandates CalRecycle to establish.

Subsection (c)(5)(A)(i)

The purpose of this subsection is to require applications to identify the particular provisions of the Act for which “unique challenges” in complying with the Act or this chapter. Requiring this information is necessary for CalRecycle’s evaluation of the exemption request because it defines the specific impetus for the exemption sought.

Subsection (c)(5)(A)(ii)

The purpose of this subsection is to require applications to explain the nature of the unique challenges and how they are caused by characteristics of the covered material. Requiring such an explanation is necessary because section 42060(a)(3)(A) of the PRC expressly requires it to be the overall factual basis for granting the exemption requested.

Subsection (c)(5)(A)(iii)

The purpose of this subsection is to require applications to include additional information relating to whether the practical necessity of the covered material at issue might justify granting of the exemption. Although the applicant can address any issues that might support a claim that the covered material is practically necessary, this subsection includes multiple examples that the applicant must address. CalRecycle identified these examples as the minimum issues that must be addressed because they cover common, high-level categories of needs that frequently guide public policy. Requiring such information is necessary to ensure that CalRecycle receives sufficient information for it to determine whether an exemption is justified because not granting it would result in significant harm. Moreover, stating basic minimum elements that every application must contain sets a reasonable, clear threshold for sufficiency. This will ensure that parties that desire an exemption will clearly understand what constitutes a complete application. This will help minimize submissions of faulty applications, thereby promoting efficiency of the process overall.

Subsection (c)(5)(A)(iv)

The purpose of this subsection is to require applications to address whether there are alternatives to the covered material. This requirement is necessary to ensure that CalRecycle receives information sufficient for it to determine whether an exemption is justified and consistent with the Act. In particular, the reasonableness of an exemption is directly related to whether other materials present an equally viable means to comply with the Act. If compliant, economically viable materials could be used instead of the covered material at issue, that necessarily means that the “unique challenges” identified by the applicant are readily overcome. Moreover, requiring a discussion of possible alternatives is necessary because the exemption authorized by section 42060(a)(3) of the PRC must be based on “unique” challenges. If there are other materials that face similar challenges, the exemption might not be appropriate, especially if those materials comply with the Act despite the challenges.

Subsection (c)(5)(A)(v)

The purpose of this subsection is to require applications to address effects on environmental justice communities. This requirement is necessary to ensure that CalRecycle receives information sufficient for it to determine whether an exemption is justified and consistent with the Act, which expressly requires CalRecycle's regulations to consider environmental justice impacts (e.g., sections 42041(aa)(5) and 42060(d) of the PRC).

Subsection (c)(5)(A)(vi)

The purpose of this subsection is to require applications to address effects on existing processing and recycling infrastructure. This requirement is necessary to ensure that CalRecycle receives information sufficient for it to determine whether an exemption is justified and consistent with the Act. If material causes significant harm to the efficiency of existing recycling infrastructure, exempting it from the Act might directly subvert the Act by undercutting its accomplishments and hindering compliance efforts of PROs and producers. On the other hand, if such effects are minimal, granting an exception might ultimately serve the purposes of the Act if processing and recycling infrastructure are likely to evolve such that the material eventually can comply with the Act.

Subsection (c)(5)(A)(vii)

The purpose of this subsection is to require applications to describe why the covered material is cannot be recycled or source reduced. Such information is necessary so that CalRecycle receives information sufficient for it to determine whether an exemption is justified and consistent with the Act, two major objectives of which are source reduction and improvements in recycling. An exemption would be inappropriate, for example, if covered material could be recycled or if it could reasonably be eliminated altogether.

Subsection (c)(5)(A)(viii)

The purpose of this subsection is to require applicants to propose a plan for the covered material to be phased into the requirements of the Act or explain why such a plan is unfeasible or unnecessary. Requiring an application to address the potential for a

phase-in plan is necessary because CalRecycle's authority to grant exemptions is necessarily limited by its express duty to implement and enforce the Act through these regulations. Except where a phase-in plan is unfeasible (e.g., due to technical impossibility) or unnecessary (e.g., because compliance challenges are temporary), granting an exemption without also simultaneously considering how the exemption might be rendered unnecessary in the future would run counter to that express duty. The Act provides a mechanism for CalRecycle to do so by expressly authorizing it to develop a phase-in plan at any time.

However, CalRecycle cannot reasonably and efficiently develop any phase-in plan without direct input from the applicant, who has unique knowledge about the covered material at issue and circumstances related to it. Therefore, it is necessary for this subsection to require an applicant to provide the basic details of what such a plan might entail. The minimum details required (current requirements that the material complies with, timeline for full compliance, and annual goals for progress in achieving compliance) are necessary because they form the most basic, logical framework for any phase-in plan and depend heavily on facts and circumstances that CalRecycle cannot reasonably know or discover without direct input from the applicant.

Subsection (c)(5)(B)

The purpose of this subsection is to require additional information in the specific situation where an application for the requested exemption under section 42060(a)(3) of the PRC is based on the challenges involved in establishing an alternative collection program to satisfy section 42355.51(d)(5) of the PRC as the means for establishing that covered material is recyclable. This is necessary because, due to the specific, complex nature of that challenge, CalRecycle is able to identify factual issues that will usually be highly relevant, such that having information tailored to address them will be necessary for CalRecycle to have sufficient information to determine whether an exemption is justified and consistent with the Act. Subsections (c)(5)(B)(i) through (c)(5)(B)(vi) identify each issue to be addressed.

This subsection also requires that requests based on an alternative collection program and ultimate compliance with section 42355.51(d)(5) of the PRC include a proposed phase-in plan, as described in subsection (c)(5)(A)(viii). Even if unstated here, the requirement of subsection (c)(5)(A)(viii) necessarily applies to such requests, which by their nature assert that such phasing in is feasible. Stating the requirement here is necessary to ensure that applicants understand that this subsection necessarily requires that a phase-in plan be feasible, and that this subsection is not a substitute for the requirement that a proposed plan be included in the application.

Subsection (c)(5)(B)(i)

The purpose of this subsection is to require that an application is specifically tailored to the establishment of an alternative collection system, both generally and specifically with respect to how the specific covered material presents the unique challenges identified in the application. This is necessary because, due to the specific, complex

nature of that challenge, CalRecycle has identified this information as highly relevant, such that guiding applicants to address it specifically and directly is necessary for CalRecycle to have sufficient information to fully understand the “unique challenge” asserted and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(ii)

The purpose of this subsection is to require that an application specifically address how the challenges identified in the application (i.e., those related to establishing an alternative collection program). Requiring this is necessary because such efforts necessarily will be the most direct, probative evidence of the nature and existence of such challenges and the potential for them to be overcome. It will also demonstrate the applicant’s competence in operating the program and good faith effort to comply with the Act, both of which would indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. In sum, this information will be highly relevant, such that guiding applicants to address it specifically and directly is necessary for CalRecycle to have sufficient information to fully understand the “unique challenge” asserted and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)

The purpose of this subsection is to require that an application specifically and fully address the existing alternative collection program, if any, that the applicant has already created for the covered material. This is similar to the information required in subsection (c)(5)(B)(ii) but identifies issues, including with respect to the specific factors listed in subsections (c)(5)(B)(I) through (c)(5)(B)(IX), that are only relevant if there is an already-created program. Requiring this is necessary because CalRecycle identified such issues as highly and universally relevant to already-created programs, so that guiding applicants to address it specifically and directly is necessary for CalRecycle to have sufficient information to fully understand those challenges and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(I)

The purpose of this subsection is to require that an application specifically address the success of the program with respect to gross volume and the percentage of the distributed covered material that the program collects. Requiring this information is necessary for CalRecycle to have sufficient information to fully understand the nature and extent of the “unique challenge” asserted, assess good faith effort of the applicant and the likelihood of future compliance, and generally to determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(II)

The purpose of this subsection is to require that an application specifically addresses whether the alternative collection program also collects covered material other than the one sought to be exempted from the act. If the program successfully collects additional covered material, and especially if the program satisfies the Act’s recyclability

requirements with respect to those materials, it will strongly support an assertion that an exemption promotes compliance with the Act and its overall goals. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(III)

The purpose of this subsection is to require that an application specifically address the efficacy of a program with respect to the ultimate recycling of the material collected. To promote compliance with the Act and its overall goals, a program must achieve actual recycling of the covered material collected. Progress in this regard is also indicative of the applicant's competence in operating the program and its good faith effort to comply with the Act, both of which would indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(IV)

The purpose of this subsection is to require that an application specifically addresses the efforts undertaken in connection with a program with respect to consumer convenience and increasing participation in the program. Consumer convenience is a key factor in the efficacy and ultimate success of an alternative collection program. Efforts to increase convenience and participation indicate the applicant's understanding of the challenges it faces, competence in operating the program, and its good faith effort to comply with the Act, all of which would indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(V)

The purpose of this subsection is to require that an application specifically addresses the educational outreach and marketing activities undertaken in connection with a program. These activities further promote participation in the program, which is a key factor in the efficacy and ultimate success of an alternative collection program. Efforts to increase participation indicate the applicant's understanding of the challenges it faces, competence in operating the program, and its good faith effort to comply with the Act, all of which would indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(VI)

The purpose of this subsection is to require that an application identify other operators and partners in the program. Knowing the persons involved in the program will allow CalRecycle to assess whether the program can draw directly from previous experience related to addressing the challenges identified in the application. Such experience would indicate that the applicant understands the challenges it faces and its likely competence to address them, both of which would indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(VII)

The purpose of this subsection is to require that an application specifically addresses the collection infrastructure, technology, and methods already established for the alternative collection program. These are key elements of an alternative collection program, and their presence would be highly relevant to the timing and likelihood of its ultimate success in satisfying the Act's recyclability requirements. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iii)(VIII)

The purpose of this subsection is to require that an application specifically address the financial investment program to date. Such investment is highly relevant to the rigor of the program, the applicant's commitment to it, and the expectation that it will continue to develop and ultimately succeed in achieving full compliance with the Act's recyclability requirements. It is also proof of the applicant's good faith effort to comply with the Act, which would further indicate that the exemption will not merely undercut the Act, but rather would result in greater compliance with it. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(iv)

The purpose of this subsection is to require that, where an alternative collection program does not already exist, an application must describe the anticipated program, including with respect to the information described in subsection(iii). This is necessary for the same purposes described in subsection (iii) and subsections (c)(5)(B)(iii)(I) through (c)(5)(B)(iii)(VIII). Also requiring the anticipated program's start date is necessary to serve those purposes because it is the logical, highly relevant additional element of the alternative collection program that is not already specified in subsection (iii).

Subsection (c)(5)(B)(v)

The purpose of this subsection is to require that an application include projections of the existing or anticipated progress toward achieving the Act's recyclability requirements and the expected date of full compliance. The assumptions underlying the projections must also be provided. Requiring this information, including technical and financial assumptions underlying projected performance, is necessary for CalRecycle to fully understand the applicant's expectations and evaluate whether for those expectations are reasonable and analytically sound and, if achieved, will serve the purposes and goals of the Act. Such understanding and evaluation are central to CalRecycle's assessment of whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(B)(vi)

The purpose of this subsection is to require that the applicant identify and describe any alternative collection programs that are comparable to the one proposed as a basis for granting the requested exemption. Such programs would be highly relevant to CalRecycle's evaluation of the applicant's program, and all the information and assertions offered regarding it. Where a comparable program has been successful, similarities with that program and the degree to which the applicant will emulate it would suggest that the applicant's program is likely to succeed. In contrast, where the comparable program has been ineffective, distinctions between that program and the applicant's program would help demonstrate why the latter will succeed. To facilitate these comparisons, this subsection directs the applicant to describe the comparable program in reference to the types of information that the applicant must provide regarding its own program. These requirements are necessary so that the CalRecycle receives all the information available to the applicant to assist in its evaluation of the exemption request and ensure that CalRecycle has sufficient information to determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(C)

The purpose of this subsection is to specify the information required to be included in an application for an exemption under section 42060(a)(4) of the PRC based on "health and safety reasons." The specific information required is detailed in subsections (c)(5)(C)(i) through (c)(5)(C)(iii) directly relates to those reasons. Such information requirements are necessary so that CalRecycle receives information relevant to the express statutory basis on which CalRecycle may grant an exemption. Having such information is therefore necessary for the implementation of the process that section 42060(a)(4) of the PRC mandates CalRecycle to establish.

Subsection (c)(5)(C)(i)

The purpose of this subsection is to require applications to identify the particular provisions of the Act with which the covered material to be exempted cannot comply due to the asserted health and safety concerns. Requiring this information is necessary for CalRecycle's evaluation of the exemption request because it defines the specific impetus for the exemption sought.

Subsection (c)(5)(C)(ii)

The purpose of this subsection is to require applications to explain the nature of the health and safety concerns, including how they relate to characteristics of the covered material and prevent the material from complying with the Act. Requiring such an explanation is necessary because section 42060(a)(4) of the PRC expressly requires it to be the overall factual basis for granting of the exemption requested.

Subsection (c)(5)(C)(iii)

The purpose of this subsection is to require applications to provide the information described in subsection (c)(5)(A)(iii) through (c)(5)(A)(viii), except with respect to the concerns and related challenges underlying exemption requests founded on health and safety. The purpose and necessity of requiring such information are the same as the purpose and necessity of requiring it with respect to the exemption addressed in subsection (c)(5)(A)(iii) through (c)(5)(A)(viii).

Subsection (c)(5)(D)

The purpose of this subsection is to specify the information required to be included in an application for an exemption under section 42060(a)(4) of the PRC based on it being “unsafe to recycle” the covered material. The specific information required is detailed in subsections (c)(5)(D)(i) through (c)(5)(D)(v) directly relates to those reasons. Such information requirements are necessary so that CalRecycle receives information relevant to the express statutory basis on which CalRecycle may grant an exemption. Having such information is therefore necessary for the implementation of the process that section 42060(a)(4) of the PRC mandates CalRecycle to establish.

Subsection (c)(5)(D)(i)

The purpose of this subsection is to require applications to identify the particular provisions of the Act with which the covered material to be exempted cannot comply because it is unsafe to recycle. Requiring this information is necessary for CalRecycle’s evaluation of the exemption request because it defines the specific impetus for the exemption sought.

Subsection (c)(5)(D)(ii)

The purpose of this subsection is to require applications to explain the characteristics of the covered material that render recycling of it unsafe. Requiring such an explanation is necessary because section 42060(a)(4) of the PRC expressly requires it to be the overall factual basis for granting of the exemption requested.

Subsection (c)(5)(D)(iii)

The purpose of this subsection is to require applications to specifically explain the nature of the safety risks, including with respect to end markets, processors, and intermediate supply chain entities, and how the exemption relates to mitigation or avoidance of the risks. To assist applicants to understand the relevant risks, it identifies examples of relevant risks that the applicant must, at a minimum, address. It also requires applicants to explain how recycling of a covered material would create or exacerbate risks to end markets, processors, and intermediate supply chain entities.

These risks, to the extent they exist, and related concerns would be directly relevant to CalRecycle's assessment of whether the covered material actually cannot be safely recycled, as expressly required by statute, and whether the exemption would undercut the Act by exempting materials without there being environmental and other risks that the exemption would avoid. This subsection also specifically requires applications to address potential contamination of equipment because that would be a particularly acute problem that granting the exemption could help address by reducing the pressure, at least temporarily, to find ways to recycle the material. Requiring this information is therefore necessary for CalRecycle to have sufficient information to fully understand relevant circumstances and determine whether an exemption is justified and consistent with the Act.

Subsection (c)(5)(D)(iv)

The purpose of this subsection is to require applications to provide the information described in subsection (c)(5)(A)(iii) through (c)(5)(A)(viii), except with respect to the assertion that the covered material is unsafe to recycle and the related challenges underlying the exemption request. The purpose and necessity of requiring such information are the same as the purpose and necessity of requiring it with respect to the exemption addressed in subsection (c)(5)(A)(iii) through (c)(5)(A)(viii).

Subsection (c)(5)(D)(v)

The purpose of this subsection is to require applications to address the risk that recycling the covered material to be exempted would cause consumers to be exposed to toxic or hazardous substances contained in products using recycled material. Requiring applicants to explain such risks is necessary because they are particularly serious and are more likely to be presented where recycling presents safety concerns. While recycling covered material is a goal of the Act, introducing toxic or hazardous substances into manufactured products would cause widespread harm, including to the recycling industry and infrastructure. Where such risks are present, applicants could legitimately claim that the products cannot be recycled, as required for the requested exemption to be granted.

Subsection (d)

The purpose of this subsection is to explain that the California Public Records Act (Division 10 of Title 1 of the Government Code) applies to applications materials and to direct parties to section 18980.15, which addresses the Public Records Act in greater detail, including with respect to trade secret protections. This is necessary because, while the Public Records Act applies regardless of this regulation, parties may not understand how that law applies or how to identify records they claim to be exempt from its mandatory disclosure provisions.

Subsection (e)

The purpose of this subsection is to allow the PRO to submit an application on behalf of participant producers. This is necessary because it is not otherwise clear that a producer needs to be the applicant with respect to the covered material to be exempted.

Moreover, permitting the PRO to apply for an exemption on behalf of producers is consistent with the overall function of the PRO, whose actions generally serve to achieve compliance with Act, and promotes the efficient implementation of its plan and the Act because a particular exemption may directly affect many producers.

Subsection (f)

The purpose of this subsection is to describe the scope and duration of granted exemptions. Limiting exemptions to the products identified in the application and use the exempted covered material is necessary so that the PRO, CalRecycle, and the public have a clear, objective way to identify products and materials that are comply with the Act. Allowing CalRecycle to exercise its discretion to supplement or modify how the application identifies the products and covered material is necessary for the same reason. Limiting the exemption to one year is necessary to prevent an exemption from persisting despite the underlying circumstances supporting CalRecycle's granting of it no longer existing. However, providing that CalRecycle can exercise discretion to grant a longer exemption is necessary because the application might prove that the basis for granting the exemption might necessarily continue for more than one year, or be very likely to do so.

Subsection (g)

The purpose of this subsection is to set forth two of the ways that an exemption can be granted for an additional year. This is necessary for effective implementation and enforcement of the Act because requiring an entirely new application would, in many instances, be an unnecessary and inefficient manner of evaluating the continued justification for the exemption.

Subsection (g)(1)

The purpose of this subsection is to set forth the first way for an exemption to be renewed for an additional year: by certifying in writing, under penalty of perjury, that the information in the initial application remains accurate. Allowing this as one way to extend the exemption is necessary because requiring an entirely new application under such circumstances would be unnecessary and inefficient. Requiring certification under penalty of perjury is necessary as a practical means for holding the producer accountable for the veracity of its representations. Exemptions awarded or maintained based on false or misleading information would directly undercut the Act's purposes and its implementation and enforcement. Requiring the written certification to be submitted within 90 days of the exemption's expiration is necessary to ensure that CalRecycle has sufficient time to consider the submission before such expiration. Lastly, the purpose and necessity of specifying that the duration provision of subdivision (f) applies to re-approvals are the same purpose and necessity of that provision with respect to initial approvals.

Subsection (g)(2)

The purpose of this subsection is to set forth another way to request that the exemption be granted for an additional year: by submitting a new application. Requiring this where the information provided in support of the previous approval is necessary because, at that point, the reasons underlying CalRecycle's approval of the exemption are likely no longer to apply.

Subsection (h)

The purpose of this subsection is to establish how exemptions may be extended when they are based on section 42051(a)(3)(A) of the PRC (unique challenges, generally) or (B) (unique challenges, specifically with respect to alternative collection programs). Addressing these separately from other exemptions is necessary because section 42051(a)(3)(B) of the PRC expressly authorizes CalRecycle to develop phase-in plans related to the exemptions, and those plans raise unique issues related to extending and maintaining the exemptions.

Subsection (h)(1)

The purpose of this subsection is to establish that exemptions based on section 42051(a)(3)(A) of the PRC may be conditioned on CalRecycle's approval of a phase-in plan. This is necessary because an exemption might only reasonably be expected to promote the purposes of the Act if a plan is put in place to ensure that granting the exemption leads to future compliance with the Act. Providing that the CalRecycle may modify the proposal submitted by the applicant or provide an entirely different plan is necessary because section 42051(a)(3)(B) of the PRC expressly authorizes CalRecycle to develop the plan at any point; in other words, it is CalRecycle, not a PRO or producers, who is empowered to decide the contents of a phase-in plan. Likewise, conditioning approval on CalRecycle's determinations related to implementation and enforcement of the act and the intent of the Act is necessary because section 42051(a)(3)(B) of the PRC expressly provides such authority to CalRecycle. Those conditions are necessary to impose to ensure that, consistent with CalRecycle's express duty to implement and enforce the Act, the extensions further, rather than undermine, that implementation and enforcement and, more generally, support the purpose of the Act.

Subsection (h)(2)

The purpose of this subsection is to establish how exemptions based on section 42051(a)(3)(A) of the PRC may be extended. Extending the exemptions requires annual updates to the information on which the exemption was based and reporting regarding the phase-in plan, including an explanation of why it was not complied with, if applicable. The exemption will be terminated unless it remains justified as previously determined. These requirements are necessary so that CalRecycle can assess whether to uphold the exemption in light of the purpose of the Act and CalRecycle's duty to implement and enforce it in furtherance of that purpose.

Subsection (i)

The purpose of this subsection is to establish that CalRecycle shall terminate or modify an exemption. In other words, expiration is not the only way for an exemption to become no longer effective. This is necessary because, regardless of when an exemption expires according to this section, circumstances might negate the justification for CalRecycle approving the exemption, such that terminating the exemption immediately is justified.

Subsection (i)(1)

The purpose of this subsection is to set forth one of the grounds CalRecycle might assert for terminating an exemption: that the information was incomplete or false when submitted or is no longer accurate. Terminating an exemption on these grounds may be necessary because the justification for the exemption may no longer apply or may never have been valid.

Subsection (i)(2)

The purpose of this subsection is to set forth a more general basis for terminating an exemption: that CalRecycle determines that the exemption does not support implementation and enforcement of the Act, is inconsistent with the Act's intent, or the original basis for granting the exemption otherwise doesn't apply. This general provision is necessary because it is the only reasonable result of such a determination, given CalRecycle's statutory duty to implement and enforce the Act.

Subsection (i)(3)

The purpose of this subsection is to set forth a more specific basis for terminating an exemption: that a phase-in plan has not been successfully implemented according to its terms. This provision is necessary because whether an exemption remains justified and continues to serve the purposes of the Act may depend on the success of a phase-in plan linked to the exemption. In other words, an exemption may merely undermine the Act unless it is designed to ultimately lead to greater compliance with it.

§18980.2.4. COVERED MATERIAL CATEGORY LIST UPDATES

Subsection (a)

The purpose of this subsection is to specify when CalRecycle will evaluate each element of the CMC list and what it will do after that review is completed; CalRecycle will review each element according to the time frame identified in statute and update the list as necessary.

Section 42061 of the PRC identifies a variety of information that CalRecycle must publish: covered material categories pursuant to subsection (a), the recycling rate pursuant to subsection (b), whether a material is deemed recyclable pursuant to subsection (c), and whether it is deemed compostable pursuant to subsection (d). At times, section 42061 of the PRC refers to "lists" and at times it references multiple elements in a single "list." As explained in the definition section, CalRecycle clarified that there is a single list with many elements.

This subsection is necessary to make clear that the timeframe for evaluating an element is the same as the time frame that is identified for a list concerning that particular subject matter. For example, the recycling rate element of the list will be reviewed at least every two years. By doing this, CalRecycle is removing the ambiguity attendant to section 42061 of the PRC and ensuring that the regulated community knows when to find information that is relevant to them.

Additionally, this provision is necessary to ensure that the regulated public knows that the review of the elements will not necessarily result in a change to the list. During the review, CalRecycle might learn that information has not changed and that there is no need to make modifications to a list.

Subsection (b)

The purpose of this subsection is to specify the sources of information that CalRecycle may use to make evaluations of each element of the CMC list. Specifically, it identifies the sources in section 42061(b)(2) of the PRC and the appropriate timeframe for providing information pursuant to section 42061(f)(3) of the PRC; it also acknowledges that there might be other sources of information not yet known and therefore makes a non-exclusive list.

This is necessary both to make clear what information sources are considered in the evaluations and will be accepted in recommendations. While section 42061(f)(3) of the PRC creates the opportunity for a producer to submit data supporting their recommended changes to the list, statute does not provide a process for doing so. Thus, it is necessary for CalRecycle to provide a process by regulation. It would be impossible to publish a list if there was no cut-off date for data submissions; if a period for timely filing information is established, producers will know when they should submit information to ensure that it can be considered. This provision is necessary to introduce the concept of timely filed information.

It is necessary to incorporate sources of information identified in section 42061(b) of the PRC for completeness. If they are not included, regulated entities may not know these are being considered as sources of information. At the same time, CalRecycle recognizes that the full universe of sources of information cannot be known at present and therefore CalRecycle needed to explicitly make this list nonexclusive. If CalRecycle did not make this specific, the public would be unclear about why we might be relying on information from sources not identified by name in this subsection.

Subsection (b)(1)

The purpose of this subsection is to ensure that information that might influence modifications to the list evaluations of each element of the CMC list are received by August 1st in order to ensure consideration of the information for the subsequent calendar year CMC list update. Section 42061 of the PRC creates the opportunity for new information to change the CMC list, however, statute does not specify when that information must be received. It is necessary to establish a cutoff date to ensure that CalRecycle has an adequate amount of time to consider all information before making

the final decisions and publishing the updated list. Based on its experience with other EPR programs, in order to have a revised list by January 1, five months are necessary to ensure the updates can be processed in time.

Subsection (b)(2)

The purpose of this subsection is to specify that information intended to inform CalRecycle of CMC changes must be submitted electronically in a form and manner approved by CalRecycle. Section 42061 of the PRC creates the opportunity for new information to change the CMC list, however, statute does not specify how that information must be transmitted. This is necessary for the efficient carrying out of the updating process, specifically, it ensures the streamlining of the process and departmental efficiency in the management of time, resources, and records. Moreover, it is necessary to ensure that producers do not provide information in a method that is inefficient and will hinder CalRecycle's ability to consider the information.

§18980.2.5. COVERED MATERIAL CATEGORY LIST RECOMMENDATIONS

Subsection (a)

The purpose of this subsection is to clarify who may make a recommendation pursuant to section 42061(f)(3) of the PRC. Specifically, it ensures that the PRO, participant producers, and Independent Producers know that they can recommend changes to the CMC list. The Act contemplates that producers may comply with the act independently (these regulations give them the name of Independent Producers) or as participants in the PRO. Implicit in this is that the PRO can act on the behalf of those participant producers to accomplish certain tasks.

Since the term producer is further explained in statute and regulation as "Independent Producer" and "participant producer," and those entities will be more able to recognize their ability to provide a recommendation if CalRecycle uses the more specific terms, it is necessary to clarify that the recommendations can be made by Independent Producers and participant producers. Additionally, it is important for participant producers to know that they can make recommendations directly on their own behalf and not only through the PRO.

In order to obtain the recommendations of multiple producers participating in the PRO and to promote the efficient and accurate updating of the CMC list, it is necessary to specifically identify the PRO as an entity that can make a recommendation pursuant to section 42061(f)(3) of the PRC. While participant producers can make recommendations individually, the PRO will often be better suited to making such a recommendation on their behalf. In CalRecycle's experience, PROs have greater familiarity with technical documents like the CMC list and the data that would inform changes than individual participant producers. Additionally, the PRO will have access to more data and will be able to coordinate with multiple producers to make a well-informed and coherent request.

Subsection (b)

The purpose of this subsection is to specify that recommendations to change the CMC list must be submitted electronically in a form and manner approved by CalRecycle. This is necessary for the efficient carrying out of the updating process, specifically, it ensures the streamlining of the process and departmental efficiency in the management of time, resources, and records. Moreover, it is necessary to ensure that producers do not provide information in a method that is inefficient and will hinder CalRecycle's ability to consider the information.

Another purpose of this subsection is also to begin and give context to the numbered list of the requirements to include in any CMC list recommendation submitted to CalRecycle, which follows this subsection.

The rationale for establishing the required information in this organizational and hierarchical manner is to ensure the regulated community understand what categories of information are necessary for each recommendation and this organizational structure will provide that clarity.

Subsection (b)(1)

The purpose of this subsection is to specify that the entity making the recommendation must include which elements of the CMC list may be impacted by their recommendations. Section 42061 of the PRC contemplates that producers will seek changes to the list; in order for a list component to be changed, the change needs to be explained clearly. Additionally, since a change to one element of the list may have an effect on another element of the list, it is necessary for the proponent to identify the affected elements. For example, dividing one covered material category into two would require new calculations for the recycling rate element.

Subsection (b)(2)

The purpose of this subsection is to specify that the PRO or producers must include which CMCs would be affected by their recommended change. Section 42061 of the PRC contemplates that producers will seek changes to the list; in order for a list component to be changed, CalRecycle needs to know the CMC that is being proposed for change, as well as those other CMCs that might be affected by the change. Changes may have indirect effects on other categories; for example, the creation of a new covered material category might include, in part, material from existing covered material category, and the creation of the new category would affect the recycling rate of the materials that remain in those preexisting categories. Furthermore, this is necessary to allow CalRecycle to adequately assess the recommendation.

Subsection (b)(3)

The purpose of this subsection is to specify that the PRO or producers must include all data, analysis, forecasting, or projections they have used to make their recommendations in their submittal. Section 42061 of the PRC contemplates that producers will seek changes to the list and looks to the entity making the recommendation to support the change they seek. While Section 42061 of the PRC

explicitly authorizes CalRecycle to require data submission to reach its determination, the statute does not explicitly discuss the recommending entity's obligation to provide its analysis of those data. In order to reach the determination required by statute, CalRecycle needs more than raw data; it needs insight into the recommending entity's reasoning, i.e., what the entity thought that data demonstrated. In order to carry out its statutory mandate to make a CMC list determination, CalRecycle needs to understand how the recommending entity analyzed the data and what the recommending entity thought would happen in the future through projection and forecasting that used the provided data. Additionally, in CalRecycle's experience, the method an entity uses to assemble or analyze data can affect the reliability of the information. Thus, this provision is necessary for CalRecycle to reach the statutory determinations by adequately assessing the validity of the recommending entity's conclusions, any data or methodologies used to draw those conclusions, as well as the ultimate recommendations that rely on these data.

Subsection (b)(4)

The purpose of this subsection is to specify that the PRO or producers must include in how they intend to continue to fulfill statutory and regulatory requirements, as well as how their producer responsibility plan will be adapted in their submittal. Specifically, the recommending entity is required to explain how CMC recommendations will meet requirements pursuant to Section 42050 as applicable and how the producer responsibility plan may be impacted and adapted accordingly. This is necessary for CalRecycle to adequately assess how any recommendations will impact on the achievement of the goals of the Act and to adequately assess the recommendation. The rationale for this provision is that changes to the CMC list may affect the achievement of the Legislature's goals for the recycling and source reduction of covered material; if CalRecycle is to ensure that the goals are met, it needs to understand the effect on their achievement before making a change based on a recommendation. Moreover, in order not to frustrate the efforts of the PRO, CalRecycle needs to know what effect the recommendation will have on the implementation of the plan.

Subsection (b)(5)

The purpose of this subsection is to specify that the PRO or producers must include a list of all entities who are in support of the recommendation in their submittal. The rationale for this provision is that CalRecycle needs to know what other producers think about the proposal and whether supporting data exists for the CMC list changes proposed by one producer that will affect other producers, end markets, and other entities. Additionally, a producer recommended change may have an effect on recycling or processing entities that have valuable information about whether such a change would support the purposes of the Act. Where other producers, processors and recyclers are supportive of the change and can supply data corroborating the recommending entity's conclusions, CalRecycle will be able to make a more informed decision. This is necessary for CalRecycle to attain a better understanding of all of the entities whom the change may impact and to adequately assess the recommendation.

Another purpose is to obtain the contact information for the entities in support of the change. This provision is necessary to ensure that CalRecycle can engage with them to identify supportive data and to ask follow-up questions. Furthermore, CalRecycle may have questions about the nature of their agreement with the proposal; CalRecycle might also want to verify that the proponent has represented their views accurately. If CalRecycle does not have their contact information, it cannot engage with the entity as described herein.

Subsection (b)(6)

The purpose of this subsection is to specify that the PRO or producers must include documentation demonstrating the circumstances requiring the recommended change in their submittal. This is necessary for CalRecycle to attain a better understanding of what impacts the change will have, as well as to inform CalRecycle of any new information that may help with adequately assessing the recommendation. The demonstrative documentation essentially serves as proof of the appropriateness for the change, without which CalRecycle would have no capacity to accurately determine if a CMC list change is needed. Additionally, the documentation could provide better context or have more precise information than CalRecycle had when drafting the most current version of the list, which could change the outcome of the list structure or evaluations. CalRecycle also anticipates that changes within covered materials themselves or within the end markets that handle them might occur; without documentation, CalRecycle would have no knowledge of such changes.

Subsection (b)(7)

The purpose of this subsection is to specify that the PRO or producers must include the financial implications and impact of recommended changes on affected entities as well as information concerning the necessity of expanding or creating new facilities and viability of responsible end markets, in their submittal. There is potential for changes in category evaluations to influence how much producers manufacture or use a particular covered material, since there is financial benefit to using covered materials within a CMC that has reduced malus fees or increased credits associated with it. Conversely, there is a financial incentive to reduce the manufacturing or use of covered materials with increased malus fees or decreased credits. Large enough changes have the potential to directly impact on the output of a particular covered material, and subsequently the intermediate supply chain entities and responsible end markets that handle them. This is necessary for CalRecycle to attain a better understanding of all of the entities whom the change may impact, including any additional actions that might be required to account for influxes or reductions in material flow, and to adequately assess the recommendation. To be successful in achieving the goals of the Act, CalRecycle needs to be able to anticipate the need for increased responsible end markets for increased production of certain covered materials or the decrease in available feedstock for others.

Subsection (b)(8)

The purpose of this subsection is to specify that the PRO must include how the fee schedule will be impacted in their submittal. This is necessary as there is a direct relationship between the evaluations of each CMC and the PRO's fee schedule. The PRO is required to delineate their fee schedule by CMC, and to incorporate eco-modulated malus fees and credits into their calculations which include considerations of the recycling rates, compostability and recyclability. Since evaluations of each of CMC includes recycling rates, compostability, and recyclability, the change in one of these evaluations will alter the eco-modulation of its respective fees. Additionally, it is necessary for CalRecycle to see the changes to the fee schedule, as the same schedule will be applied to Independent Producers. Lastly, changes in the fee schedule could have dramatic financial implications for producers and the PRO. Changes in the fee schedule in either direction may require the PRO to adjust their ecomodulation formulas in order to maintain the intended sum of fees, which is designed to cover the costs of implementing the Act, and which must also be included in the PRO's annual report.

Subsection (c)

The purpose of this subsection is to specify who should receive a copy of the recommendations. While section 42061 of the PRC creates the opportunity for a producer to make a recommendation and submit data supporting their recommend changes to the list, statute does not provide a process for doing so. One purpose is to ensure that it is clear that CalRecycle receives recommendations from both participant producers and Independent Producers. The rationale for this provision is that CalRecycle needs to receive the recommendation in order to act on it.

Additionally, it is necessary for the PRO to be aware of the proposals of its members. The PRO must be able to anticipate any effects that the changes may have on its plan, especially its eco-modulated fee schedule. Providing the PRO with a copy of the request allows the PRO to subsequently provide CalRecycle with its opinion on the recommendation if it so chooses. This is necessary to make clear that CalRecycle must receive the recommendations, and to make clear that the PRO must have the ability to review recommendations made by participant producers.

Subsection (d)

The purpose of this subsection is to specify that CalRecycle may request additional information from any party who submits recommendations. While section 42061 of the PRC creates the opportunity for a producer to make a recommendation and submit data supporting their recommend changes to the list, statute does not provide a process for doing so. Additionally, section 42061(f)(3) of the PRC explicitly authorizes CalRecycle to require the proponent of the change to submit supportive data. The rationale for this provision is that the information discussed above may be suitable for justifying a change in some instances, but not in each situation. In some instances, more information may be needed and CalRecycle seeks to make this clear to the regulated public. The information gained from this provision is needed to adequately assess those recommendations.

§ 18980.2.6. EFFECTIVE SCOPE OF EXEMPTIONS

Subsection (a)

The purpose of this subsection is to establish that CalRecycle may exercise discretion to consider exemptions to apply beyond the specific products identified in an application. This is necessary for effective implementation of the Act because a single exemption may concern specific products or materials that are identical for purposes of producers' obligations under the Act. In such scenarios, there is no logical reason that the exemption could not apply to all of them equally under the same considerations required to be included in exemption applications. Under such circumstances, CalRecycle would likely to be inundated with a very large number of exemption requests and thus be practically unable to effectively and consistently implement the processes set forth in this Article.

Subsection (b)

The purpose of this subsection is to establish that CalRecycle may issue an exemption for a class of products on its own initiative. CalRecycle's statutory authority to create exemptions is not expressly limited to exemptions requested by any party. This subsection is necessary to specify the manner in which CalRecycle will exercise that authority. This subsection provides that CalRecycle, when considering on its own initiative whether to exempt classes of products or covered material, consider the same factors as set forth with respect to applications for exemptions. This is necessary so that CalRecycle exercises its authority consistently and fairly.

Subsection (c)

The purpose of this subsection is to establish how applications for exemptions may request that CalRecycle exercise its authority to exempt a class of products, rather than only the products specifically identified in the application. Entities are required to precisely define the class of products or covered material and demonstrate why the exemption should apply to it. This is necessary so that entities requesting an exemption understand how to include in their application a request for CalRecycle to exercise the authority described in subsections (a) and (b).

Subsection (d)

The purpose of this subsection is to specify the means by which CalRecycle will provide notice of an exemption that applies to a class of products or materials. This is necessary so that entities know how to determine the extent to which they are subject to the Act.

Subsection (e)

The purpose of this subsection is to establish that, when CalRecycle deems exemptions not to be limited to the specific products identified in an application, the expiration and termination provisions of this article still apply. This is necessary because the same rationale provided elsewhere for the expiration or termination provisions of this article applies regardless of whether the exemption has such broader application. However, this subsection provides that CalRecycle may, on its own initiative, deem an exemption

to apply for more than one year, even if no request was submitted by a PRO or producer for such extension. This is necessary for effective implementation and enforcement of the Act because, where CalRecycle can readily ascertain that an exemption remains justified for the same reasons underlying its previous approval, there is no utility in requiring submission of an express request. Moreover, for exemptions that CalRecycle authorizes to have broad effect and that clearly remain justified, CalRecycle would likely be inundated with new exemption requests unless it could extend the broad exemption without having received a request.

ARTICLE 3. EVALUATIONS FOR COVERED MATERIAL CATEGORIES

§ 18980.3. RECYCLABILITY

Subsection (a)

The purpose of this subsection is to specify the earliest point at which covered material may be considered recycled under the Act: when it has been accepted by a responsible end market. This is necessary for implementation of multiple concepts under the Act, including recycling rates, source reduction, and recyclability, which require there to be a consistent reference point for determining whether material can be considered “recycled” under the Act. For such implementation to be consistent with the intent of the Act (*e.g.*, that it “increase system efficiency,” as provided in section 42040(b)(3)(B) of the PRC), items cannot be considered recycled before the point at which they are actually certain to be processed as stated in the statutory definition of “recycling” (section 42041(aa) of the PRC).

Subsection (b)

The purpose of this subsection is to specify how CalRecycle will assess recyclability for purposes of the list it publishes pursuant to section 42061(c) of the PRC. Providing this clarity is necessary because section 42061(c) of the PRC uses the term “recyclable” with respect to both covered material categories and covered material, without expressly distinguishing between categorical recyclability determinations versus more granular, product-specific ones. The latter requires specific material to satisfy the product-specific criteria of section 42355.51(d) of the PRC, such as those in subsection (d)(3), whereas the former necessarily only concerns the criteria in section 42355.51(d)(2) of the PRC, which are category-based and thus the only ones that can logically apply to CalRecycle recyclability assessments.

Subsection (c) and subsections (c)(1) and (c)(2)

The purpose of these subsections is to lay out how the various provisions of PRC section 42355.51(d) may apply to the various bases that may establish recyclability for particular materials. Doing so is necessary because statute does not expressly state how various which criteria from section 42355.51(d) of the PRC apply to particular material, depending on the basis asserted for material to be deemed recyclable. That lack of specificity is especially likely to cause confusion because, for the exemptions from section 42355.51(d)(2) and (3) of the PRC provided in subsections (d)(4) through (d)(6) of this subsection, covered material can be “recyclable” under the Act despite not

being within a covered material on the list maintained by CalRecycle pursuant to section 42061 of the PRC. Subsections (c)(1) and (c)(2) provide the necessary explanation of how the various subsections of section 42355.51(d) of the PRC can be applied to particular covered material to establish its recyclability under the Act.

Subsection (d) and subsections (d)(1) and (d)(2)

These subsections further the purpose of subsection (d)(2) by interpreting how statute applies requirements relative to the “design guide” provisions of section 42355.51(d)(3) of the PRC. Subsections (d)(1) and (d)(2) accomplish this by providing that design elements of plastic packaging “prevent recyclability” for purposes of that section where the design guide states that they either render the packaging “non-recyclable” or place the material into the “requires test results” category. The former interpretation is the only logical application of the term used in the design guide. The latter is necessary because, in practical effect, requiring test results means that certain materials are conditionally non-recyclable.

Subsection (d)(2) of this subsection implements the “requires test results” condition by incorporating the test results requirement stated in the design guide, requiring that results be provided by a lab having the qualifications stated in proposed section 18981(b)(1) and requiring the results to be provided to the PRO or CalRecycle. The lab qualifications requirement is necessary for the same reasons provided with respect to proposed section 18981(b)(1). Requiring results to be disclosed is necessary because, without such a requirement, limitations established by the reference to the design guide could not be reliably and effectively implemented and enforced.

Subsection (e)

The purpose of this subsection is to interpret the provision in section 42061(c) of the PRC incorporating 14 CCR section 17989.2 only incorporates covered material that is “food service packaging items,” as that term is defined in 14 CCR section 17989, and only applies with respect to subsections (a)(1) and (a)(3) of that subsection. This is necessary because, on its face, 14 CCR section 17989.2 only concerns food-related packaging. Moreover, the recyclability requirements in section 42355.51(d)(3) of the PRC for all covered material already encompass the health and safety concerns addressed by 14 CCR section 17989.2, but with less specific criteria and compliance requirements. Applying 14 CCR section 17989.2 to all covered materials would mean that no material could be considered recyclable under the Act until an accredited laboratory tested it to confirm that it has a total fluorine concentration of less than 100 parts per million. The Legislature’s choice to reference 14 CCR section 17989.2, instead of directly including its more rigorous requirements, signals the Legislative intent for that provision only to apply in the food context only.

Moreover, interpreting the Act’s incorporation of 14 CCR section 17989.2 logically must be limited to subsections (a)(1) and (a)(3) of that subsection because its other provisions are procedural in nature, so they are not compatible with how the Act incorporates the section (requiring material itself to meet incorporated requirements).

Lastly, it is necessary for subsection to require producers or the PRO, upon demand by CalRecycle, to produce the test results proving compliance with subsection (a)(3). This is necessary so that CalRecycle can effectively implement and enforce the testing requirement incorporated through 14 CCR section 17989.2 for deeming materials recyclable.

Subsection (f)

The purpose of this subsection is to establish a process for producers to demonstrate that covered materials are recyclable because they comply with sections 42355.51(d)(4) and (d)(5) of the PRC. Requiring a process for producers to show such compliance is necessary to ensure that a PRO can fulfill its role of ensuring that covered material satisfies the requirements of the Act (see, e.g., section 42051.1(c)(1) and (m) of the PRC) and because, without such requirement, CalRecycle could not evaluate the PRO's performance of that role or otherwise effectively implement and the Act's recyclability provisions with respect to the materials addressed in this section.

Subsection (f)(1)

The purpose of this subsection is to provide the process for participant producers to demonstrate recyclability under sections 42355.51(d)(4) or (d)(5) of the PRC. The subsection authorizes a PRO to conduct evaluations and make determinations, and report the determinations to CalRecycle, of whether a covered material meets the statutory requirements. These requirements are necessary to ensure that the PRO fulfills its role of ensuring that covered material satisfies the requirements of the Act (see, e.g., sections 42051.1(c)(1) and (m) of the PRC) and because, without such requirement, CalRecycle could not evaluate the PRO's performance of that role or otherwise effectively implement, and the Act's recyclability provisions with respect to the materials addressed in this section.

Subsection (f)(1)(A)

The purpose of this subsection is to set forth one of the required elements of the process a PRO must use for determining whether covered material is recyclable pursuant to sections 42355.51(d)(4) or (d)(5) of the PRC. A PRO is required to detail the process in its plan. This is necessary because allowing the PRO flexibility in how to implement the requirements of the Act is consistent with the purpose and function of the PRO and its plans as provided, for example, in sections 42051.1(b) and (c) of the PRC, which authorize the PRO to implement the means for achieving compliance with the Act. This is also necessary to ensure that CalRecycle can effectively assess a PRO's implementation of its plan and compliance with the Act.

Subsection (f)(1)(B)

The purpose of this subsection is to set forth another required element of the process to be established under this subsection. Requiring a PRO to report in their annual report which covered materials are deemed recycled pursuant to sections 42355.51(d)(4) or (d)(5) of the PRC, and to identify the relevant producers, is necessary because, without

knowing the materials and producers at issue, CalRecycle could not effectively implement and enforce the Act's recyclability provisions.

Subsection (f)(1)(C)

The purpose of this subsection is to set forth another required element of the process to be established under this subsection. Requiring a PRO to conduct periodic audits and investigations of the covered materials deemed to be recyclable pursuant to sections 42355.51(d)(4) and (d)(5) of the PRC is necessary to ensure that the PRO fulfills its role of ensuring that covered material satisfies the requirements of the Act (see, e.g., sections 42051.1(c)(1) and (m) of the PRC) and because, without such requirement, CalRecycle could not evaluate the PRO's performance of that role or otherwise effectively implement, and the Act's recyclability provisions with respect to the materials addressed in this subsection. Requiring audits and investigations be conducted by an independent third-party is necessary for the same reasons and also to ensure that audits and investigations produce unbiased, accurate results. Requiring all such results to be included in annual reports and to be accessible to CalRecycle shall have full access to any results of an investigation or audit is necessary so CalRecycle can effectively implement and enforce the Act, including by overseeing the PRO's implementation of its plan and compliance with the act.

Subsection (f)(2)

The purpose of this subsection is to provide the process for Independent Producers to demonstrate materials' recyclability under sections 42355.51(d)(4) or (d)(5) of the PRC. Requiring an Independent Producer to demonstrate such compliance in their plans and annual reports is necessary so that CalRecycle can assess their compliance and effectively implement and enforce the Act with regard to such materials.

Subsection (f)(2)(A)

The purpose of this subsection is to set forth the first requirement for Independent Producers to make the demonstration required under this subsection. Requiring plans to identify the relevant covered materials and include supporting data is necessary because, without knowing the materials and being provided the relevant supporting data, CalRecycle could not effectively implement and enforce the Act's recyclability provisions with respect to such Independent Producers and materials.

Subsection (f)(2)(B)

The purpose of this subsection is to set forth the second requirement for Independent Producers to make the demonstration required under this subsection. Requiring the producers to again demonstrate, in the same manner as provided in subsection (f)(2)(A), that the covered material at issue is recyclable is necessary because, without knowing that producers continue to rely on sections 42355.51(d)(4) or (d)(5) of the PRC to comply with the Act and updating the support for such compliance, CalRecycle could not effectively implement and enforce the Act's recyclability provisions with respect to such Independent Producers and materials.

§ 18980.3.1. RECYCLABILITY OF CERTAIN COVERED MATERIAL CATEGORIES IDENTIFIED BY THE DEPARTMENT

The purpose of this section is to implement and interpret section 42061(a)(3)(B) of the PRC. This is necessary because this section outlines how certain covered material categories may, despite not yet satisfying any requirement of section 42355.51(d) of the PRC, be considered recyclable for purposes of the Act and temporarily qualify for being labeled recyclable for purposes of section 42355.51 of the PRC. However, the statutory text does not establish any particular process for implementing this exception and describes specific criteria using terms that are ambiguous and could not be implemented and enforced without interpretation by CalRecycle.

Subsection (a)

The purpose of this subsection is to establish how section 42061(a)(3)(B) of the PRC exemption relates to the Act's recyclability provisions. It only applies with respect to covered material categories because it expressly concerns "material types and forms" (*i.e.*, covered material categories), not specific products. This subsection also provides that CalRecycle will add covered material categories that qualify for the exemption on the list of covered materials published by CalRecycle pursuant to section 42061 of the PRC. This is necessary because the Act expressly requires CalRecycle to include categories deemed recyclable on that list.

Subsection (b) and subsections (b)(1) through (b)(3)

The purpose of subsection (b) is to provide the first step in the process for establishing that a covered material category qualifies for the exemption at issue. The process provided is a multi-step one, beginning with a preliminary identification by CalRecycle of materials that are "trending toward" meeting certain requirements of section 42355.51(d) of the PRC and "measurable increase of statewide collection and sorting rates." This is necessary because CalRecycle cannot have complete information to make the identification required for the exemption to apply based solely on its updates to material characterization studies pursuant to section 42355.51(d)(1)(B)(ii) of the PRC. Rather, it must be on information that necessarily will be held by outside parties.

The purpose of subsections (b)(1) through (b)(3) is to explain, with respect to specific terms used in statute, the conditions required for CalRecycle to make such identifications. These subsections set forth the statutory text in a more accessible, readable format. This is necessary because, given the complex nature of what is required to be identified as "trending," the constituent elements of that determination and the process for making it are likely to be difficult for producers to understand. These subsections also specify that CalRecycle will make its preliminary determination based on information or other information relevant to increases in collection and sorting, the period over which such trending should be considered, and that satisfying the requisite conditions must be determined to be more likely than not. These subsections are necessary because, without such greater specificity, it would be unclear how CalRecycle will reliably, consistently make preliminary identifications, which are

necessarily data-driven and depend on the likelihood of the exemption not being needed in the future, required for the exception to apply pursuant to section 42061(a)(3)(B) of the PRC. In subsection (b)(3), setting the period over which the “trending” finding must be made as ending upon the next update to the material characterization study is necessary to ensure that the exemption remains valid and because, by its terms, statute sets that time as when CalRecycle can again identify covered material categories that are “trending.” Interpreting this to mean that exemptions should be reconsidered at that time is necessary to avoid contradicting the express, non-permanent function of the exemption (to apply to materials expected to fully comply with the Act in the future).

Subsection (c)

The purpose of this subsection is to establish the second step in the process for identifying materials that might qualify for the exemption at issue. Requiring solicitation of public comments and evidence relevant to that identification is necessary for implementation of section 42061(a)(3)(B) of the PRC because that section requires CalRecycle to make a complex determination that it would otherwise lack sufficient information and evidence to make.

Subsection (c)(1)

The purpose of this subsection is to focus public participation on the likelihood of the material category “trending” to the point of meeting specific criteria to be considered recyclability within five years. Requiring this is necessary because, as described above, the exemption at issue necessarily will be evaluated in light of updates to the material characterization study published by CalRecycle, and those updates are mandated every five years under section 42355.51(d)(1)(B)(ii) of the PRC.

Subsection (c)(2)

The purpose of this subsection is to focus public participation on the effect of existing recycling programs on the increases in collection and sorting that CalRecycle preliminarily recognized in its initial identification of material categories. Requiring submissions to address this effect is necessary to ensure that CalRecycle receives information and evidence regarding the specific circumstances that statute requires to be present for the exemption at issue to apply.

Subsection (c)(3)

The purpose of this subsection is to focus public participation on how the designation of a covered material category as recyclable will avoid disruption of improvements in certain indicators of whether materials are likely to be recycled. This is necessary to ensure that CalRecycle receives information and evidence regarding the specific circumstances that must be present for the exception to apply.

Subsection (c)(4) and subsections (c)(4)(A) through (c)(4)(D).

The purpose of subsection (c)(4) and subsections (c)(4)(A) through (c)(4)(D) is to address additional, specific circumstances and issues that must be discussed when public submissions assert that the disruption described in subsection (c)(3) would be

caused by the inability to label covered material as “recyclable” or with the chasing arrows symbol. Requiring specific additional support for such assertions is necessary because the assertions concern a particularly complicated scenario for when the exemption at issue applies. Labeling of currently non-recyclable materials as “recyclable” might tend to encourage improper sorting of materials by consumers and might be less likely or impossible to directly affect how alternative bases (those other than the one provided in section 42355.51(d)(2) of the PRC) for qualifying as recyclable. As such, without additional information, it may be especially challenging for CalRecycle to discern how labeling of products as recyclable will affect consumer behavior or any other matter in a way that exacerbates disruption of improvements in recyclability, including with respect to collection, sorting, development of responsible end markets, and alternative collection programs. These subsections require information about how not being considered recyclable can inhibit compliance with recyclability criteria (subsection(c)(4)(A)), how labeling of covered material as “recyclable” or with the “chasing arrows” symbol would affect consumer behavior in a manner relevant to the terms of the exemption (subsection (c)(4)(B)), how such labeling otherwise will affect the relevant terms (subsection (c)(4)(C)), and how such labeling relates to existing or anticipated alternative collection programs, which are expressly mentioned in statute (subsection (c)(4)(D)). Each of these issues are complex and directly relate to the express statutory requirements for the exemption to apply, so additional information and evidence about them is necessary to ensure that CalRecycle can assess the various relevant facts and their effects on recyclability. Such understanding is crucial for CalRecycle to effectively implement the exception.

Subsection (d)

The purpose of this subsection is to set forth the timeline for CalRecycle’s consideration of materials that it preliminarily identifies as “trending” pursuant to 42061(a)(3)(B) of the PRC. The one-year duration is necessary to ensure that the effective period of the exemption (through the next update of information referred to in section 42061(a)(3)(B)) of the PRC is sufficient for the exemption to have the intended effect of allowing otherwise noncompliant material to trend toward, such that it eventually may achieve full compliance with the Act. Providing that CalRecycle will communicate its decision concerning the exemption via its website or by adding the covered material category at issue to its list of covered material categories is necessary to provide reasonable notice to producers, PROs, and the public and ensure that they will understand how to determine whether the exemption is available.

Subsection (e), subsection (e)(1), and subsections (e)(1)(A) and (e)(1)(B)

The purpose of subsection (e), subsection (e)(1), and subsections (e)(1)(A) and (e)(1)(B) is to set forth, using the express terms used in statute and the process set forth in subsection (e), the specific conditions that must clearly be established for CalRecycle to finalize the identification of a covered material category as “trending.” The subsections (e)(1), (e)(1)(A), and (e)(1)(B) do not interpret those express terms, but rather merely lays them out in an organized, clearer manner than does statute. Setting

forth the terms in this manner is necessary because, given the complex nature of what that identification requires, statute may be difficult for producers and other members of the public to understand. It is not clear from statute what ultimate conclusions, including their level of certainty, that CalRecycle must make to finalize or rescind its preliminary identification. Requiring the comments and submissions to clearly demonstrate that the exemption should apply is necessary because, given the significant effect of exempting materials from recyclability requirements, imposing a lower standard (e.g., a preponderance of the evidence) would unreasonably risk undermining the fundamental purposes of the Act. Moreover, setting forth the statutory requirements in clearer terms will serve as an additional guide to the public to further ensure that public submissions include information and evidence useful to CalRecycle's evaluation of whether the exemption at issue should apply. The additional specificity provided by this subsection is therefore necessary to ensure CalRecycle's effective implementation of this exemption and enforcement of the Act.

Subsection (e)(2)

The purpose of this subsection is to set forth when CalRecycle will necessarily not finalize its identification of a covered material under this section. Where the public participation process described in this section invalidates the reasons for CalRecycle's preliminary decision to consider the exemption, the exemption necessarily cannot apply. This subsection sets forth that unavoidable logic to provide additional clarity regarding CalRecycle's evaluation process.

Subsection (f)

The purpose of this subsection is to further implement section 42061(a)(3)(B) of the PRC by establishing when, and under what conditions, the exemption at issue will expire or be extended. Expiration of the exemption upon the mandatory update to the information referred to in that section is necessary because statute expressly sets that time as when CalRecycle can again identify covered material categories that are "trending." Interpreting this to mean that exemptions should be reconsidered at that time is necessary to avoid contradicting the express, non-permanent function of the exemption (to apply to materials expected to fully comply with the Act in the future). This interpretation is also necessary to ensure effective implementation and enforcement of the Act, as erroneous exemptions from the requirements for material to be considered recyclable would wholly undercut the intent and purpose of the Act. This subsection also provides that the process already set forth in this section applies to the reconsideration of the exemption, unless CalRecycle can determine without such process that the basis for the exemption remains sufficient. Applying the same process is logical and appropriate because there is no reason for a different process to apply and providing that CalRecycle may opt not to require the process is necessary to avoid imposing a burden on producers, the PRO, and CalRecycle that would have no benefits for the implementation and enforcement of the Act.

§ 18980.3.2. METHODOLOGY FOR RECYCLING RATE DETERMINATION

Subsection (a), subsections (a)(1) and (a)(2) (including subsections (a)(1)(A) through (a)(1)(D))

The overall purpose of subsection (a) is to address key elements of the methodology and process that CalRecycle is required to establish pursuant to section 42060(a)(8) of the PRC for calculating recycling rates. Subsection (a)(1) specifies that materials are considered recyclable when accepted and not removed by an end market, which is necessary to ensure that recycling rate calculations accurately reflect the actual recycling of materials, rather than just collection. Accurate calculation of recycling rates is required for effective implementation and enforcement of the Act, a core purpose of which is to improve such rates. Subsections (a)(2)(A) through (a)(2)(D) identify sources of data that CalRecycle may use to calculate recycling rates. This is necessary to provide transparency and to fulfill the requirement under section 42060(a)(8) of the PRC that CalRecycle establishes the process it will use to calculate rates.

Subsection (b)

The purpose of this subsection is to establish the timeframe for the data used to calculate recycling rates. Using the data for the most recent calendar year for which data is available is necessary to ensure that recycling rates are as accurate as possible.

Subsection (c)

The purpose of this subsection is to establish how the amount of material will be measured for purposes of calculating recycling rates. Measuring the amount of material by weight is necessary because it aligns with how materials are typically measured and reported and allows for consistent, objective measurement across all materials and recycling programs.

Subsection (d)

The purpose of this subsection is to establish what “recycling rate” refers to in context of covered materials. Recycling rates are calculated for each covered material category, as opposed to a product- or material-specific basis. This is necessary because establishing a methodology for calculating rates necessarily involves a level of specificity, and, with data that will be available, it is not possible to determine recycling rates with more precision than with respect to covered material categories (*e.g.*, product-specific rates).

Subsection (d)(1)

The purpose of this subsection is to address the calculation of recycling rates for covered materials that have multiple components that are not detachable. Calculating a single recycling rate for materials comprising non-detachable components is necessary because such components are typically discarded as a single item, so they need to be considered together to ensure accuracy of the calculation.

Subsection (d)(2)

The purpose of this subsection is to address the calculation of recycling rates for covered material that has multiple components that are detachable and that fall into

different covered material categories. Calculating a recycling rate for each detachable component is necessary because such components are typically discarded and processed as separate items, so they need to be considered separately to ensure accuracy of the calculation.

Subsection (d)(3)

The purpose of this subsection is to address the calculation of recycling rates where a recycling rate cannot be calculated separately for a covered material category represented in a group of materials. The recycling rate for the group of materials is used for each category that cannot be separately assessed. This is necessary to ensure that the calculation methodology meaningfully accounts for such materials while consistently resolving the difficulty that they pose.

Subsection (d)(4)

The purpose of this subsection is to address cases where insufficient information exists to calculate a recycling rate. Such rates will be deemed “unknown.” This is necessary because the calculation of any rate would be impossible.

Subsection (d)(5)

The purpose of this subsection is to address the special compliance obstacle that arises when a new covered material categories is created and there is insufficient information to calculate a rate for it. Assuming such categories satisfy the applicable requirement under section 42050(c) of the PRC is necessary because determining compliance, or compliance itself, would otherwise be impracticable.

Subsection (e)

The purpose of this subsection is to establish the options available to a PRO or Independent Producer for calculating and reporting estimated recycling rates. Allowing the option of using the same methodology as CalRecycle uses or a methodology approved by CalRecycle is necessary to ensure consistency and comparability of reported rates. Excluding subsection (a)(2) of subsection (a) from the former option is necessary because the data sources listed in that subsection may not be available to the PRO or producer. Requiring a PRO or producer to disclose the inputs and assumptions used in their own methodology is necessary so that CalRecycle can assess the accuracy of the estimates and how they relate to other reported rates.

§18980.3.3. ELIGIBILITY TO BE LABELED COMPOSTABLE

Subsection (a)

The purpose of this subsection is to interpret generally the concept of being “eligible for being labeled ‘compostable’” in section 42050(b) of the PRC. The subsection provides that that “eligibility” refers only to the requirements under sections 42355 through 42358.5 of the PRC that address the potential for being so labeled, not to whether particular labeling—in other words, labels used on discrete covered material—is lawful. This interpretation is necessary because the Act generally does not concern the lawfulness of labeling practices, but rather whether covered material, as a practical matter, can be composted. Moreover, in the context of the functions that the Act assigns

to CalRecycle, CalRecycle cannot logically consider the highly specific, technical product-by-product criteria that ultimately determines whether discrete covered material complies with section 42050(b) of the PRC.

Subsection(b)

The purpose of this subsection is to apply the interpretation described in subsection (a). This subsection explains that the covered material categories will be considered “eligible to be labeled ‘compostable’” if they could possibly contain specific covered material that could, at least potentially, be lawfully labeled “compostable.” This necessarily flows from the interpretation set forth in subsection (a) and is the only logical way to implement the requirement that the list published pursuant to section 42061(d) of the PRC contains covered material categories that are “compostable.”

Subsection (b)(1)

The purpose this subsection is to identify section 42357(g)(1)(B) of the PRC as a categorical requirement to be applied in the context of “eligibility.” That requirement is that the covered material category be an allowable input under the United States Department of Agriculture National Organic Program. Including the requirement is necessary because statute expressly mandates that it be applied. Also, consistent with the interpretation described in subsections (a) and (b) of this proposed section, the requirement also must be applied because it can be evaluated on a categorical basis, to determine whether categories potentially include compliant materials.

Subsection (b)(2)

The purpose this subsection is to identify section 42357(g)(1)(E) of the PRC as a categorical requirement to be applied in the context of “eligibility.” That requirement is that materials be designed to be associated with recovery of desirable organic wastes collected for composting. Including the requirement is necessary because statute expressly mandates that it be applied. Also, consistent with the interpretation described in subsections (a) and (b) of this section, the requirement also must be applied because it can be evaluated on a categorical basis, to determine whether categories potentially include compliant materials.

Another purpose of this subsection is to set forth how this subdivision relates to the subsections of proposed section 18980.2.5, under which CalRecycle will accept submissions, including supporting evidence, requesting updates to the list of covered material categories published by CalRecycle. This is necessary so that PROs and producers will understand that these regulations elsewhere provide a means for submitting information that CalRecycle will consider when applying section 42357(g)(1)(E) of the PRC to covered material categories.

Subsections (b)(2)(A) and (B)

The purpose of these subsections is to interpret, in the context of covered material categories, the requirement under section 42357(g)(2) of the PRC that materials “designed to be associated with the recovery of desirable organic waste...that are

collected for composting,” and to establish the specific standards applicable to that requirement.

Interpreting the statutory provision is necessary because statute requires that it be applied, but the term “designed to be associated” is ambiguous on its face, such that applying it necessarily requires a specific interpretation. CalRecycle has interpreted that term to require that material achieve, rather than merely be intended to achieve, the outcome of being associated with recovery of desirable organic wastes. That interpretation is necessary because it is the only one that logically relates to whether materials are collected for composting, which is the goal expressly stated in the statute. The “intent” of a design is irrelevant to whether material can be composted along with other materials and, in any event, is subjective and thus could be complied with simply by asserting a motivation to comply, rendering it of no practical effect.

CalRecycle has interpreted the concept of being “associated with” recovery of other materials to mean that material is collected and processed with other materials. This is necessary because it is the only interpretation that logically links the design of products to whether they are actually collected for composting, which is the goal expressly stated in the statute.

These subsections also set forth specific standards for collection and acceptance of materials. Setting specific standards concerning these factors is necessary because statute expressly concerns them: items must be “collected,” and such collection must be “for composting” (i.e., are accepted by composters to be processed). The statute provides no standards, but the statutorily mandated criterion cannot be applied consistently without any. The regulation adopts a two-tiered approach: 50 percent collection and acceptance before 2026, and 75 percent collection and acceptance as of 2026 and beyond. A phase-in approach is necessary to avoid imposing an unreasonable compliance burden. The specific standards established are appropriate in light of the policy goal stated in section 41780.01 of the PRC: That not less than 75 percent of waste be source reduced, recycled, or composted. These standards are also consistent with regulations already adopted (14 CCR section 17989.5) for whether packaging used in state food service facilities can be considered compostable.

Subsection (c)

The purpose of this subsection is to identify and interpret the statutory criteria concerning whether discrete covered material is eligible to be labeled “compostable.” Although such criteria are not considered with respect to covered categories because they cannot be applied on a category-by-category basis, interpretation of them is still necessary to provide complete guidelines as to how to comply with the Act’s provisions regarding compostability. This is further necessary because certain criteria are subject to multiple interpretations and cannot be applied consistently unless CalRecycle resolves such ambiguity.

Subsection (c)(1)

The purpose of this subsection is to relate eligibility of discrete covered materials to the list of covered material categories published by CalRecycle pursuant to section 42061 of the PRC. That list of covered materials establishes the authoritative threshold requirement for any discrete covered material to be eligible: It must be within a category identified on the list as eligible to be labeled compostable. This is necessary because section 42061(d) of the PRC expressly provides that the list shall serve this purpose.

Subsection (c)(2)

The purpose of this subsection is to relate eligibility of discrete covered materials to the requirements set forth in subsection (b), concerning the categorical criteria of section 42357 of the PRC. This is necessary so this subsection presents a complete set of guidelines for assessing compliance with the Act's requirements related to compostability.

Subsection (c)(3)

The purpose of this subsection is to identify certification pursuant to section 42357(g)(1)(A) of the PRC as one of the specific criteria applicable to eligibility of discrete covered materials to be labeled "compostable." Identifying that requirement is necessary so that this subsection presents a complete set of guidelines for assessing compliance with the Act's requirements related to compostability. Moreover, specifying that the applicability of this subsection is limited by proposed section 18981 (concerning whether any certification entities have been approved by CalRecycle) and subsection (c)(4) of subsection (c) is necessary to avoid confusion over the scope of the certification requirement.

Subsection (c)(4)

The purpose of this subsection is to identify the exemption from subsection (c)(3) provided by section 42356.1(d) of the PRC, establish a process for CalRecycle to determine whether it applies, and to interpret the terms used in statute to describe the exemption. Identifying that exemption is necessary so that this subsection presents a complete set of guidelines for assessing compliance with the Act's requirements related to compostability. Interpreting the terms of the exemption is necessary because the terms are subject to multiple meanings and cannot be applied logically or consistently without a single established meaning. In particular, the term "demonstrated to not inappropriate any plastics or polymers" requires interpretation.

Subdivision (c)(4)(A)

The purpose of this subsection is to specify that demonstrating applicability the exemption for fiber products requires a complete list of substances contained in the covered material at issue, regardless of how such substances become incorporated into the material. This requirement is necessary given the clear statement in section 42356.1(d) of the PRC that the exemption requires a demonstration of materials that products do not include. Demonstrating that any substance is absent from a material necessarily requires an exhaustive list of substances that are present in it.

Subsection (c)(4)(B)

The purpose of this subsection is to interpret the requirement that plastic be absent to be limited to plastics not present due to contamination beyond the control of the manufacturers, and to require that such absence be demonstrated by a competent testing laboratory. Excluding plastic contaminants not caused by the manufacturing process is necessary because, due to the ubiquity of microplastic contamination throughout practically all materials and environments, reading the statutory exemption to strictly prohibit any presence of plastics would mean no materials could qualify for it. Requiring compliance with this requirement to be demonstrated by testing conducted by accredited laboratories is necessary because such compliance cannot be assessed without examination of materials at the molecular level. Without such a requirement, there would be no practical, objective basis to give effect to the exemption while ensuring products claimed to use fiber materials, or that appear to comprise only fiber, actually do not contain plastic. Furthermore, requiring testing by a laboratory having an ISO/IEC 17025:2017 accreditation, as described in proposed section 18981(b)(1), ensures that such examination is conducted by an independent party that has the necessary expertise to apply scientifically appropriate methods to detect the presence of non-contaminant plastics. That accreditation provides such a safeguard by relying on internationally accepted standards applied by internationally recognized accreditation bodies.

Subsection (c)(4)(C)

The purpose of this subsection is to establish that producers have the affirmative obligation to demonstrate that covered material qualifies for the exemption, and a PRO has the affirmative obligation to have a process to consider such demonstration and to protect the confidentiality of information submitted to it. These requirements are necessary because statute expressly requires products to be “demonstrated” to qualify for it; without the affirmative obligations regarding that demonstration, there would be no practical effect to that statutory provision. Requiring the PRO’s process to account for confidentiality concerns is necessary to ensure that the PRO has a complete set of guidelines for satisfying its obligations, and such restriction is expressly mandated by section 42052(e) of the PRC.

Subsection (c)(4)(D)

The purpose of this subsection is to establish that CalRecycle may require producers to demonstrate compliance with section 42356.1(d) of the PRC for covered material claimed to be eligible to be labeled compostable despite not satisfying the requirements of subsection (c)(3). For a product to be lawfully labeled compostable despite not complying with a standard specification applicable under sections 42355 through 42358.5 of the PRC, section 42356.1(d) of the PRC requires the product to be “demonstrated to not incorporate any plastics or polymers.” To comply with the Act, therefore, Producers necessarily must be able to make such demonstration. Requiring Producers to do so upon request is necessary to give effect to this criterion for being eligible to be labeled compostable. Such an effect is necessary for full implementation and enforcement of the Act.

Subsection (c)(4)(E)

The purpose of this subsection is to interpret how the exemption applies to groups of products that are, for purposes of whether they are compostable, identical. Interpreting the exemption to apply products that are identical in type and composition is necessary under a plain reading of the statutory requirement that products be “demonstrated.” If any product is demonstrated to qualify for the exemption, that demonstration logically must apply to products that are identical in all respects relevant to that demonstration. To give effect to this interpretation, this subsection requires a producer to assert in writing that the products at issue are identical as required. This is necessary to ensure that the products at issue are sufficiently identified and to establish the scope of the claimed exemption and, if the exemption is later determined to be unfounded, the scope of the violations of the Act.

Subsection (d)

The purpose of this subsection is to avoid confusion as to the legal effects of complying with this section. Because this section and the Act only concerns “eligibility to be labeled compostable,” and only does so for the purpose of compliance with section 42050(b) of the PRC, it has no standalone application concerning compliance with the labeling laws set forth in section 42357 of the PRC. Given that this subsection interprets particular elements of section 42357 of the PRC, expressly describing this limitation is necessary because the public could misconstrue this section as generally governing the labeling of products as “compostable.” CalRecycle does not have authority to enforce such laws generally, and this section only addresses them to fulfill CalRecycle’s role in implementing and enforcing the Act.

Subsection (e)

The purpose of this subsection is to further avoid confusion as to the legal effects of complying with this section. Because this section and the Act only concerns “eligibility to be labeled compostable,” and only does so for the purpose of compliance with section 42050(b) of the PRC, it has no standalone application concerning any state laws, including sections 42355 through 423358.5 of the PRC, governing whether label or labeling practice is deceptive. Given that this section interprets elements of such laws, expressly describing this limitation is necessary because the public could misconstrue this section as governing deceptive labeling practices more generally. CalRecycle does not have general authority to enforce laws prohibiting deceptive labeling, and this section only addresses them to fulfill CalRecycle’s role in implementing and enforcing the Act.

§18980.3.4. THIRD-PARTY VALIDATION FOR POSTCONSUMER RECYCLED CONTENT

Subsection (a)

The purpose of this subsection is to provide a process for implementing the postconsumer content validation provisions of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC. This is necessary because section 42053(e)(1) of the PRC expressly states that validation of postconsumer recycled content must be performed by an independent entity approved by CalRecycle. CalRecycle therefore must establish a process and criteria that it will apply for deciding whether to approve

such entities. Although section 42057(a)(2)(B)(i) of the PRC does not expressly require that approved entities be “independent,” imposing the same requirements for approval under either provision is necessary to ensure the integrity of the validations provided by approved entities. Moreover, given that the approvals mentioned in both provisions have the same function, there is no logical or practical reason why the Act would require separate, redundant approvals and related processes.

Subsection (a)(1)

The purpose of this subsection is to specify a credential that an entity must have to be approved by CalRecycle to validate postconsumer recycled content for purposes of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC. Requiring the entity to have a 17065 ISO/IEC accreditation is necessary to ensure that a uniform standard is applied for consideration of whether to approve an entity, and that that standard is appropriate for that certification. The 17065 ISO/IEC standard is appropriate because it is an internationally recognized standard for the accreditation of entities that certify products, processes, and services. Requiring the accreditation to be issued by the International Accreditation Forum, the International Laboratory Accreditation Cooperation, or bodies recognized by either of them is necessary to ensure that the accreditation is consistent with internationally recognized standards. Taken together, these requirements are necessary to ensure that each CalRecycle approval has a reliable, consistent basis in certification standards and processes that CalRecycle itself lacks.

Subsection (a)(2) and subsections (a)(2)(A) through (a)(2)(C)

The purpose of these subsections is to specify additional criteria that entities approved by CalRecycle for purposes of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC must satisfy. The overall requirement is that the entity be independent, impartial and without any conflict of interest. Subsections (a)(2)(A) through (a)(2)(C) expound on that requirement by identifying specific circumstances that would necessarily disqualify an entity from meeting this requirement: holding a financial interest in a producer of material needing validation, conducting any business with producers of products subject to the validation requirement, or being under an agreement requiring other parties specifically to refer producers to it to provide the required validation. The overall criteria are necessary for implementing the statutory requirement that the approved third party be “independent.” Implementing that requirement requires greater specificity than in statute, which provides no direct guidance as to what “independence” requires. The chosen criteria will give effect to traditional purposes of independence requirements by ensuring that entities provide reliable services without bias or the appearance of bias. The requirements therefore support the integrity of the statutory function of the validation requirement, including that the malus fee pursuant to section 42053(e)(1) of the PRC is adjusted to reflect actual percentages of postconsumer recycled content and that source reduction described in section 42057(a)(2)(B)(i) of the PRC is accurately assessed.

Subsection (b) and subsections (b)(1) through (b)(4)

The purpose of this subsection is to specify the information and documentation that entities must submit to CalRecycle for requesting approval (or reapproval) for purposes of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC. Requiring such information

and documentation is necessary to implement the approval process, which is not specifically set forth in the Act. Subsection (b)(1) through (b)(4) are necessary to ensure that CalRecycle has the information and documentation needed to identify the certification entity and confirm that it has the accreditation described in subsection (a)(1). Subsection (b)(4) requires an affidavit from the entity, affirming that the entity satisfies the requirements of subsection (a)(2). An affidavit is necessary because it is the only practicable, non-invasive way to assess compliance with such requirements.

Subsection (c)

The purpose of this subsection is to establish a reasonable period for the effective period of CalRecycle's approval of independent third-party validation entities, and to explain that the approval is no longer effective once the entity's accreditation is no longer valid. A period for expiration of CalRecycle's approval is necessary because, without such a limitation, there would be no mechanism for ensuring that the basis for CalRecycle's approval of an entity remains valid. Such assurance is necessary for the integrity of the statutory function of the validation requirement, including ensuring that the malus fee pursuant to section 42053(e)(1) of the PRC is adjusted to reflect actual percentages of postconsumer recycled content and that source reduction described in section 42057(a)(2)(B)(i) of the PRC is accurately assessed. The five-year period balances the need for the list of approved entities not to include entities that no longer meet the requirements of this section with the risk of unnecessarily burdening entities and CalRecycle by requiring frequent re-approvals. Providing that approvals are deemed to expire once the applicable accreditation expires or becomes invalid is also necessary because such circumstances would necessarily remove the basis for the approvals.

Subsection (d)

The purpose of this subsection is to establish when approved entities may request renewal of their approvals. The two-year period for requesting renewal is necessary because, without there being such a period, entities would not know how early they may request renewal, and requests submitted early in the five-year approval period would unnecessarily risk burdening CalRecycle with frequent requests. The one-year period ensures that entities will have sufficient time to submit renewal requests without risking lapse in their status, while still reasonably ensuring that the list of approved entities only includes those that continue to meet the requirements of this section.

Subsection (e)

The purpose of this subsection is to establish the method by which CalRecycle will inform the public which entities have been approved for purposes of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC. Providing that CalRecycle will maintain a list of approved entities on its website is necessary so that the public can readily identify entities that have been approved. Another purpose is to limit the legal effect of an entity's mere presence on the list published by CalRecycle. It is necessary to establish that mere presence on the list is not a guarantee that the approval remains valid because, as stated in subsection (d), approvals may become invalid before their expiration date (when an approved entity no longer holds the required accreditation), and it is not possible for CalRecycle to know immediately when that occurs. As a result,

the list itself cannot be relied on as sufficient to confirm that a validation entity remains approved.

Subsection (f)

The purpose of this subdivision is to specify when approval of entities may be retroactive, so that validations issued before the entity was formally approved may still be considered valid for purposes of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC. Providing for such retroactivity is necessary because the statute is ambiguous in this regard, and whether the date of validation predates the entity's approval is not relevant to whether the validation was issued by an entity that satisfies the requirements of this section. Rather, as long as the entity satisfied the requirements of subsection (a) when it issued the validation at issue, there is no practical or logical reason why a new validation would be required for CalRecycle's approval to be considered valid.

§18980.3.5. DISPOSAL OF COVERED MATERIAL

The purpose of this subsection, and this section overall, is to interpret the terms "disposal" and "disposed" with reference to where covered material is sent or how it is used. This is necessary because the terms are used in the Act but are not expressly defined in a clear and singular place. Rather, the Act includes multiple subsections affecting what constitutes "disposal," giving the term a scope that is broad in nature. Providing an interpretation in one section in this chapter serves to ensure that the term is readily understood and consistently defined.

Subsection (a)

The purpose of this subsection is to establish deposition at a landfill as one basis for covered material to be considered disposal. Interpreting disposition in a landfill to constitute disposal is necessary because the definition of "disposal" in section 40192(a) of the PRC, which applies to the Act, expressly includes "deposition of solid wastes onto land," which necessarily encompasses final disposition in at a landfill.

Subsection (b)

The purpose of this subsection is to establish use as alternative daily cover or intermediate cover as another basis for covered material to be considered disposal. Interpreting such uses as "disposal" is necessary because it constitutes "deposition of solid wastes onto land," which is necessarily disposal pursuant to section 41092(a) of the PRC. This subsection also refers to regulatory sections that describe what activities constitute use as alternative daily cover or intermediate cover, which is necessary because the scope of what those uses entail is not otherwise readily discernible.

Subsection (c)

The purpose of this subsection is to establish use for energy generation or fuel production, except for anaerobic digestion of source separated organic materials, as another use that constitutes disposal. Interpreting such use to be disposal is necessary because section 42014(aa)(2)(D) and (E) of the PRC, respectively, state that such use is not "recycling", and that "other forms of disposal" are also not recycling. Taken

together, these provisions necessarily define energy production and fuel production as “disposal.”

Subsection (d)

The purpose of this subsection is to incorporate the general definition of “disposal” established under section 40192(a) of the PRC and to provide examples of what falls within that definition. Including this definition is necessary to ensure that it is readily accessible because section 40192(a) of the PRC applies to the Act but is not expressly mentioned in the act, and locating it is not straightforward. As such, including the definition of “disposal” here provides clarity regarding its full nature and scope. Including the three examples provided (littering, open burning, and illegal dumping) is necessary to ensure that persons subject to the Act fully understand that such activities necessarily constitute final disposition onto land, into the atmosphere, or into the waters of the state.

ARTICLE 4. RESPONSIBLE END MARKETS

The purpose for article 4 is to develop regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimize risks to public health and worker health and safety, as authorized by section 42041(ad) of the PRC.

The term “end market” is used to describe the entity who receives recyclable materials and utilizes the material as a product or starting material for production of a new product. Section 42041(ad) of the PRC defines the term “responsible end market” to mean “a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.” The term is used throughout the statute and requirements reference the term.

§18980.4. RESPONSIBLE END MARKET DETERMINATION CRITERIA

Subsection (a)

The purpose of this subsection is to establish criteria for when end markets can be identified as “responsible end markets.” This subsection states what an “end market” is, generally, based on section 42041(ad) of the PRC, which defines the term as qualified by “responsible.” Subsections (a)1) through (a)5) detail specific standards applicable to identification of a “responsible end market.” Pursuant to section 42041(ad) of the PRC, this is necessary for CalRecycle to establish clear and consistent criteria regarding benefits to the environment, minimizing risk to public and worker health, and safety for responsible end markets, and is also necessary because the Act does not clearly define the criteria for being “responsible in the context of “responsible end market.

Subsection (a)(1)

The purpose of this subsection is to define and establish a clear and consistent definition for the aforementioned first standard of “responsible,” which is the compliant standard. For an end market to be deemed compliant, the end market is required to

operate with all required permits, licenses, and other clearances including approvals from local, state, or federal entities. The compliant standard does not impose any new requirements on end markets. Rather, it reinforces the importance that end markets operate in a manner that is required by all laws at each level of government. This is necessary because it clarifies and specifies the minimum qualifications that an end market needs in order to be considered a responsible end market.

Subsection (a)(2)

The purpose of this subsection is to establish a clear and consistent definition for the second standard of “responsible,” which is the transparent standard. For a responsible end market to be deemed “transparent,” the end market is required to conduct the activities listed in subsections (a)(2)(A) through (a)(2)(G). This is necessary because a PRO or an Independent Producer, as required by section 42041(aa) of the PRC and proposed section 18980.3.2, must be able to ensure that covered materials are sent to responsible end markets in order for it to count towards being recycled. However, since a PRO or an Independent Producer does not control the flow of materials, a PRO or an Independent Producer would have no way of verifying if materials are being responsibly managed unless the end market is able to provide sufficient documentation and information that clearly prove that materials are being responsibly managed. If a PRO or an Independent Producer is unable to verify where covered materials are sent to, it is equivalent to covered materials being disposed. The criteria set out in these subsections are carefully crafted to set a standard that provides the most clear, consistent, and practicable means of establishing the transparency requirement as required by the Act.

Subsection (a)(2)(A)

The purpose of this subsection is to establish the necessity of requiring chain of custody. CalRecycle chose implementing regulations which require documenting the chain of custody of materials transported from origination to the end market in subsection (a)(2)(A) because understanding which entities are handling materials will permit CalRecycle to identify the parties that may need to be audited to verify compliance, which is necessary to maintain transparency as well as the veracity of relevant documents.

Subsection (a)(2)(B)

The purpose of this subsection is to require relevant entities to maintain chain of custody records. CalRecycle chose regulations which require said entities to maintain records pertaining to chain of custody in subsection (a)(2)(B) because there is no requirement for the end market to retain this specific information as part of its record retention process. This is necessary, as without this record retention process, all benefits from documenting the chain of custody would be nullified.

Subsection (a)(2)(C)

The purpose of this subsection is to require the entity to document complaints, penalties, violations, or other forms of enforcement actions taken against an entity

relevant to this section. CalRecycle chose to document any complaints, penalties, violations, or other forms of enforcement action taken against the entity in subsection (a)(2)(C) because this is necessary for CalRecycle to retain the ability to review such information when auditing a responsible end market which is an essential requirement to ensure that it is complying with all applicable laws. The evaluation of this compliance is also necessary because CalRecycle makes determinations on who is a responsible end market for purposes of reporting by the PRO or the Independent Producer.

Subsection (a)(2)(D)

The purpose of this subsection is to require relevant entities to maintain relevant records pertaining to any permits, licenses or other clearances required by local state, or federal regulatory agencies. CalRecycle chose regulations which require said entities to maintain records pertaining to any permits, licenses or other clearances required by local state, or federal regulatory agencies relevant to this section because this is necessary for CalRecycle to retain the ability to review such information when auditing a responsible end market which is an essential requirement to ensure that it is complying with all local, state, and federal regulatory entities.

Subsection (a)(2)(E)

The purpose of this subsection is to establish the requirement that an entity relevant to this section is willing to be named, audited, and/or inspected by a PRO or an Independent Producer pursuant to proposed section 18980.4.3. CalRecycle chose implement regulations which require that the relevant entity be willing to be named, audited, and/or inspected by a PRO or an Independent Producer pursuant to proposed section 18980.4.3 because the ability to audit the entity is necessary to verify compliance, which is necessary to maintain transparency as well as compliance with all relevant sections of the Act.

Subsection (a)(2)(F)

The purpose of this subsection is to establish the requirement for relevant entities to turn over the records in which they were required to retain pursuant to Subsection (a)(2)(B). CalRecycle chose regulations which require said entities to turn over any records identified in subsection (a)(2)(A) through (a)(2)(D) as this is a vital and necessary requirement to inspect and maintain compliance with all aspects of transparency and compliance as illustrated in subsections (a)(2)(A) through (a)(2)(D). Without providing the relevant records identified in the aforementioned sections to the PRO, Independent Producers and the CalRecycle, there would be no way for the PRO, Independent Producers, or CalRecycle to verify that materials are going to responsible end markets. This is also necessary because without the requirement for the entity to provide records, there would be no purpose behind requiring the maintenance of the records, and there would be no way of verifying transparency and compliance with this Section.

Subsection (a)(2)(G)

The purpose of this subsection is to establish the requirement that a relevant entity specify to the PRO, CalRecycle, and any Independent Producers the types of covered material and covered material categories the end market will collect. CalRecycle chose to implement regulations which require a responsible end market entity to specify types of covered materials of covered material categories as this is necessary to maintain transparency at the most fundamental levels in order for the PRO, Department, and Independent Producers to be aware of the types of materials in which the entity is accepting and collecting.

Subsection (a)(3)

The purpose of this subsection is to establish a clear and consistent definition for the third standard of “responsible,” which is the standard of maximizing environmental benefits and minimizing risks to public health and safety. The Act authorizes CalRecycle to develop criteria regarding the benefits to the environment and minimizing risks to public health and worker health and safety, pursuant to section 42041(ad) of the PRC. CalRecycle provides a clear and consistent definition of this criteria in subsections (a)(3)(A) through (a)(3)(C). This is necessary as CalRecycle is using its authority to establish clear and consistent criteria to an otherwise broad and ambiguous concept introduced by the statute.

Subsection (a)(3)(A)

The purpose of this subsection is to specify that in order for an end market to be deemed a responsible end market, the end market shall recycle covered material in a way that is consistent with the proposed regulations and the Act. This is necessary as the statute only implies that a responsible end market shall recycle recovered material but does not explicitly state this. As such, it is ambiguous and open to interpretation, and this subsection provides necessary clarity and consistency.

Subsection (a)(3)(B)

The purpose of this subsection is to specify that an end market shall manage incompatible materials as specified in subsection (a)(3)(B)(i) and (a)(3)(B)(ii) of this section in order to be deemed “responsible.” Incompatible materials, as defined in proposed section 18980.1(15), refers to materials received by a responsible end market which are unable to be recycled at that facility. Incompatible materials may include contaminants that cannot be recycled as well as recyclable material that the end market is not authorized to recycle. One of the requirements of a responsible end market, as stated in section 42041(ad) of the PRC, is to dispose of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety. This subsection provides clarity, consistency, and specificity regarding how a responsible end market must manage incompatible materials. This is necessary to provide clarity, consistency, and specificity to a requirement that is not otherwise defined in section 42041(ad) of the PRC.

Subsection (a)(3)(B)(i)

The purpose of this subsection is to specify how a responsible end market must manage incompatible materials that can be further processed and recycled. If an end market receives incompatible material that can be further processed and recycled, the end market is required to send said material to entities that are authorized and able to process and recycle the material in order for that end market to be considered a responsible end market. This is necessary as it adds clarity, consistency, and specificity to the Act as well as requirements in these proposed regulations, and to ensure that incompatible materials are actually recycled as required by the Act.

Subsection (a)(3)(B)(ii)

The purpose of this subsection is to specify how a responsible end market must manage incompatible materials that cannot be further processed and recycled. If an end market receives incompatible materials that cannot be recycled for health and safety reasons, the end market must ensure proper disposal of the material to be deemed a responsible end market. Proper disposal by a responsible end market must demonstrate that such disposal is done in a way that prevents environmental, public health, and safety risks, such as transportation, handling, and final disposition of hazardous waste by permitted hazardous waste entities or transportation, handling, and final disposition of solid waste by permitted solid waste entities.

This is necessary as it adds clarity, consistency, and specificity to requirements of these proposed regulations and ensures proper disposal of recycling contaminants as required by the Act.

Subsection (a)(3)(C)

The purpose of this subsection is to specify that a responsible end market is required to provide documentation to a PRO or an Independent Producer that describes how it conducts recycling and how it minimizes and manages emissions, effluents, and residuals. This is necessary as a PRO or Independent Producer is required to ensure that covered materials are recycled at responsible end markets as required by the Act, and regulations requiring documentation are necessary to ensure compliance with this requirement. It is also necessary for the entity to describe how it minimizes and manages emissions, effluents, and residuals because responsible end markets must function in a way that, as required by section 41041(ad) of the PRC benefits the environment and minimizes risks to public health and worker health and safety. Requiring the entity to minimize and manage emissions, effluents, and residuals goes directly to the entity's impact on the environment and minimization of risks to public health.

Subsection (a)(4)

The purpose of this subsection is to specify that in order for an end market to be deemed a responsible end market, the end market must either achieve adequate recycling yields for recyclable covered material, specified in subsection (a)(4)(A), or meet the compostability standards for covered material that is compostable or made of wood or other organic materials, specified in subsection (a)(4)(B). This is necessary to

provide clear and consistent criteria to ensure that all collected covered materials get recycled in a way that minimizes loss of materials, minimizes disposal of the of the material, maintains the material in the economic mainstream, and ensure recovered materials are used for their highest and best use to achieve the goals of the Act.

Subsection (a)(4)(A)

The purpose of this subsection is to provide a clear and consistent definition and process for determining adequate recycling yield for the purpose of end markets that recycle materials other than compostable covered material or covered material made of wood or other organic material. Subsection (a)(4)(i) specifies the recycling yield percentage that a responsible end market should achieve, and subsection (a)(4)(A)(ii) specifies how the calculation of the yield should be done. This is necessary in order to provide a specific, clear and consistent standard in subsection (a)(4) that can be universally applied.

Subsection (a)(4)(A)(i)

The purpose of this subsection is to provide the specific criteria by which the adequate recycling yield percentage will be determined, which is through the needs assessment. This is necessary as, pursuant to the Act, it allows CalRecycle to set the appropriate yield and reflects and is consistent with the current real time state of affairs, such as improved technology, and can be adjusted accordingly as required by the Act.

Subsection (a)(4)(A)(ii)

The purpose of this subsection is to provide a clear, specific, and consistent formula for calculating the adequate recycling yield. This is necessary to provide clarity on how an entity should calculate yield, and to best achieve the goals of the Act. Without having this formula clearly specified and best situated to achieve the Act, there would be risks in entities inconsistently and incorrectly calculating yield.

Subsection (a)(4)(B)

The purpose of this subsection is to specify the conversion requirements of an end market for compostable covered material or covered material made of wood or other organic material in order for the end market to be deemed a responsible end market.

Composting, anaerobic digestion, or another form of conversion that leads to an organic waste product causes material to undergo a biological process that results in changes to the physical properties of the material, making it impossible to determine a yield based on material weight. However, the process should result in the complete biological decomposition or disintegration of the material into an organic waste product. Thus, CalRecycle has determined that this to be an equivalent standard to recycling yield.

This is necessary as compostable covered material and material made of wood or other organic material do not have a recycling pathway that is amenable to the yield

calculation specified in subsection (a)(4)(A) and that this section presents an equivalent standard.

Subsection (b)

The purpose of this subsection is to further define what “end market” means. While the “end market” is used throughout the Act and throughout these draft regulations, “end market” is not a term that is defined. CalRecycle proposes to define “end market” and seeks to provide specificity as to what end market means for each material class, as specified in subsections (b)(1) through (b)(5). CalRecycle is proposing to define “end market” specific to material classes because each material class has unique properties and may be amenable to only certain types of remanufacturing. This is necessary because the term “end market” is used throughout the Act and through these draft regulations but is not defined.

Subsection (b)(1)

The purpose of this subsection is to interpret, and further define “end market” for covered material made of glass for the entity who first uses glass in lieu of a virgin material downstream of a beneficiation plant. These entities may include manufacturers of bottles, fiberglass, pozzolan, or any other packaging or product made of glass. This is necessary as the Act does not define what “end market” means for glass covered material.

Subsection (b)(2)

The purpose of this subsection is to define “end market” for covered material made of metal. These include entities that smelt metal and produce ingots, sheets, coils, or other materials that are refabricated into a packaging or product made of metal. This is necessary as the Act does not define what “end market” means for metal covered material.

Subsection (b)(3), (b)(3)(A), and (b)(3)(B)

The purpose of this subsection is to define “end market” for covered material made of paper or fiber. The end market may be an entity that re-pulps material, pursuant to subparagraph (A) of this subsection, or an entity that uses beneficiation wastepaper to produce a product, pursuant to subparagraph (B) of this subsection. This is necessary as the Act does not define what “end market” means for covered material made of paper or fiber. In addition, bifurcating the end market into two different pathways is necessary as both pathways have been deemed by CalRecycle as being legitimate end markets for covered material made of paper or fiber.

Subsection (b)(4)

The purpose of this subsection is to define “end market” for covered material made of plastic. The end market is an entity that creates a new product by molding, extruding, or thermoforming processed material. This is necessary as the Act does not define what “end market” means for covered material made of plastic.

Subsection (b)(5)

The purpose of this subsection is to define “end market” for compostable covered material or covered material made of wood or organic materials. The end market is an entity that converts the material into a recycled organic product. This is necessary as the Act does not define what “end market” means for compostable covered material or material made of wood or organic materials.

Subsection (b)(6)

The purpose of this subsection is to specify that if a covered material is made of a mixture of material types and are not detachable, the end market for that covered material shall be the end market of the dominant material type specified in subsections (b)(1) through (b)(5). Additionally, this subsection defines “dominant material type” to be the material type that the covered material predominantly made of by weight.

For example, consider an aluminum can with a plastic coating. The can is predominantly metal but contains a plastic component that is not detachable. Though this is a mixture of two material types, it is predominantly metal and thus the end market for an aluminum can would be the end market specified in subsection (b)(2).

This is necessary because many covered materials are a mixture of different material types. CalRecycle recognizes the need to reasonably identify an end market for covered materials that are made of a mixture of material types that are not detachable and has proposed this mechanism for these materials.

Subsection (b)(7)

The purpose of this subsection is to specify that if a covered material is made of a mixture of material types that are detachable, the end market for that covered material shall be the end market of each respective material type of each detachable component, as specified in subsections (b)(1) through (b)(5).

For example, consider a glass bottle with a metal cap. The glass container is made of glass and should be recycled at a glass end market while the detachable metal cap is made of metal and should be recycled at a metal end market.

This is necessary because many covered materials are a mixture of different material classes. If the components are detachable, then the components should be detached and recycled in each respective end market.

Subsection (b)(8)

The purpose of this subsection is to clarify and establish that if a covered material can be reasonably recycled at multiple types of end markets, then any of the eligible end market shall be deemed valid. For example, a covered material made of paper could either be recycled into another paper product by an entity described in subsection (b)(3) or could be converted into an organic waste product by an entity described in

subsection (b)(5). This subsection would permit either entity as being a valid end market for the covered material. This is necessary to not limit the end markets for covered material that can be recycled in different end market types.

§18980.4.1. END MARKET IDENTIFICATION

Subsection (a)

The purpose of this subsection is to require a PRO or an Independent Producer to describe, in their plan, the method by which they intend to identify and verify responsible end markets. Because the PRO and Independent Producers choose how to manage the end of life of covered materials through their plans, the PRO or an Independent Producer is best positioned to identify and verify responsible end markets. This is necessary because, pursuant to the Act and proposed section 18980.3.2, covered material shall be sent to a responsible end market in order to count towards recycling. Thus, a PRO or Independent Producer would be required to identify responsible end markets where covered materials can be sent to in order to meet the recycling rate requirements specified in section 42050(c) of the PRC. Failure to identify and verify responsible end markets for covered materials would lead to covered materials not being recycled. This would mean that a PRO or an Independent Producer would be out of compliance with the Act.

Subsection (a)(1)

The purpose of this subsection is to add specificity to the general requirement of subsection (a) of this proposed section. The specific requirement is to have a PRO or an Independent Producer describe the process they will take to identify end markets. This is necessary as this allows CalRecycle to further evaluate the level of rigor a PRO or an Independent Producer employs to identify responsible end markets.

Subsection (a)(2)

The purpose of this subsection is to add specificity to the general requirement of subsection (a) of this proposed section. The specific requirement is to have a PRO or Independent Producer describe how they will evaluate each end market and determine whether an end market meets the standards defined in proposed section 18980.4(a) and can be deemed a responsible end market. This is necessary as a PRO or Independent Producer is authorized to identify end markets and determine if it is a responsible end market that covered materials can be sent to. To ensure that the end markets are indeed responsible, CalRecycle is requiring this to understand the methodology a PRO or Independent Producer is going to use to make their determinations.

Subsection (b)

The purpose of this subsection is to require a PRO or an Independent Producer to ensure that any intermediate supply chain entity that is utilized has all required permits, licenses, or other clearances that are required by any local, state, or federal regulatory agency. The intent would be to ensure that all intermediate supply chain entities meet

these minimum standards that are protective of the environment and of worker health and safety. This is necessary because the intent of the Act is to ensure all covered material is collected, processed, transported, and recycled in a way that is beneficial to the environment. Intermediate supply chain entities play a critical role in the management of materials from collection to remanufacturing. By requiring a PRO or an Independent Producer to verify if an intermediate supply chain entity has all necessary clearances, it would confirm whether an intermediate supply chain entity meets the minimum standards of the Act and these regulations.

Subsection (c)

The purpose of this subsection is to require end markets or independent supply chain entities that manage covered material to maintain information, as specified further in subsection (c)(1) and provide information to a PRO or Independent Producer, as specified in subsection (c)(2). This is necessary as this information is critical for a PRO or Independent Producer to evaluate whether an end market or intermediate supply chain entity meets the standards of the Act and these regulations.

Subsection (c)(1)

The purpose of this subsection is to specify that an end market or independent supply chain entity must maintain chain of custody information for any collected covered material or intermediate product. This is necessary as chain of custody information is necessary required when evaluating whether an end market meets the standards of responsible end marked as specified in proposed section 18980.4(a) and whether an intermediate supply chain entity meets the standard specified in proposed section 18980.4.1(b). Proper retention of this information by entities that manage covered material or intermediate products is necessary in order to provide proof of whether a material was properly managed.

Subsection (c)(2)

The purpose of this subsection is to specify that an end market of independent supply chain entity shall provide records pertaining to chain of custody of collected covered materials to a PRO or an Independent Producer. Chain of custody information is necessary when evaluating whether an end market meets the standards of responsible specified in proposed section 18980.4(a) and whether an intermediate supply chain entity meets the standard specified in proposed section 18980.4.1(b). This is necessary as a PRO or Independent Producers needs to have the ability to access information, establish chain of custody, and to require the relevant entities to provide the necessary information to ensure compliance.

Subsection (d)

The purpose of this subsection is to establish requirements for a PRO or Independent Producer who receives information pursuant to proposed section 18980.4.1(c). The requirements are specified in subsections (d)(1) and (d)(2). This is necessary to make

the PRO or Independent Producer aware of its duties with regard to the information received and to specify how sensitive data must be handled.

Subsection (d)(1)

The purpose of this subsection is to specify that a PRO or an Independent Producer is required to provide any information collected pursuant to proposed section 18980.4.1(c) to CalRecycle upon request by CalRecycle. This is necessary to allow CalRecycle the opportunity to review chain of command information and to verify whether or not covered material is being collected, processed, and transferred to responsible end markets in a way that is consistent with these proposed regulations and the Act.

Subsection (d)(2)

The purpose of this subsection is to specify that a PRO or an Independent Producer is required to maintain confidentiality of any information collected pursuant to proposed section 18980.4.1(c). A PRO or an Independent Producer would be prohibited from sharing any of the information with entities other than CalRecycle. This is necessary as chain of command information is considered sensitive and by not limiting the use of the information to a PRO or an Independent Producer may limit an end market or intermediate supply chain entity from coordinating with the PRO or Independent Producer. By constraining the use of the information specific for a PRO or Independent Producer's needs, it would ensure end markets and intermediate supply chain entities of potential access by other entities.

Subsection (e)

The purpose of this subsection is to require a PRO or Independent Producer to maintain records of any contracts or agreements established with end markets and intermediate supply chain entities. CalRecycle anticipates a PRO or Independent Producer would develop contracts and agreements with a number of entities along the supply chain to ensure covered materials are collected and properly recycled at a responsible end market. This is necessary because it will require a PRO or Independent Producer to maintain these records and would allow CalRecycle to inspect these records and to verify whether a PRO or Independent Producer's actions are consistent with the requirements of these proposed regulations and the Act.

§18980.4.2. END MARKET VERIFICATION

Subsection (a)

The purpose of this subsection is to require a PRO or an Independent Producer to conduct an annual verification of each end market it uses. The specific information that the verification should include is further specified in subsections (a)(1) through (a)(4). This is necessary as a PRO or Independent Producer must ensure on an annual basis that collected covered materials continue to be recycled at entities that are responsible end markets.

Subsection (a)(1)

The purpose of this subsection is to specify that a PRO or Independent Producer shall include in the verification any records of noncompliance by an end market. Records of noncompliance could include violations or deviations from any of the criteria specified in proposed section 18980.4. This is necessary such that CalRecycle is able to evaluate whether an end market used by a PRO or Independent Producer may not meet the standards of responsible, specified in proposed section 18980.4.

Subsection (a)(2)

The purpose of this subsection is to specify that a PRO or Independent Producer shall include in the verification any descriptions of any corrective actions that were taken to ensure an end market became compliant. Pursuant to proposed section 18980.4.2(a)(1), a PRO or Independent Producer would document any situations of noncompliance by an end market. Under this subsection, a PRO or Independent Producer would specify any actions that were taken to correct the noncompliance. This is necessary for CalRecycle to verify whether the compliance issue was resolved and that the end market continues to be a responsible end market. If the end market no longer meets the standards of a responsible end market, a PRO or Independent Producer who uses the end market may be in violation of the Act and these proposed regulations.

Subsection (a)(3)

The purpose of this subsection is to specify that a PRO or Independent Producer shall include in the verification descriptions of any instances where a PRO or an Independent Producer prohibits sending material to an entity because of the entity's noncompliance. This is necessary such that CalRecycle can be aware of any ongoing issues with end markets.

Subsection (a)(4)

The purpose of this subsection is to specify that a PRO or Independent Producer shall include in the verification any records of complaints made against the end market. This is important to inform CalRecycle of potential issues with a particular end market.

Subsection (b)

The purpose of this subsection is to specify that a summary of the verification should be included in a PRO or an Independent Producer's annual report. This is necessary to specify how a PRO or an Independent Producer is to communicate the results of the verification to CalRecycle.

§18980.4.3. END MARKET AUDITS AND INVESTIGATIONS

Subsection (a)

The purpose of this subsection is to require a PRO or an Independent Producer to conduct and complete annual audits and investigations of responsible end markets and that the investigations and audits be conducted by an independent third-party. A PRO or Independent Producer may have material sent to an entity they deem to be a responsible end market. However, it is critical that those entities continue to remain

being a responsible end market. It is also critical that any investigation or audit be conducted by an entity that has no conflict of interest. This is necessary to ensure that all covered materials are recycled at end markets that continue to be responsible end markets and that all investigations and audits are done by entities that do not have a conflict of interest. It is necessary that these audits be conducted annually in order to ensure that the responsible end market is maintaining compliance with the requirements of the Act and these regulations, and as the PRO and Independent Producers must be audited annually as specified in section 42054 of the PRC and report annually as well, matching the auditing requirement to this annual cycle meets the need to monitoring the responsible end markets while also not adding too onerous of a frequency that does not align with the annual reporting and auditing already required of the PRO and Independent Producers.

Subsection (b)

The purpose of this subsection is to authorize a PRO or Independent Producer to utilize randomized material tracking in conducting investigations or audits. Material tracking can include bale tracking as well as tracking intermediate products. Providing this guideline is necessary to ensure that the PRO or Independent Producers understand how to assess whether materials are being properly collected, processed, transported, and ultimately recycled at a responsible end market.

Subsection (c)

The purpose of this subsection is to specify that all results of an investigation and copies of any audits are to be included in the annual report submitted by a PRO or Independent Producer to CalRecycle. Furthermore, this section specifies that CalRecycle shall have full access to any results of an investigation or audit. Full access to this information would provide transparency and an opportunity for both CalRecycle and the general public to understand how materials are being managed. This is necessary for CalRecycle to monitor end markets or intermediate supply chain entities, and having access to the information that it seeks to gain from this section would allow CalRecycle to conduct more thorough evaluations of a PRO or Independent Producer's plans and activities.

Subsection (d)

The purpose of this subsection is to allow CalRecycle to require a PRO or Independent Producer to initiate an audit of investigation when CalRecycle deems it necessary. This is necessary as CalRecycle has a limited ability to investigate an end market and directly evaluate whether an end market continues to be a responsible end market or not. Nonetheless, a PRO or Independent Producer is authorized to conduct an investigation and has a direct relationship with its responsible end markets. This subsection is necessary for CalRecycle to direct a PRO or Independent Producer to conduct an investigation in order to determine compliance if CalRecycle believes the end market is not operating as a responsible end market.

Subsection (e)

The purpose of this subsection is to allow CalRecycle to require a PRO or Independent Producer to provide records pertaining to responsible end markets when CalRecycle requests them and that all end information would be unredacted. This is necessary as CalRecycle has limited direct access to records pertaining to responsible end markets. Nonetheless, it is important that CalRecycle periodically review records to ensure that end markets are operating as *responsible* end markets. Since a PRO or Independent Producer has records pertaining to these entities, CalRecycle requests that these materials be submitted to CalRecycle when requested, allowing CalRecycle to conduct periodic checks of responsible end markets. It is necessary for these records to be unredacted so that CalRecycle may review them in their entirety; however, because many of the records may contain information that should be kept confidential, it is necessary for that information to be identified so that CalRecycle can maintain the confidentiality of that information should any portion of these records be requested or made available to the public.

Subsection (f)

The purpose of this subsection is to specify that if CalRecycle finds a responsible end market to no longer meet the standards specified in proposed section 18980.4(a), any covered materials sent to that entity would not be deemed recycled or composted pursuant to the requirements of the Act and these proposed regulations. This is necessary as pursuant to the Act and these proposed regulations, covered materials must be sent to a responsible end market in order for the material to be deemed recycled. If an end market no longer is a responsible end market, any material sent to that entity can no longer legally be deemed recycled pursuant to the Act and these proposed regulations.

Subsection (g)

The purpose of this subsection is to specify that an investigation record supplied by a PRO or Independent Producer to CalRecycle would be sufficient to establish a violation from the requirements of these proposed regulations. This is necessary because if any information in an investigation record warrants corrective action, CalRecycle would seek to use the information to conduct enforcement actions.

§18980.4.4. END MARKET VIABILITY

Subsection (a)

The purpose of this subsection is to require a PRO or an Independent Producer to ensure the viability of responsible end markets by conducting the tasks outlined in subsection (a)(1) through (a)(5). This is necessary because 42051.1(c)(1) of the PRC requires the PRO to provide viable responsible end markets to ensure covered material will achieve the goals of the Act.

Subsection (a)(1)

The purpose of this subsection is to specify that a PRO or an Independent Producer shall provide financial support to existing end markets that are not responsible end markets to help assist these end markets to become responsible end markets by meeting the standards specified in proposed section 18980.4(a). This is necessary to allow a pathway for existing end markets that are not responsible end markets to receive resources to ensure they are able to meet the standards specified in proposed section 18980.4(a).

Subsection (a)(2)

The purpose of this subsection is to specify that a PRO or an Independent Producer shall provide financial support to divert materials from end markets that are not responsible end markets. Recipients of fundings could include local jurisdictions, recycling service providers, and independent supply chain entities. This is necessary as a PRO or an Independent Producer can further incentivize entities from continual use of an end market that fails to meet the standards specified in proposed section 18980.4(a).

Subsection (a)(3)

The purpose of this subsection is to specify that a PRO or an Independent Producer shall either develop new responsible end markets for covered materials and/or explore and invest in alternatives for covered materials that do not have a responsible end market. Furthermore, it specifies that alternatives can include investing in refill and reuse infrastructure to facilitate the phasing out of any covered materials that lack a responsible end market.

Covered materials that do not have a responsible end market will never be recycled. This is because, pursuant to section 42041(aa)(3) of the PRC, a covered material needs to be sent to a responsible end market in order to be considered recycled. Therefore, this subsection is necessary as a PRO or an Independent Producer need to ensure that all covered materials, especially plastic covered materials, go to a responsible end market in order to meet the goals of the Act. If such is not possible, it is necessary that a PRO or an Independent Producer facilitate the transition away from non-recyclable or non-compostable covered materials.

Subsection (a)(4)

The purpose of subsection is to specify a process by which a PRO or an Independent Producer shall undertake if a covered material does not have a viable responsible end market. The steps of the process are further outlined in subsections (a)(4)(A) through (a)(4)(C). This is necessary as it provides clarity and guidance to a PRO or an Independent Producer on how they should approach identifying and establishing new viable responsible end markets. Furthermore, if a PRO or Independent Producer is unable to identify a new viable responsible end market through this process, the PRO would be obligated to phase out the covered material.

Subsection (a)(4)(A)

The purpose of subsection is to require a PRO or Independent Producer to conduct a study, within a 2-year period, that evaluates the feasibility of developing a new viable responsible end market for a covered material that does not have a responsible end market. Furthermore, the study will also evaluate the feasibility of collecting, transporting, and processing of the covered material. This is necessary to provide guidance to a PRO or Independent Producer on conducting such evaluations. Furthermore, it specifies the level of rigor CalRecycle expects when conducting these evaluations. This subsection chose a two-year period for this study because two years allows for sufficient time for a PRO or an Independent Producer to conduct a study with scientific rigor while still requiring prompt action by a PRO or an Independent Producer. The two-year period was also chosen as CalRecycle determined that anything less than two years would be too onerous on the PRO or Independent Producer, while anything beyond two-years may result in overlooking or delaying an otherwise viable new responsible end market. This two-year period also reflects previously proposed concepts at public workshops.

Subsection (a)(4)(A)(i)

The purpose of this subsection is to require a PRO or Independent Producer to, in their study, evaluate technologies that can be used to recycle the covered material. The evaluation should ensure that the technology meets and does not conflict with the definition of recycling in section 40241(aa) of the PRC. This is necessary as it will require a PRO or Independent Producer to evaluate if recycling technology, which is consistent with the definition of recycling, can reasonably be used to recycle a covered material.

Subsection (a)(4)(A)(ii)

The purpose of this subsection is to require a PRO or Independent Producer to, in their study, evaluate the feasibility of collecting, transporting, processing, and recycling the covered material. This will require a PRO or Independent Producer to conduct an investigation to see if a covered material can be reasonably collected and transferred to a responsible end market for recycling and evaluate the level of investment that is needed. This is necessary as it complements the requirements of subsection (a)(4)(A)(i). Subsection (a)(4)(A)(i) evaluates whether a technology exists to recycle a particular covered material. This subsection seeks to evaluate how feasible developing and implementing a technology may be and would also determine if sufficient infrastructure in collection, transportation, and processing would be needed to conduct recycling. Collection, transportation, and processing are significant components of the supply chain leading up to an end market.

Subsection (a)(4)(A)(iii)

The purpose of this subsection is to require a PRO or Independent Producer to, in their study, evaluate if the end market meets the standards specified in proposed section 18980.4(a). Proposed section 18980.4(a) specifies the standards for a responsible end market. This is necessary as all new end markets will have to be deemed responsible in

order for the end market to be properly utilized and count towards the recycling goals of the Act.

Subsection (a)(4)(A)(iv)

The purpose of this subsection is to authorize a PRO or Independent Producer to, in their study, conduct pilot programs to test any of the evaluations specified in subsections (a)(4)(A)(i), (a)(4)(A)(ii), or (a)(4)(A)(iii) of proposed section 18980.4.4. This is necessary to allow a PRO or Independent Producer to conduct full-scale studies that can evaluate whether a responsible end market can exist for a particular covered material. This would allow a PRO or Independent Producer to use evidence to justify whether such an end market exists.

Subsection (a)(4)(B)

The purpose of this subsection is to specify that if a PRO or Independent Producer, pursuant to proposed section 18980.4.4, conducts a study that evaluate a feasibility of a responsible end market for a particular covered material and has determined that a responsible end market does exist, a PRO or Independent Producer shall then develop a strategy for the development of the responsible end market within the state. Further, the strategy should be included within the PRO or Independent Producer's plan or shall be submitted as a plan amendment. The specifics of what to be included in the plan for implementation are specified in subsection(a)(4)(B)(i) through (a)(4)(B)(v). This is necessary to ensure that if a PRO or Independent Producer does find that developing a new responsible end market for a covered material that previously didn't have a responsible end market, that a PRO or Independent Producer shall then work towards developing such a responsible end market within the state.

Subsection (a)(4)(B)(i)

The purpose of this subsection is to specify that a PRO or Independent Producer, within their strategy to develop a responsible end market for a covered material, shall include a description of the end market. The description shall specify items such as the recycling technology that is to be utilized and the end products of the recycling process. This is necessary such that both CalRecycle and the public are aware of the types of end markets a PRO or Independent Producer intends to develop within the state.

Subsection (a)(4)(B)(ii)

The purpose of this subsection is to specify that a PRO or Independent Producer, within their strategy to develop a responsible end market for a covered material, shall include a justification of how the end market meets the standards specified in proposed section 18980.4(a). This requires a PRO or Independent Producer to justify how the new end market would meet the criteria for being considered a responsible end market. This is important as it would allow a PRO or Independent Producer to justify to CalRecycle and the public how a new end market should be deemed a responsible end market.

Subsection (a)(4)(B)(iii)

The purpose of this subsection is to specify that a PRO or Independent Producer, within their strategy to develop a responsible end market for a covered material, shall include a description of the viability of the end market. This would require a PRO or Independent Producer to explain how the end market would be feasible and economically successful. This is important as this will allow the PRO or Independent Producer to justify how a new end market can be sustained within the state.

Subsection (a)(4)(B)(iv)

The purpose of this subsection is to specify that a PRO or Independent Producer, within their strategy to develop a responsible end market for a covered material, shall include a budget and investment strategy that describes how a PRO or Independent Producer would fund the development of the end market and all other necessary components, such as developing collection, transportation, and processing infrastructure. This is necessary as it would describe how a PRO or Independent Producer intends to fund the development of a new responsible end market within the state.

Subsection (a)(4)(B)(v)

The purpose of this subsection is to specify that a PRO or Independent Producer, within their strategy to develop a responsible end market for a covered material, shall include a timeline that details how long the development of an end market would take and the goals a PRO or Independent Producer has for implementation. This is necessary to ensure that a PRO or Independent Producer works towards timely development of new responsible end markets within the state.

Subsection (a)(4)(C)

The purpose of this subsection is to specify that if a PRO or Independent Producer, pursuant to section 18980.4.4(a)(4)(A), conducts a study that evaluate a feasibility of a responsible end market for a particular covered material and had determined that a responsible end market does not exist, a PRO or Independent Producer shall work towards phasing out the particular covered material by investing in alternatives. Alternatives can include refillable or reusable options that reduce reliance on the covered material. This is necessary to require a PRO or Independent Producer to invest in alternatives if a responsible end market does not exist for a particular covered material.

Subsection (a)(5)

The purpose of this subsection is to require a PRO or Independent Producer to notify CalRecycle when a study, pursuant to proposed section 18980.4.4(4), is being conducted and specify the date in which the study was initiated. This is necessary such that CalRecycle is aware that a study is being conducted. The exact is also necessary as it allows CalRecycle to verify if the study is being conducted within a 2-year period, as specified in proposed section 18980.4.4(a)(4)(A).

ARTICLE 5. REQUIREMENTS FOR PRODUCERS

§18980.5. PRODUCER COMPLIANCE

Subsection (a)

The purpose of this subsection is to make it clear that producers of covered material have two methods of complying with the requirements of the Act: joining a PRO or complying individually as Independent Producers. This is necessary to ensure that producers understand their options. This provision is necessary for completeness, and to provide context for the application for independent producer application process that follows.

With regards to applying to be an Independent Producer, the purpose is to ensure that the prospective applicants know where to find the information that will allow them to apply. Section 42051(b)(2) of the PRC creates the opportunity to comply individually but does not establish a process wherein a producer could understand how it could avail itself of this option. The rationale for this provision is that a producer that wishes to avail itself can be directed to the right process by the regulatory reference provided here.

Subsection (b)

The purpose of this subsection is to make it clear that entities that become producers of covered material have two methods of complying with the requirements of the Act within the time period specified in statute: joining a PRO or complying individually as Independent Producers. This is necessary to ensure that new producers understand their options. This provision is necessary for completeness, and to provide context for the application for Independent Producer application process that follows.

With regards to applying to be an Independent Producer, the purpose is to ensure that the prospective new producer applicants know where to find the information that will allow them to apply. Section 42051(b)(2) of the PRC creates the opportunity to comply individually but does not establish a process wherein a producer could understand how it could avail itself of this option. The rationale for this provision is that a producer that wishes to avail itself can be directed to the right process by the regulatory reference provided here.

Subsection (c)

The purpose of this provision is to explain to former PRO participants how to comply if they no longer participate with the PRO and by when that compliance must be achieved. This includes setting the date by which they must comply, directing them to the Independent Producer application process, and pointing out that a producer can also comply with the Act by no longer selling, offering for sale, importing, or distributing covered materials in the state.

In order to provide certainty to the producer and CalRecycle, to aid the enforcement of the Act by providing clarity as to when the producer is not compliant with the Act, and to ensure that the newly nonparticipating producer has adequate time to make an Independent Producer application, CalRecycle needs to provide a date from the occurrence of dismissal or voluntary dissolution by which the producer must select one of these compliance options. Six months is appropriate because it will provide sufficient time to organize an Independent Producer application or to conclude business activities

that it undertook in the past thinking that compliance would be administered by the PRO. A longer time, however, would frustrate the achievement of the Act's goals.

With regard to pointing out the Independent Producer application regulations, this is necessary to ensure that the prospective applicants know where to find the information that will allow them to apply. Section 42051(b)(2) of the PRC creates the opportunity to comply individually but does not establish a process wherein a producer could understand how it could avail itself of this option. The rationale for this provision is that a producer that wishes to avail itself can be directed to the right process by the regulatory reference provided here. Furthermore, it is important for newly nonparticipating producers that their application process is the same as other producers seeking to comply independently.

To ensure that newly non-participating producers know that their compliance options, it is necessary to tell them that they can seek to comply individually as an Independent Producer or must cease selling, offering for sale, importing, or distributing covered materials in the state.

§18980.5.1. APPLICATION FOR INDEPENDENT PRODUCER COMPLIANCE

Subsection (a)

One purpose of this subsection is to begin to specify the application process for Independent Producer compliance. Section 42051(b)(2) of the PRC creates the opportunity to comply individually and requires a determination from CalRecycle for a producer to be an individual producer, but statute does not establish a process for the producer's presentation of that information or CalRecycle's process for administering this provision. It is necessary for CalRecycle to fill in the details of this process; if CalRecycle did not do this, applicants would have no way of knowing how to seek CalRecycle's determination, nor would they know if they were authorized to comply independently or not. This is necessary to implement section 42051(b)(2) of the PRC and make clear the pathway for compliance with the Act as an Independent Producer.

Here, CalRecycle starts specifying the minimum information needed for an application by starting a list; the rationale for beginning this list is that this organizational method will be clearer to the producer as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components. This is established as a minimum list because there may be additional information not currently contemplated by CalRecycle that a producer can use to support its application.

Also, CalRecycle specifies that the submission of the application must be made electronically. The specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, and allows for easier distribution within

CalRecycle, thereby allowing the appropriate departmental personnel to review the documentation.

Another purpose is to make clear that applicants for Independent Producer status must be registered with CalRecycle and to direct them to the regulations that address registration. Registration information is used to maintain contact with the applicant during the application process and in the future after an application has been approved. Moreover, that registration process provides the producer with a means of accessing CalRecycle systems to engage in the application process; thus, it is necessary for CalRecycle to provide the citation for that registration section.

Subsection (a)(1)(A) through (a)(1)(E)

The purpose of these subsections is to obtain the contact information for the applicant. In order to come to a determination, CalRecycle may need to compare the producer's submission with other records that are available to it, and it will need this contact information to ensure that the information matches the producer. Furthermore, when CalRecycle approves an application, the true physical address of the applicant and the true legal entity name must be provided. If CalRecycle only had a fictitious business name or a PO box, it may prevent the certification from being an accurate and frustrating service of process. If CalRecycle did not have this information, governmental processes (e.g., potential enforcement actions and dialogue concerning plan development) would be hindered and the achievement of the Act's purposes would be frustrated. Furthermore, in order to remedy any defects in the application or to issue the approval, CalRecycle will need to contact the producer. In CalRecycle's experience with past EPR programs, CalRecycle has needed to reach producers by telephone, e-mail, and postal mail.

Subsection (a)(2)

This provision specifies that the applicant needs to identify the types of covered material it is selling, offering for sale, importing, or distributing in or into the state. CalRecycle's determination of whether individual compliance is appropriate or not hinges on the producer's satisfaction of the criteria found in Section 42051(b)(2) of the PRC; in order to know whether their covered material meets these criteria, CalRecycle needs to know the types of covered material the producer is offering for sale, importing, or distributing in or into the state.

Subsection (a)(3)

This provision specifies that the applicant needs to provide information that demonstrates compliance with the requirements of section 42051(b)(2)(A) of the PRC. Section 42051(b)(2)(A) establishes criteria that a producer must meet in order to function as an Independent Producer; CalRecycle's determination concerns whether the applicant meets these criteria. In order to reach its determination, CalRecycle needs to see the applicant's evidence that it satisfies these criteria. If CalRecycle does not obtain this information, it would be unable to make the informed determination with which it was tasked by the Legislature.

Subsection (b)

The purpose of this subsection is to specify that CalRecycle may approve or deny an application. In order for the applicant to know what to expect from CalRecycle's evaluation of their application, they need to know that the application will be approved and denied; this means that the application will not be conditionally approved or have any other resolution. This provision is necessary to ensure this clarity.

Subsection (c)

The purpose of this subsection is to specify that if an application for Independent Producer compliance has been denied that the producer must join a PRO within six months or cease selling, offering for sale, importing, or distributing covered materials in the state. This is necessary to specify the actions needed for a producer to maintain compliance with the Act should individual compliance not apply.

In order to provide certainty to the producer and CalRecycle, to aid the enforcement of the Act by providing clarity as to when the producer is not compliant with the Act, and to ensure that the newly nonparticipating producer has adequate time to make an Independent Producer application, CalRecycle needs to provide a date from the denial by which the producer must select one of these compliance options. Six months is appropriate because it will provide sufficient time to work with the PRO to gain membership or to conclude business activities that it undertook in the past thinking that they would be functioning as an Independent Producer. A longer time, however, would frustrate the achievement of the Act's goals.

In order to ensure that newly non-participating producers know their compliance options, it is necessary to tell them that they can seek to comply individually as an Independent Producer or must cease selling, offering for sale, importing, or distributing covered materials in the state.

Subsection (d)

The purpose of this subsection is to specify that once an application for Independent Producer compliance is approved, a producer shall comply with the requirements of this chapter as an Independent Producer. This is necessary to make clear the pathway for compliance with the Act and with the relevant regulations which apply to an Independent Producer as defined in proposed section 18980.1(a)(15).

§18980.5.2. EXEMPTIONS FOR SMALL PRODUCERS**Subsection (a)**

One purpose of this subsection is to begin to specify the application process for producers seeking a small producer exemption that would, upon approval, exclude that producer from all requirements of this chapter, except for Section 42050(b) of the PRC. In 42060(a)(5) of the PRC, the Legislature tasked CalRecycle with establishing an exemption process for small producers, small retailers, and small wholesalers based on size, revenue, number of retail locations, and market share. Implicitly, the Legislature tasked CalRecycle with verifying that the entity has gross sales of less than one million

dollars (\$1,000,000) in the state. Explicitly, the Legislature entrusted CalRecycle with determining whether exempting the entity would hinder the ability of type of covered material or covered material category from complying with the requirements of the Act. However, the Legislature did not provide a process for the task it gave CalRecycle; these provisions fill in necessary details.

Here, CalRecycle starts specifying the minimum information needed for an application by starting a list; the rationale for beginning this list is that this organizational method will be clearer to the producer as opposed to a more narrative paragraph. A producer will be able to go through the list and determine whether they have all the required components. This is established as a minimum list because there may be additional information not currently contemplated by CalRecycle that a producer can use to support its application.

Also, CalRecycle specifies that the submission of the application must be made electronically. The specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, and allows for easier distribution within CalRecycle, thereby allowing the appropriate departmental personnel to review the documentation.

Subsection (a)(1)(A) through (a)(1)(E)

The purpose of these subsections is to obtain the contact information for the applicant. In order to come to a determination, CalRecycle may need to compare the producer's submission with other records that are available to it, and it will need this contact information to ensure that the information matches the producer. Furthermore, when CalRecycle approves an application, the true physical address of the applicant and the true legal entity name must be provided. If CalRecycle only had a fictitious business name or a PO box, it may complicate internal departmental processes, including potential enforcement action against these entities (and especially in cases where an application is denied and those producers would need to join an approved PRO, comply individually as an Independent Producer, or cease selling, offering for sale, importing, or distributing covered materials in the state). Furthermore, in order to remedy any defects in the application or to issue the approval, CalRecycle will need to contact the producer. In CalRecycle's experience with past EPR programs, CalRecycle has needed to reach producers by telephone, e-mail, and postal mail.

Subsection (a)(2)

The purpose of this subsection is to obtain proof from the producer, for the most recent calendar year, that it had gross sales of less than one million dollars in the state. This information is necessary to fulfill the Legislature's goal of considering the exemption only for those producers who, in the most recent calendar year, had gross sales of less than one million dollars in the state. CalRecycle will not have this information unless a

producer provides it; in order for CalRecycle to evaluate whether a producer meets this criterion, it needs this information from the producer.

Subsection (a)(3)

The purpose of this provision is to obtain information from the producer about the nature of the producer's sales, distribution, or imports, including but not limited to storefront, internet website, or other online presence. The rationale for requiring this information is that CalRecycle needs to make a determination about whether the producer is under the in-state gross sales threshold; the number of physical locations and sales and distribution information, as well as the location of those outlets, are necessary context for evaluating the applicant's claims regarding in-state sales.

Subsection (a)(4)(A), (a)(4)(B), and (C)

The purpose of this subsection is to obtain information on the type of covered material and covered material categories the applicant sells, offers for sale, distributes, or imports: the covered material category, name, description, and quantity and weight sold. In order to make the determination required by the Legislature (whether exemption would hinder the ability of a type of covered material or covered material category from complying with the requirements of this chapter) CalRecycle needs to know the covered materials and covered material categories that would be affected by the exemption; moreover, in order to consider the effect of the exemption on whether covered materials or covered material categories will comply with the requirements of the Act, CalRecycle requires information about the quantity of materials that would be exempted. CalRecycle will use the information it in its determination for approving or denying an application.

Subsection (b)

The purpose of this subsection is to specify that CalRecycle will evaluate the application, the point at which the exemption is effective (date of approval), and how long the exemption is valid (one year).

For completeness and clarity, it is necessary to explain what CalRecycle will do (review and evaluate the application) and, using its discretion, determine whether exemption satisfies the statutory requirements. In 42060(a)(5) of the PRC, the Legislature directed CalRecycle to establish this exemption process. Implicitly, the Legislature tasked CalRecycle with verifying that the entity has gross sales of less than one million dollars (\$1,000,000) in the state. Explicitly, the Legislature entrusted CalRecycle with determining whether exempting the entity would hinder the ability of type of covered material or covered material category from complying with the requirements of the Act. In order to ensure that applicants understand the nature of CalRecycle's decision, it is necessary for CalRecycle's to draw attention to the discretionary tasking from the Legislature. Furthermore, it is necessary to make explicit what is implicit in the Act: that CalRecycle will review and consider the application. The rationale for stating this explicitly is to ensure that applicants know their requests will be considered.

In creating the exemption, the Legislature sought one year of data. The rationale for a one-year initial exemption term is that the exemption period will align well with the initial data request.

The rationale for making it effective on the date of approval is to ensure an approved application and issued exemption is valid for one full year before an applicant has to renew an exemption pursuant to the requirements of this section. This process is also consistent with other department processes (solid waste permitting, for example) where permit effective dates are established upon issuance by local enforcement agencies.

Subsection (c)

The purpose of this subsection is to establish a process for a small producer that has been issued an exemption pursuant to this section, to renew the exemption annually, and within a specified timeframe. In 42060(a)(5) of the PRC, the Legislature tasked CalRecycle with establishing an exemption process for small producers, small retailers, and small wholesalers based on size, revenue, number of retail locations, and market share. Given the Legislature's concern about whether an exemption would hinder the ability of type of covered material or covered material category from complying with the requirements of the Act, as well as the fact that producer activities and covered material category compliance can change over time, it is necessary to revisit the exemption periodically and consider whether they should expire or be extended. Given that statute did not provide a process, CalRecycle is filling in the necessary details.

Providing a specific process is necessary so that applicants have a reasonable opportunity to request an extension. Requiring the applicant to submit updated information pursuant to subsection (a)(1)(A) is necessary to determine on-going compliance with the requirements of this section and ensure the applicant maintains annual gross sales of less than one million dollars (\$1,000,000) to satisfy the required threshold specified in section 42060(a)(5)(A) and update, if applicable, any of the other information provided by the applicant since its previous application.

The rationale for submitting the information up to 90 days in advance of expiration is to ensure there is reasonable time for CalRecycle staff to review and evaluate the application and make a determination. Additionally, using the expiration date of the original exemption (as opposed to some other date) will avoid penalizing early submitters of information, who would ultimately have to report on a more frequent basis than annually if it were the date of approval being used.

In creating the exemption, the Legislature sought one year of data. The rationale for yearly extensions is that the data period for extensions will align well with the initial data request. Implicitly, the Legislature acknowledged that business circumstances can change significantly if a period of greater than one year is used; thus, the Legislature's intention is best realized by one-year extensions.

Subsection (d)

The purpose of this subsection is to specify that a producer that no longer has an approved exemption is subject to the requirements of the Act and the regulations adopted pursuant to it. This is necessary for completeness, specifically, to ensure producers that are no longer exempt know that they need to comply with applicable requirements.

ARTICLE 6. REQUIREMENTS FOR THE PRODUCER RESPONSIBILITY ORGANIZATION

§ 18980.6. GENERAL REQUIREMENTS

Subsection (a)

The purpose of this subsection is to specify the requirements for the PRO in reporting information to CalRecycle. Section 42051(d) of the PRC establishes circumstances wherein the PRO is required to notify CalRecycle that something has occurred. Here, CalRecycle uses a list; the rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components. Requiring this information is necessary for CalRecycle to implement and enforce section 42051(d) of the PRC effectively, including by ensuring that the PRO implements its plan.

Subsection (a)(1)

One purpose of this subsection is to further specify the information that the PRO is obligated to report when a producer under the PRO is non-compliant by introducing and giving context to the list that follows it. Section 42051(d)(3) of the PRC establishes that the PRO is required to notify CalRecycle of any instance of producer noncompliance, but it does not specify the specific information that the PRO is required to provide to CalRecycle. This provision is necessary to fill in the details and provide clarity to the PRO about the substance of the notification. Here, CalRecycle uses a list; the rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all the required components.

Another purpose of this subsection is to ensure that the PRO includes, in this report, instances of noncompliance that stem from an entity being a producer of non-compliant covered material. Section 42082 of the PRC requires CalRecycle to publish a list of noncompliant covered material categories by producer but does not direct how this information should be collected. CalRecycle is already receiving information regarding specific producers' noncompliance pursuant to section 42051(d) and that information can help CalRecycle to fulfill section 42082 of the PRC listing obligations. Being a producer of noncompliant covered material is one way of being noncompliant with the statute and requires PRO reporting even when it is not singled out; nevertheless, it is necessary for CalRecycle to explicitly identify this non-compliance as an important

subset of noncompliant activity so that the PRO will be sure to report it. Reporting of this information is necessary to receive producer-specific information that will help CalRecycle to populate the list required by section 42082 of the PRC.

Subsection (a)(1)(A)

The purpose of this provision is to ensure that the PRO transmits the name of the noncompliant producer to CalRecycle. In order to gain information that will allow CalRecycle to comply with the requirement under section 42082 of the PRC to publish a list of such producers, to pursue appropriate enforcement actions against noncompliant producers, to verify that the plan is being carried out in accord with section 42051.1(m)(1), (2), and (4) of the PRC (requiring that the plan contains adequate incentives for compliance, have protocols to make it aware of producer violations, and maintain records to demonstrate participant producer compliance) and to ensure that the PRO is maintaining its compliance, taking into account potential noncompliant activities of its participants, CalRecycle needs to know the name of the noncompliant producer.

Subsection (a)(1)(B)

The purpose of this subsection is to ensure that CalRecycle has adequate information to uniquely identify the product using non-compliant material. CalRecycle is seeking information that can identify the product, which includes information such as stock keeping units, and unique properties of the product, such as the material and dimensions of the product. In the enforcement context, it is necessary for CalRecycle to clearly identify the product in question; if CalRecycle cannot identify the violative product, it cannot pursue enforcement actions. In section 42081(a)(2) of the PRC, the Legislature decided that packaging size, material category, and package form were relevant to determining the number of violations; features like material, dimension, and form help to distinguish one product and package combination from others. Additionally, in CalRecycle's experience, stock keeping units and universal product codes are methods of distinguishing products which are conducive to the actual practice of industry. Finally, CalRecycle recognizes that there are circumstances wherein there is some other means of identifying a product not listed; thus, opportunity is left for the identification of such a feature.

To enforce the Act, it is necessary to identify the product that is at the root of the non-compliance. Furthermore, this product specific information is necessary to verify that the plan is being carried out in accord with 42051.1(m)(1), (2), and (4) of the PRC (requiring that the plan contains adequate incentives for compliance, have protocols to make it aware of producer violations, and maintain records to demonstrate participant producer compliance) and that the PRO is otherwise maintaining its compliance taking into account potential noncompliant activities of its participants,

Another reason for this subsection is to ensure that the PRO takes the appropriate steps to maintain its compliance taking into account potential noncompliant activities of

its participants. In order to ensure that the PRO responds and reports appropriately, CalRecycle needs to know what the product underlying the noncompliance is.

Subsection (a)(1)(C)

The purpose of this provision is for the PRO to identify to CalRecycle the covered material and covered material category associated with the noncompliant producer and product. The rationale for this provision is that compliance determinations involve understanding the type of covered material being used in the package as well as the product being packaged. Subdivision (a)(1)(b) will provide CalRecycle with details related to the product being packaged, which will assist CalRecycle in determining how the statute applies. This subdivision will assist CalRecycle in applying the appropriate recycling rate data and package-specific requirements, such as source reduction requirements, which are applicable for plastic covered material only.

Subsection (a)(1)(D)

The purpose of this provision is to identify the effects of PRO-identified producer non-compliance on the PRO's implementation and ability to implement the Act, including how the PRO's approved plan is affected. The rationale for this provision is that producer non-compliance can affect the PRO's ability to implement the Act; in order to accomplish its task in subsection (a)(1)(E) (discussed below), the PRO needs to be able to articulate the adverse effects it needs to offset.

Subsection (a)(1)(E)

The purpose of this subsection is for the PRO to identify for CalRecycle the actions it has taken or will take to ensure compliance with this chapter. This information is necessary to ensure that the PRO's plan is being carried out in accord with 42051.1(m)(1), (2), and (4) of the PRC (requiring that the plan contains adequate incentives for compliance).

An additional reason for this provision is that the noncompliance of participant producers can affect the PRO's own compliance and the PRO's ability to accomplish the goals of the Act; if a participant producer is not complying, the PRO may need to take additional actions to accomplish the goals of the Act. It is necessary for the PRO to report this information to CalRecycle so that CalRecycle can verify that the PRO is accomplishing the goals of the Act.

Subsection (a)(2)

The purpose of this subsection is to specify the information the PRO must provide pursuant to section 42051(d) of the PRC, when a producer no longer participates in the PRO plan, including producers no longer in compliance because they are a producer of non-compliant material. This is necessary to ensure the implementation of the plan.

Section 42051(d)(3) of the PRC establishes that the PRO is required to notify CalRecycle of this occurrence, but it does not specify the information that the PRO is required to provide to CalRecycle. This provision is necessary to provide clarity to the

PRO about the substance of the notification. Here, CalRecycle uses a list; the rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components.

Another purpose of this subsection is to ensure that the PRO includes, in this report, instances of producer nonparticipation due to noncompliance that stems from an entity being a producer of non-compliant covered material. Section 42082 of the PRC requires CalRecycle to publish a list of non-compliant covered material categories by producer but does not direct how this information should be collected. Being a producer of noncompliant covered material may result in dismissal from a PRO plan, it is necessary to explicitly identify this non-compliance as an important subset of non-participation so that the PRO will be sure to report it. Reporting of this information is necessary in order to receive producer specific information that will allow it to populate the list required by section 42082 of the PRC.

Subsection (a)(2)(A)

One purpose of this provision is to ensure that the PRO transmits the name of the newly nonparticipating producer to CalRecycle. Unless the PRO notifies CalRecycle, CalRecycle will be under the impression that the producer is a member of the PRO. If CalRecycle thinks the producer is participating when it is not, the PRO might be held responsible erroneously for failure to report on the producer's behalf; moreover, CalRecycle will not know that it needs to be looking to the producer for individual compliance. This provision is necessary to know who is participating and who is not.

Another purpose of this subsection is to ensure that CalRecycle has adequate information to uniquely identify the products of the newly nonparticipating producer. CalRecycle is seeking information that can identify the product, which includes information such as stock keeping units, and unique properties of the product, such as the material and dimensions of the product. To enforce the Act and verify producer and PRO compliance, it is necessary for CalRecycle to clearly identify the product in question. In section 42081(a)(2) of the PRC, the Legislature decided that packaging size, material category, and package form were relevant to determining the number of violations; features like material, dimension, and form help to distinguish one product and package combination from others. Additionally, in CalRecycle's experience, stock keeping units and universal product codes are methods of distinguishing products which are conducive to the actual practice of industry. Finally, CalRecycle recognizes that there are circumstances wherein there is some other means of identifying a product not listed; thus, opportunity is left for the identification of such a feature. Unless the PRO notifies CalRecycle, CalRecycle will be under the impression that the product's compliance is administered by the PRO. If CalRecycle thinks the producer is participating when it is not, the PRO might be held responsible erroneously; moreover, CalRecycle will not know that it needs to be looking to the producer for individual compliance related to that product.

Another purpose of this provision is for the PRO to identify to CalRecycle the covered material and covered material category associated with the newly nonparticipating producer. The rationale for this provision is that compliance determinations involve understanding the type of covered material being used in the package as well as the product being packaged. This information will provide CalRecycle with details related to the product being packaged, which will assist CalRecycle in determining how the statute applies. This subdivision will assist CalRecycle in applying the appropriate recycling rate data and package-specific requirements, such as source reduction requirements, which are applicable for plastic covered material only.

The PRO may need to revisit its fee structure if the producer does not participate and knowing the covered material that is no longer part of that program will assist the PRO to that end. Another reason is that some non-participation may be related to non-compliance; compliance determinations involve understanding the type of covered material being used in the package as well as the product being packaged.

Subsection (a)(2)(B)

One purpose of this subsection is to further specify the information that the PRO is obligated to report when a producer no longer participates in the PRO's plan. Section 42051(d)(3) of the PRC establishes that the PRO is required to notify CalRecycle of this occurrence, but it does not specify the information that the PRO is required to provide to CalRecycle. This provision is necessary to provide clarity to the PRO about the substance of the notification. Here, CalRecycle fills in the details of this notification by making it clear that the PRO should explain the producer's reason for new non-participation; the rationale for this provision is that CalRecycle's response to the fact of non-participation will depend on the reason for non-participation. If a producer does not participate by virtue of being dismissed by the PRO for noncompliance, CalRecycle will need this information for enforcement purposes and section 42082 of the PRC listing; if a producer leaves due to some fault of the PRO, CalRecycle will need this information to ensure that the PRO fulfills its obligations under the Act.

Without the information, CalRecycle cannot effectively enforce the Act because its enforcement duties include assessment of the PRO's implementation of its plan and the effectiveness of various aspects of the plan, including its application of criteria required pursuant to section 42051.1(m)(3) of the PRC for when the PRO will terminate producers' participation. Where non-participation is caused by the PRO's termination of the producer's participation, CalRecycle needs to be able to verify that the PRO followed the plan elements that implement section 42051.1(m)(3) of the PRC.

Subsection (a)(2)(C)

One purpose of this subsection is to further specify the information that the PRO is obligated to report when a producer no longer participates in the PRO's plan. Section 42051(d)(3) of the PRC establishes that the PRO is required to notify CalRecycle of this occurrence, but it does not specify the information that the PRO is required to provide to CalRecycle. This provision is necessary to provide clarity to the PRO about the

substance of the notification. Here, CalRecycle fills in the details of this notification by making it clear that the PRO should provide reasons for dismissal along with any supporting documentation if the producer was dismissed by the PRO.

Without the information, CalRecycle cannot effectively enforce the Act because its enforcement duties include assessment of the PRO's implementation of its plan and the effectiveness of various aspects of the plan, including its application of criteria required pursuant to section 42051.1(m)(3) of the PRC for when the PRO will terminate producers' participation. Where non-participation is caused by the PRO's termination of the producer's participation, CalRecycle needs to be able to verify that the PRO followed the plan elements that implement section 42051.1(m)(3) of the PRC; the information and documentation sought in this provision is necessary toward his end.

Subsection (a)(2)(D)

The purpose of this subsection is to specify the PRO-identified producer's requirements in reporting data for the repercussions of the producer's non-compliance or non-participation on the implementation and plan's progression. This information will be necessary to allow CalRecycle to obtain data for the effects of non-compliance and non-participation, in the case that the PRO deems the PRO-identified producer has been non-compliant due to having non-compliant covered material or issues arising with the PRO-identified producer not reporting data to CalRecycle. This provision is necessary to capture the effects of non-compliance and non-participation on the PRO's fee schedule.

§ 18980.6.1. PRODUCER RESPONSIBILITY PLAN SUBMISSION

The purpose of this section is to establish a process for submitting producer responsibility plans to CalRecycle. Statute provides some elements of process but does not provide all the mechanics necessary to submit a plan, thus CalRecycle must fill in the details by providing those mechanics.

Subsection (a)

The purpose of this subsection is to specify that PROs are required to prepare and submit a plan for CalRecycle to review and approve as specified in section 42051.2 of the PRC. The information is necessary context for the submission date this provision provides to the initial PRO.

Additionally, the purpose of this subsection is to specify that April 1, 2026, is the date by which the initial PRO is required to submit their producer responsibility plan pursuant to section 42051.25 This is necessary because the implied compliance date for producers to join an approved PRO is upon approval of a producer responsibility plan (plan) or commencing January 1, 2027, whichever is sooner, as specified in section 42051 of the PRC. To meet this date, CalRecycle has determined April 1, 2026, will allow sufficient allotted time for the Advisory Board and CalRecycle to review, respond, and for the PRO to make necessary revisions to the plan to be approved by CalRecycle. This date will allow 60 calendar days for the Advisory Board to review and respond, 90 calendar days

for CalRecycle to review and respond, and an additional 30 calendar days for any further revisions.

Subsection (b)

The purpose of this subsection is to specify that any successor and additional PROs approved by CalRecycle will be required to prepare and submit a plan for review and approval. This subsection is necessary to ensure that the successor or additional PRO understands the process for submitting its plan. Unlike the initial PRO, whose plan must be submitted on a date certain, there is no identifiable calendar date for a successor PRO to submit its plan. The circumstances requiring a successor PRO have not yet come to pass and the decision to allow additional PRO's is a discretionary one that can only be exercised in the future, thus a separate provision for these types of PROs is needed. The rationale for six months is to allow reasonable time for a PRO to prepare a plan pursuant to section 42051.1 of the PRC to submit to the Advisory Board and CalRecycle for review. Any less time may be overly burdensome to a PRO and any more time would lead to potential delays in the PRO implementing the plan and the requirements of the Act based on review timelines, time for revision, and CalRecycle approval.

Subsection (c)

In furtherance of the section's purpose of explaining to the PRO how it should submit its proposed plan, the purpose of this subsection is to point the PRO to the regulatory requirements that pertain to the PRO's producer responsibility plan and are thus relevant to the contents of a plan submission, that is, proposed in sections 18980.8 and 18980.8.1 and to specify that CalRecycle will not approve a plan that does not meet these requirements. This provision is necessary to facilitate the PRO's ability to find the appropriate requirements for a submittable plan; if the PRO does not know where to find the requirements, it will not be able to draft a plan which should be submitted or that could be approved by CalRecycle.

Subsection (d)

The purpose of this subsection is to specify that the PRO must make the producer responsibility plan publicly available for comment on a website after submitting the plan to the advisory board. Section 42051.2 of the PRC anticipates that there will be comments from the public on the proposed plan but does not specify how the public will be aware of the contents of the plan. The rationale for this provision is that the public will be able to see the plan if it is posted on the PRO's internet website. In the Act, the Legislature endorsed the posting of other documents on the PRO's internet website to ensure that the public is aware of the PRO's actions; posting of this proposed plan will be just as accessible to the public. Additionally, CalRecycle received feedback from interested parties during the informal rulemaking process in March 2023 and July 2023 when presenting concepts on the PRO and producer responsibility plan requirements; these parties were in favor of creating opportunities for public input in general and, in particular, public involvement and awareness in the development of plans, plan updates and plan amendments. This provision is responsive to that feedback.

Subsection (e)

One purpose of this subsection is to specify what the PRO will submit to CalRecycle once the PRO receives public and advisory board comments: PRO will prepare a revised plan, a summary of comments from the advisory board and from members of the public, public comments responses, and any other steps taken by the PRO relative to these comments, including amendments that the PRO made in response to the comments. Pursuant to section 42051.2(a) of the PRC, the PRO is obligated to consider the comments of these entities; in order to verify that this was done, CalRecycle needs to know the content of the comments (in summary format), the response to comment, and the changes made as a result of these comments.

This section also requires the plan to be made available for public review by posting the revised proposal on a website prior to an approved plan. This provision makes clear that this is the minimum requirement, and that a PRO can do more to make the revised proposal available to the public. This provision is responsive to requests made by members of the public in the informal workshops to foster public involvement and transparency in the plan development process and is necessary to promote transparency of PRO activities with the regulated public and the public at large. Without this provision, the public would not be able to learn, prior to finalization, what the PRO did as a result of its comments, nor would it know, prior to finalization, what changes resulted from the review of the advisory board. In the Act, the Legislature endorsed the posting of other documents on the PRO's internet website to ensure that the public is aware of the PRO's actions; posting of this revised and proposed plan will be just as accessible to the public.

§ 18980.6.2 PRODUCER RESPONSIBILITY PLAN APPROVAL

Subsection (a) and subsections (a)(1) through (a)(2)

The purpose of these subsections is to develop a process for revising a PRO plan when the PRO plan is conditionally approved. Pursuant to section 42051.2(b)(3) of the PRC, the PRO is responsible for resubmitting a revised plan on the appropriate date if a plan is only conditionally approved; however, the Act does not specify the intermediate steps that will need to be taken to ensure that the revised plan can be completed by the deadline or to ensure that appropriate coordination between the PRO and CalRecycle occurs. In this provision, CalRecycle fills in these details by obtaining, at appropriate intervals, an estimated date of resubmittal from the PRO and status updates that demonstrate how the PRO is addressing each condition specified by CalRecycle.

In CalRecycle's experience with other EPR programs, the conditional approval process needs condition-specific updates and the PRO's realistic evaluation of the time it will take to complete the work if the Act's requirements are to be met by the statutory deadline. Furthermore, these estimates and updates need to be provided over the course of the PRO's work. If the PRO did not estimate how long it would take to resubmit the plan to CalRecycle, the burden of establishing a timeline would fall on CalRecycle and the PRO may not find that timeline reasonable, causing unnecessary back-and-forth. The periodic estimates of a timeline are necessary for CalRecycle to

gauge the PRO's likelihood of providing an approving plan at a date certain. This will also facilitate implementation of the revised plan. If the PRO did not provide condition-specific updates, the PRO's resubmittal might fail to address those conditions, leaving the PRO and CalRecycle with a plan that cannot be approved. Furthermore, these estimates and updates need to be provided over the course of the PRO's work.

If CalRecycle did not provide a time for the estimate and report to be provided, neither CalRecycle nor the PRO would know when the report should be made. The last day of each following month is a reasonable time because it provides for monthly reporting that gives the PRO the maximal time in a month to make the report. If the interval were set shorter, it would likely prove too burdensome to the PRO; if it were longer, CalRecycle might not be able to identify problems until it was too late to remedy the defect.

Additionally, this is necessary because statute does not define a process when PRO plans are conditionally met, and CalRecycle is required to implement section 42051.2 of the PRC.

Subsection (b)

The purpose of this subsection is to make the meaning of conditional approval clearer. Specifically, this provision makes clear that conditional approval is a preliminary determination that certain elements of the plan do not meet applicable requirements but that, if certain conditions are met, final approval will be warranted. Such conditions may include, without limitation, clarification to remove ambiguities or addition of information or data demonstrating that requirements have been met. The Act uses the term "conditional approval" but does not explicitly define it, thus CalRecycle needs to fill in the details of conditional approval if CalRecycle and the PRO are to be able to differentiate between conditional approval and final approval of PRO plans and to identify when the additional requirements that pertain to conditionally approved plans are triggered. If CalRecycle did not define conditional approval, the PRO might believe that such approval was a final determination. The rationale for the definition provided here is that an unprovable plan could not be improved by the satisfaction of conditions, and an approvable plan already meets those conditions. The non-exclusive examples are based on CalRecycle's experience in other EPR programs and are needed to help the PRO and CalRecycle to identify typical defects in conditionally approvable submissions, but it is also necessary not to make the list exclusive because there may be other defects that prevent final approval but do not require disapproval.

Subsection (c)

The purpose of this subsection is to make specific that the expiration date for an approved plan is five years from the date of approval by CalRecycle. Section 42051.2(d) of the PRC specifies that an approved plan has a lifespan of five years but does not explicitly state when this five-year period begins and ends. In order for the PRO to understand when its plan will expire and when it needs to submit a proposed updated plan, it is necessary for the PRO to know when a five-year timeline starts or expires. The rationale for selecting the approval date as the date from which the five-year period

begins is that this date will be memorialized by CalRecycle on paperwork and in its electronic files, making it accessible to CalRecycle. Moreover, the date will also be prominently communicated to the PRO, making it well known and useful for the PRO.

§ 18980.6.3 REVIEW OF UPDATED PRODUCER RESPONSIBILITY PLAN

Subsection (a)

The purpose of this subsection is to make specific when a PRO is required to submit updated plans for review by the advisory board; this provision requires the proposed update to be provided to the advisory board at least one year in advance of expiration.

Section 42051.2 (d)(2) of the PRC prohibits the submission of a revised plan less than 180 calendar days prior to expiration but does not bar CalRecycle from requiring even earlier submission. By setting an expiration date, giving CalRecycle the discretion not to extend a previously approved plan, and requiring submission of an update proposal to the advisory board prior to the expiration date, the Legislature demonstrated its belief in the value of having an up-to-date plan, its concerns about having a plan that is over five years old, and the need for time to evaluate and process an updated plan proposal.

In CalRecycle's experience with EPR programs, one year is the minimum amount of time in which a plan update can have a reasonable chance of being processed, modified, and approved prior to the expiration of the previous plan. In order to avoid the lapsing of one plan without an approved and up-to-date plan being able to take its place seamlessly, this provision is necessary.

Subsection (b)

The purpose of this subsection is to reference the regulatory and statutory expectations of plan approval when updating the PRO plan. This is necessary for completeness; if the PRO does not have the requirements explicitly provided by the Legislature in statute and the regulatory provisions that fill in the details of those statutory provisions, the PRO will be unable to update its plan in a way that will allow it to be approved by CalRecycle.

Subsection (c)

The purpose of this subsection is to establish the endpoint of the advisory board comment period for the proposed updated PRO plan as "no later than" 60 calendar days after the PRO's submission of the proposed update to the advisory board. The Act establishes a timeline for the advisory board's consideration of an initial proposal (60 calendar days pursuant to section 42070(h) of the PRC) but does not explicitly address a timeframe for the advisory board's consideration of the update. This provision is needed to make clear that section 42070(h) of the PRC applies to updated plans just as it applies to initial plans, and that the comment period for the advisory board is the same in both instances.

Another purpose of this subsection is to specify that the PRO must make the proposed updated producer responsibility plan publicly available for comment on a website after

submitting the plan to the Advisory Board. Section 42051.2 of the PRC anticipates that there will be comments from the public on the proposed initial plan but did not specify how the public will be aware of the contents of the plan; CalRecycle provided a public posting responsibility under the rationale that the public will be able to see the plan if it is posted on the PRO's internet website. In order to make clear that the same public comment provisions of section 42051.2 of the PRC apply, and that the means for providing the document to the public is the same, CalRecycle needed to include this provision.

Subsection (d)

One purpose of this subsection is to specify what the PRO will submit to CalRecycle once the PRO receives public and advisory board comment: the PRO will prepare a revised plan, a summary of comments from the advisory board and from members of the public, public comments responses, and any other steps taken by the PRO relative to these comments, including amendments that the PRO made in response to the comments. Pursuant to section 42051.2(a) of the PRC, the PRO is obligated to consider the comments of these entities; to verify that this was done, CalRecycle needs to know the content of the comments (in summary format), the response to comment, and the changes made as a result of these comments.

Another purpose is to make clear the timeline for PRO submission to CalRecycle. (120 days). Section 42051.2(b)(1) of the PRC establishes this timeline for plans but does not make clear that the timeline applies to updated plans. In order to make it clear that updated plans are reviewed and processed in the way required by 42051.2(b)(1) of the PRC, this provision is necessary.

This section also requires the plan to be made available for public review by posting the revised proposal on a website prior to an approved plan. This provision makes clear that this is the minimum requirement, and that a PRO can do more to make the revised proposal available to the public. This provision is necessary to promote transparency of PRO activities with the regulated public and the public at large. Without this provision, the public would not be able to learn, prior to finalization, what the PRO did as a result of its comments, nor would it know, prior to finalization, what changes resulted from the review of the advisory board. In the Act, the Legislature endorsed the posting of other documents on the PRO's internet website to ensure that the public is aware of the PRO's actions; posting of this revised and proposed plan will be just as accessible to the public.

Subsection (e)

The purpose of this subsection is to make specific that the expiration date for an approved revised plan is five years from the date of approval by CalRecycle. Section 42051.2(d)(1) of the PRC specifies that an approved updated plan has a lifespan of five years but does not explicitly state when the five-year period begins and ends. The rationale for selecting the approval date as the date from which the five-year period

begins is that this date will be memorialized by CalRecycle. Moreover, the date will also be prominently communicated to the PRO, making it easily accessible to the PRO.

Subsection (f)

The purpose of this subsection is to make specific when updated and approved PRO plans are to be made publicly available on the PRO website: within 5 calendar days of Department approval. In order for producers and others to implement an approved and updated plan, they have to be able to see the update. In order for the public and producers to see the approved, updated amended plan and ensure that their actions are consonant with it, the plan needs to be available. Since the Legislature has required in the Act that approved plans be posted to the PRO's website, those entities will know to look for the updated plan there. The rationale for choosing five days is that the PRO needs time, but only a small amount of it, to receive the approved plan from CalRecycle and post it to their website. A shorter period of time might be too onerous, while a longer period of time would ignore that the PRO already has an established internet platform to which it can easily add the document and leave producers unaware of the updated plan.

§ 18980.6.4 PRODUCER RESPONSIBILITY PLAN AMENDMENTS

Subsection (a)

The purpose of this subsection is to establish the applicable timeline for proposed amendments that modify a PRO plan in any of the ways identified in section 42051.2(e)(1) of the PRC. This is necessary because section 42051.2(e)(1) of the PRC requires that such amendment first be submitted to the advisory board for review and comment, but it does not set forth the specific timeline for that process. Section 42051.2(d) of the PRC, regarding mandatory updates of plans before they expire, is similar, in that it also requires the advisory board review and comment process without specifying the applicable timeline. In contrast to those specific circumstances, section 42051.2(a) of the PRC does set forth a specific period (90 calendar days) for the advisory board's opportunity to review and comment before CalRecycle considers a plan. Taking section 42051.2 of the PRC as a whole, the only reasonable interpretation is that the timeline set forth in section 42051.2(a) of the PRC applies generally to plan changes that must be submitted to the advisory board.

Subsection (b)

The purpose of this subsection is to make specific PRO plan amendment requirements for the PRO to include a summary of comments received by the advisory board and the steps taken by the PRO relative to plan revisions. Section 42050 of the PRC requires the PRO to provide the proposed amendment to the advisory board for comment and to seek approval from CalRecycle, but it does not specify how CalRecycle will become aware of the Advisory Board's comments or the response to those comments. This provision is necessary to fill in the details not addressed by statute and to ensure that CalRecycle has the benefit of the Advisory Board's consideration of the plan amendment.

Subsection (c)

The purpose of this subsection is to make clear when an amended plan expires. The Act anticipates that the plans may be amended but does not explicitly discuss what amendment does to the expiration date of the plan. This provision fills in that missing detail by providing that the original expiration date remains in effect. The rationale for retaining the plan's original expiration date is that doing so ensures that unamended plan features receive periodic review no later than the time anticipated by the Legislature; moreover, it is a date already well known to the Independent Producers and CalRecycle.

Subsection (d)

The purpose of this subsection is to make specific when amended and approved PRO plans are to be made available on the PRO website: within 5 calendar days of Department approval. In order for the public and producers to see the approved, amended plan and ensure that their actions are consonant with it, the plan needs to be available. Since the Legislature has required in the act that approved plans be posted to the PRO's website, those entities will know to look for the amended plan there. The rationale for choosing five days is that the PRO needs time, but only a small amount of it, to receive the approved plan from CalRecycle and post it to their website. A shorter period of time might be too onerous, while a longer period of time would leave producers and others ill-prepared to successfully implement the amendments.

§ 18980.6.5 ANNUAL REPORT AND PROGRAM BUDGET**Subsection (a)**

The purpose of this subsection is to make specific the due date of the PRO annual report and budget by April 1 of each year. Section 42051.3 of the PRC requires the submission of an annual report and budget but does not specify a time. In order to provide certainty to the PRO and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the PRO is in breach of its obligations under the Act, CalRecycle needs to provide a due date for submission. April 1 was selected because CalRecycle needed to establish a deadline to submit the annual report and budget, and April 1 is consistent with the initial due date of the PRO plan under section 18980.6.1(a) of these proposed regulations and the data reporting deadline, as specified in 18980.10.1(b) of these proposed regulations. This is necessary because it implements section 42051.3 of the PRC, and doing so requires CalRecycle to adopt regulations.

Subsection (b)

The purpose of this subsection is to clarify that the PRO is required to make the submitted, but not yet approved, annual report and budget publicly available on the PRO website until it is replaced with the approved report and budget. Section 42051.3 of the PRC requires the PRO to submit its annual report and budget and make it publicly available on its website but does not explicitly say whether this applies to the submitted report and budget and the approved report and budget, or just the submitted report and budget, or, alternatively, to the approved report and budget. In order to

ensure that the PRO knows what to post, CalRecycle needs to fill in this detail and specify that the posting requirement applies both to the submitted and approved. The PRO needs to publish to the submitted report and budget and the approved report and budget to create transparency between the PRO, public, and advisory board and because showing the submitted report and budget and approved report and budget plan illustrates how the PRO is implementing the approved plan. Moreover, this is necessary to maintain consistency with the posting requirements of other EPR programs.

Subsection (c)

The purpose of this subsection is to reference the annual report and budgetary requirements of proposed section 18980.9. This is necessary for completeness; this subsection concerns the process of submitting and needs to acknowledge the substance that will make for an approvable submittal. If the PRO is unable to find the relevant substantive requirements, it will be unable to provide an approvable report.

Subsection (d)

The purpose of this subsection is to specify that PRO annual reports and budgets must be published on the PRO website within 5 calendar days of Department approval. In order to provide certainty to the PRO and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the PRO is in breach of its obligations under the Act, CalRecycle needs to provide a date for posting. The rationale for selecting five calendar days is that the PRO needs time, but only a small amount of it, to publish a document to their website. In CalRecycle's experience, more than five days is not necessary to accomplish this task.

§ 18980.6.6. DOCUMENT SUBMITTALS

Subsection (a)

The purpose of this subsection is to specify the procedures and criteria for when the PRO submits documents to CalRecycle. This applies to PRO submissions (*i.e.*, the producer responsibility plan, updated producer responsibility plan, plan amendments, initial program budget, annual report, and other associated documents) given to CalRecycle. This provision is necessary to provide clarity about electronic submission, date of receipt, the public nature of the documents, the meaning of completeness and correctness, and the submission under penalty of perjury, each addressed in the subsections that follow as a list. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components.

Subsection (a)(1)

One purpose of this subsection is to specify that documents submitted to CalRecycle must be submitted electronically. This is necessary to meet the contemporary standards of submitting documents and establish a consistent format of submission. Moreover, the specification of electronic submission is necessary because it provides instantaneous

transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, allows for the appropriate departmental personnel to review the documentation, provides consistency with other internal processes of CalRecycle, and minimizes the cost and time burden associated with mailing.

Another purpose is to specify the date of receipt for an electronic submittal. The purpose of this subsection is to make specific when receipt occurs. In order to provide certainty to the PRO and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the PRO is in breach of its obligations under the Act, CalRecycle needs to provide a date for receiving the PRO's electronic submission. Because electronic transmissions are nearly instantaneous, it is reasonable to assume that an electronic transmission is received on the same day it is submitted.

Subsection (a)(2)

The purpose of this subsection is to explain that the California Public Records Act (Division 10 of Title 1 of the Government Code) applies to plans submitted to CalRecycle, subject to exemptions that may apply, and to direct parties to section 18980.15, which addresses the Public Records Act in greater detail, including with respect to trade secret protections. This is necessary because, while the Public Records Act applies regardless of this regulation, parties may not understand how that law applies or how to identify records they claim to be exempt from its mandatory disclosure provisions.

This subsection also establishes how CalRecycle will implement the exemption from the mandatory disclosure requirements of the Public Records Act provided in section 42051.2(b)(5) of the PRC, which exempts "financial, production, or sales data" contained in PRO plans. The exemption does not apply to information in summary form that cannot be attributed to specific entities. Therefore, this subsection requires that portions of PRO plans that the PRO claims contain such information must specifically be identified, and that a cover letter is submitted along with the plan setting for the basis for all such claims. These requirements are necessary because CalRecycle might not know the full scope of what the PRO claims to constitute financial, production, or sales data that can be attributable to specific entities. Moreover, it is necessary that these provisions apply to all plan submissions, not just the approved plan. Although section 42051.2(b)(5) expressly refers only to the approved plan, the Public Records Act exemption itself logically must apply generally to all plans submitted to CalRecycle, or else the exemption would be effectively meaningless.

Subsection (a)(3)

The purpose of this section is to require that all documents subject to section 18980.6.6 are complete and correct. In order for CalRecycle to rely on the reports and documentation provided by the PRO, it needs to be able to trust that the documents are complete and correct. If the reports and other documents are incomplete, CalRecycle

will lack important information. Moreover, section 42051.3(b)(2) of the PRC explicitly requires completeness for annual reports. Given that the Act does not specify the meaning of this term, it is necessary for CalRecycle to make it clear. If the reports and other documents are incorrect, CalRecycle will believe it has accurate information when that information is actually incorrect. Completeness and correctness requirements are often used in CalRecycle regulatory and EPR programs (see, e.g., 27 CCR, section 21563); it is used here to maintain consistency with those programs.

Another purpose of this subsection is to introduce the criteria for what CalRecycle defines as a complete and correct document submittal. This is necessary to ensure that the PRO can find the definitions of completeness and correctness that follow.

Subsection (a)(3)(A)

The purpose of this subsection is to specify that a document is complete if it contains provisions intended to meet all requirements in proposed sections 18980.6.1, 18980.6.3, 18980.6.4, and 18980.6.5 (as applicable to each document) and if it contains sufficient detail for CalRecycle to determine if the requirements in the referenced sections have been met. The rationale for requiring completeness is that CalRecycle will be unable to approve an incomplete document. The rationale for why completeness was defined this way is set forth herein. With regard to subsections 18980.6.1, 18980.6.3, and 18980.6.5, these are the appropriate sections because they contain reference to the relevant statutory provisions, cross-reference applicable regulations, and identify supporting documents. With regard to subsection 18980.6.4, which addresses plan amendments, it is implicit in that regulation that the process must yield a document that is sufficient for CalRecycle to yield a determination; because it cannot anticipate the type or subject of an amendment to specify a form, there is no better location but this procedural section to address completeness for a plan amendment.

Subsection (a)(3)(B)

The purpose of this subsection is to specify that a document is correct if all information provided is accurate, exact, and is certified as directed in the following subsection (“I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge.”). In order to help the PRO to understand the standard by which a document is approved or disapproved; it needs to know what the CalRecycle means correctly. The rationale for requiring it to be accurate is that, in order to be correct, something should be free from error as a result of the exercise of due care, which is what accuracy entails. The rationale for requiring the information to be exact is that the PRO needs to explain facts with precision in order for the information to be reliable; if the information does not reflect the requisite precision, CalRecycle will be unable to ascertain that the goals of the Act will be met. Additionally, CalRecycle, in other existing adopted regulations, such as other EPR programs or solid waste regulations under 27 CCR, section 21563(d)(2), specifies what is considered

“correct” for the purpose of approving or denying certain documents using a similar formulation; this provision is intended to follow in that practice and approach.

Subsection (a)(4)

One purpose of this subsection is to require that all documents subject to section 18980.6.6 are signed. This provision is necessary to ensure that a person in the PRO takes responsibility for the truthfulness and correctness of the document. A signature is appropriate to this end because it is a recognized individual and personalized mark. Without signature required, the PRO might submit an incorrect or untruthful submission because no individual can be held directly accountable for the untruthfulness or incorrectness.

Another purpose of this subsection is to specify that to which the person signing the document is attesting. Specifically, the signatory must sign:

“I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge.”

The rationale for this is to replicate the requirement from other EPR regulations that solicit a certification statement for document submittals, as specified in 14 CCR, Section 18973(e).

Another purpose is to make clearer who can sign the document. The signature must be from a party, with signatory authority, who is responsible for the contents of the document. The individual needs to be someone empowered by the PRO to make the claims about the truthfulness and correctness of the document, thus it is necessary for the person signing it to have signatory authority. In order for someone to attest that the document is true and correct, they need to be responsible for the contents of the document. If the person is not responsible for the contents of the document, it is unlikely that they will have sufficient knowledge that would make their statement about its truthfulness and correctness valuable.

§18980.6.7 ECO-MODULATED FEE AND FEE SCHEDULE

Subsection (a)

The purpose of this subsection is to specify and clarify that prior to the approval of a PRO’s plan, a PRO shall charge participant producers a fee based on a series of items specified in section 42053(b) of the PRC. The items are listed in subsections (a)(1) through (a)(5) of this subsection. This is necessary to clarify the timeline specified in statute, which is unclear on its face. Section 42053(b) of the PRC includes an ambiguous timeline, stating “during the first two years of operation and during the preparation of the plan” and does not factor in situations where multiple PROs may be approved. CalRecycle anticipates the preparation of the plan by the initial PRO will take longer than two years and that during that period, the initial PRO shall charge participants fees based on the factors specified in this subsection, which are subject to change over time

Subsection (a)(1) through (a)(5)

The purpose of these subsections is to list the items on which the PRO must base its fee schedule during plan preparation and the first two years of operation. The items are expressly required by statute and are set forth here to provide the full statutory context for this section clearly and completely.

Subsection (b)

The purpose of this subsection is to specify that after a PRO's plan is approved, the PRO shall charge all participants fees that are eco-modulated as described in their plan. Furthermore, the section completes and clarifies that the PRO needs to account for the costs necessary to ensure that each covered material and covered material category meets the requirements of the chapter, which includes the requirement that accounting of costs takes into account the minimization of environmental and public health impacts, as required by section 42053(d)(1)(D) of the Act, along the entire supply chain of covered materials and covered material categories. It is necessary for the entire supply chain to be considered because it ensures that as a covered material proceeds through all collection, processing, recycling, and remanufacturing steps that the minimization of environmental and public health impacts is considered, which ensures fees accurately account for the costs of each covered material. This is necessary to clarify that any fees for participants charged by a PRO address the entire supply chain and are eco-modulated once the PRO's plan is approved consistent with the Act.

Subsection (c)

The purpose of this subsection is to specify that if a PRO charges a special assessment, pursuant to section 42053(f) of the PRC, a PRO is to include the special assessment in the fee schedule. This is necessary as a special assessment will impact a PRO's budget and thus, the special assessment needs to be reflected in the PRO's fee schedule for completeness and consistency between the proposed regulations and the Act

Subsection (d)

The purpose of this subsection is to specify and clarify the process by which the PRO shall set individual assessments for each participant producer. The requirements are specified in subsections (d)(1) and (d)(2). This is necessary in order for a PRO to provide transparency in how they develop base fees for each participant producer, which allows both the PRO and the participant producer to comply with both the PRO's plan as well as the Act. This subsection to maintain consistency and completeness between the Act and the proposed regulations.

Subsection (d)(1)

The purpose of this subsection is to specify the first step in developing an individual assessment, which is to develop the base fee rate for each covered material category. In developing the base fee rate, in order to maintain transparency, clarity and consistency with the Act, CalRecycle is requiring a PRO to develop the base fee rates using an evidence-based approach. The process is further detailed in subsections (d)(1)(A) through (d)(1)(C). This is necessary to clarify and maintain transparency

regarding the first step the PRO takes in developing an individual assessment for each participant producer as required by the Act.

Subsection (d)(1)(A)

The purpose of this subsection is to add specificity to the requirement in section 42053(d) of the PRC. Pursuant to 42053(d) of the PRC, the PRO is to develop a fee schedule based on factors specified in sections 42053(d)(1) through 42053(d)(4) of the PRC.

This subsection, in order to specify and provide consistency and transparency, specifies that the PRO, in developing the fee schedules, would first develop a base fee rate for each covered material category and in doing so, would address each factor in sections 42053(d)(1) through 42053(d)(4) of the PRC. This subsection requires the PRO to reference the most recent needs assessment, most recent material characterization studies, source reduction data, data pertaining to recycling rates, data pertaining to biodegradation or disintegration rates of compostable covered materials, and other verifiable data. This is necessary as it maintains transparency and provides a PRO an opportunity to explain how the base fees rates were developed and will require a PRO to use more empirical data to justify the rates while facilitating accuracy.

Subsection (d)(1)(B)

The purpose of this subsection is to allow a PRO the opportunity to explain and justify any discrepancies it observes in the data sets used to develop the base fee rate. While CalRecycle intends for the data contained in sources identified in proposed section 18980.6.7(d)(1)(A) will be reliable, CalRecycle also recognizes the possibility that a PRO may also have sources of data that CalRecycle doesn't have in order to develop an evidence-based base fee rate for each covered material category. This section would allow a PRO to note a discrepancy and to provide supporting documentation or data to support any discrepancies. This is necessary as it provides a PRO an opportunity to set base fee rates based on data that is not necessarily restricted to the sources identified by CalRecycle and facilitates the most complete and accurate base fee rate as intended by the Act.

Subsection (d)(1)(C)

The purpose of this subsection is to specify that the PRO shall set higher base fee rates for covered material categories that lack a responsible end market in order to fund the necessary investments to develop viable responsible end markets for those covered material categories, implement source reduction measures for those covered material categories, and/or transition to reuse and refill systems to replace those covered material categories. CalRecycle chose to include this requirement because producers of covered materials that lack a responsible end market should have an increased fee for those covered materials because using materials that don't meet the requirements of the Act frustrate the ability of the entire program to succeed. This is necessary for completeness and to facilitate the purpose of section 42053(c)(1) of the PRC by ensuring that producers of covered materials in covered material categories that lack a

responsible end market pay a higher portion in fees such that the PRO can fund the development of a responsible end market or work towards reducing the impacts of a covered material category that lacks a responsible end market.

Subsection (d)(1)(D)

The purpose of this subsection is to specify that a PRO may set an alternative base fee rate for a covered material category specific to a given participant producer if that participant producer utilizes an alternative collection program. The fee rate shall consider the measurable performance of the alternative collection program compared to the statewide performance of curbside collection for the same materials. Measurable performance factors may include recovery rate, contamination rate, recycling rate, and other environmental impacts such as greenhouse gas emissions from transportation of materials. If a PRO sets an alternative reduced base fee rate, the PRO shall include in the justification, pursuant to 18980.6.7(d)(1)(A), a description of why a reduced base fee rate is being applied to a given covered material category-participant producer combination.

This is necessary as it allows a PRO to set lower fee rates for covered material categories that have alternative collection programs that have better performance than curbside collection. Further, alternative collection programs may lead to increased recovery rates, reduced contamination rates, and improved recycling rates which is consistent with the goals of the Act. However, the costs to utilize such a program may also increase a producer's cost. Allowing a PRO to account for these factors may provide financial incentives to producers to facilitate or establish new alternative collection programs.

Subsection (d)(2)

The purpose of this subsection is to specify and clarify how a total individual assessment is to be calculated by the PRO for each participant producer. The details of how this calculation should be conducted are specified in subsections (A) and (B). This is necessary to provide clarity on how a PRO should calculate each individual assessment.

Subsection (d)(2)(A)

The purpose of this subsection is to specify the first step in calculating an individual assessment for each producer, which is to first calculate the base fee for each covered material category applicable to a producer. The calculation for a base fee is equal to the base fee rate of a covered material category multiplied by the amount of covered material of the covered material category sold, distributed, or imported in or into the state within the previous calendar year by that particular producer. The PRO is required to calculate the base fee for each covered material category for each producer. This is necessary as it specifies how the base fee is calculated by a PRO based on the base fee rate a PRO develops pursuant to proposed section 18980.6.7(d)(1).

Subsection (d)(2)(B)

The purpose of this subsection is to clarify and specify the second step in calculating an individual assessment for each producer, which is to calculate the total individual assessment. The individual assessment is equal to the sum of the base fees calculated pursuant to proposed section 18980.6.7(d)(2)(A). This is necessary as it specifies how the total assessment is to be calculated by a PRO.

Subsection (e)

The purpose of this subsection is to require a PRO, when setting a malus fee or credit for a participant producer pursuant to section 42053(c)(2) of the PRC, to develop a justification. Subsections (e)(1) and (e)(2) of section 42053 of the PRC provide further specificity in how a PRO should develop a justification. This is necessary as it provides a PRO with an opportunity to explain why a particular producer should receive a credit or malus fee.

Subsection (e)(1)

The purpose of this subsection is to specify that when a PRO develops a justification for a malus fee or credit, a PRO would be required to address the factors specified in section 42053(e) of the PRC. Furthermore, a PRO will be required to reference data in the most recent needs assessment, most recent material characterization studies, source reduction data, data pertaining to recycling rates, data pertaining to biodegradation or disintegration rates of compostable covered materials, and other verifiable data. The data should serve as evidence to justify a credit or malus fee. This is necessary to allow a PRO an opportunity to explain how it determined whether a producer receives a malus fee or credit. Specifying the use of specific data sources and type is necessary to maintain transparency and provide a PRO an opportunity to explain how the malus fees and credits were developed and will require a PRO to use more empirical data to justify the fees and credits while facilitating accuracy.

Subsection (e)(2)

The purpose of this subsection is to allow a PRO to explain any discrepancies it observes in the data sets used to determine a malus fee or credit. While CalRecycle believes that the data contained in sources identified in proposed section 18980.6.7(e)(1) will be reliable, CalRecycle also recognizes that a PRO may also have reputable sources of data that CalRecycle doesn't have in order to determine credits or malus fees for a producer. This section would allow a PRO to note a discrepancy and to provide supporting documentation or data to support any discrepancies. This is necessary as it provides a PRO an opportunity to propose malus fees and credits based on data that is not necessarily restricted to the sources identified by CalRecycle.

Subsection (f)

The purpose of this subsection is to specify that a PRO is required to develop a formula to calculate a participant producer's portion in contributing towards the California Plastic Pollution Mitigation Fund, pursuant to section 42053(c)(5) of the PRC and provide the formula to CalRecycle. Pursuant to section 42064(f) of the PRC, the formula should be based on the number of plastic components and weight of plastic covered material a

producer offers for sale, sells, distributes, or imports in or into the state. CalRecycle does not specify how a PRO determines each participant's contribution beyond what is specified in statute. Rather, CalRecycle is simply requiring the PRO to develop a formula that can be consistently applied to each participant producer. This is necessary as it provides transparency in the PRO's process. Furthermore, CalRecycle seeks to use the formula for subsequent calculations CalRecycle is required to make, as specified in proposed section 18980.7.6.

Subsection (g)

The purpose of this subsection is to interpret how section 42053(d)(2) applies statute applies the requirements published in the "Association of Plastic Recyclers design guide" describing elements of covered material that render recycling "more difficult." This subsection does not incorporate the reference to composting in section 42053(d)(2) because the design guide concerns recycling, not composting. Including provisions to specify which design guide category means with respect to the language in section 42053(d)(2) is necessary because that language does not match the titles of the categories in the design guide. Without interpretation, therefore, the reference to the design guide cannot be implemented. More specifically, interpreting the design guide's "preferred" category to mean that any covered material to have elements that made recycling more difficult is necessary because that category is designated as containing the most easily recyclable material. By definition, then, all the other categories must be more difficult to recycle.

Subsection (h)

The purpose of this subsection is to add specificity to a factor specified in section 42053(e)(4) of the PRC. Under section 42053(e)(4) of the PRC, a PRO shall adjust a producer's fee using malus fees or credits if there is presence of hazardous material as identified by the Office of Environmental Health Hazard Assessment, CalRecycle of Toxic Substances Control, or CalRecycle. CalRecycle is proposing to make this provision specific by stating that a PRO is required to charge a malus fee to a producer who uses covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code. This list specifies, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65), chemicals known to the state to cause cancer or reproductive toxicity. This is necessary in order to define what "hazardous material" means, incentivize producers to use covered materials that do not contain chemicals listed on the Prop. 65 list, and to prevent a PRO from awarding credit to a producer for using a covered material that contains a potentially hazardous substance.

Subsection (i)

The purpose of this subsection is to add specificity to a factor specified in section 42053(e)(6) of the PRC. Under section 42053(e)(6) of the PRC, a PRO may provide credits to producers who are achieving source reduction beyond what producer of similar covered material are achieving. One way in which a producer is able to source

reduce would be through switching from a covered material to a reusable or refillable alternative. This section would require a PRO to adjust credits based on factors specified further in subsections (h)(1) and (h)(2). This is necessary in order to incentivize producers towards refillable and reusable alternatives that are more beneficial than their single use counterparts.

Subsection (i)(1)

The purpose of this subsection is to require a PRO to adjust credits based on the number of times a reusable or refillable alternative to a covered material is used in the supply chain prior to the end of life of the alternative material. This is necessary because while switching to a reusable or refillable alternative contributes to source reduction, CalRecycle recognizes that a reusable or refillable alternative is only environmentally beneficially if the reusable or refillable alternative is used to the break-even point. The break-even point is the point at which the environmental impact per use of a reusable or refillable alternative falls below the environmental impact of the covered material. Thus, a reusable or refillable alternative is only environmentally beneficial if continues to be reused or refilled. The PRO shall adjust a credit to incentive producers to use reusable or refillable alternatives that can be used past their break-even points.

Subsection (i)(2)

The purpose of this subsection is to require a PRO to stop providing credits to producers who use a refillable or reusable alternative to a covered material that is found to be frequently disposed through a material characterization study. This is necessary as frequent disposal indicates that a refillable or reusable alternative is not sufficiently meeting the break-even point. The break-even point is the point at which the environmental impact per use of a reusable or refillable alternative falls below the environmental impact of the covered material. By not meeting the break-even point, the reusable or refillable alternative would have a higher environmental impact than the covered material.

Subsection (j)

The purpose of this subsection is to add specificity and clarity to the requirement stated in section 42053(e)(7) of the PRC. Section 42053(e)(7) of the PRC specifies that plastic covered materials derived from renewable materials shall be subject to a reduced fee relative to plastic covered material derived from a nonrenewable material. CalRecycle has interpreted this to mean that the Act intends to incentivize the use of plastic covered materials derived from renewable materials; therefore, this subsection requires a PRO to provide a credit to producers who use plastic covered material made of renewable materials. This is necessary to establish the requirement that such a credit shall be provided and to set up the following subsections that provide further specificity as to what is required for a PRO to be able to award this credit.

Subsection (j)(1)

The purpose of this subsection is to define “renewable materials” for the purposes of section 42053(e)(7) of the PRC. “Renewable material” is defined to mean a material that is made of a natural resource that can be replenished and is not of petroleum origin. Natural resources can include wood, mycelium, alae, or plants such as cotton, corn, sugar cane, or wheat. This is necessary as the Act does not define what “renewable materials” and defining it in regulations provides adequate specificity for a PRO to identify what material types may qualify for a credit. It is necessary to specify that renewable materials do not include those of petroleum origin because current science does not consider petroleum origins to be renewable. Specific examples of those natural resources that are renewable are given in order to illustrate to the regulated community the types of materials that would constitute renewable materials.

Subsection (j)(2)

The purpose of this subsection is to require a PRO to specify and provide justification, pursuant to proposed section 18980.6.7(e), the feedstock used to produce the covered material when a PRO awards a credit pursuant to proposed section 18980.6.7(i). This is necessary to provide clarity and transparency as to the sources used to generate covered material.

§18980.6.8. RECORD KEEPING AND REPORTING REQUIREMENTS

Subsection (a)

The purpose of this subsection is to start a list of the records the PRO must maintain. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components. This information is necessary as it will implement the plan requirements and meet the data collection requirements of the statute, as further specified in the discussion of the individual information items that together constitute that list.

Another purpose is to make sure that the records are disaggregated by each participant producer where applicable. The rationale for disaggregation where applicable is that statute requires some reporting to be disaggregated, while in other instances it is not required to be disaggregated. In order for the entity to report correctly, it needs records to substantiate the claims made in those reports; this provision makes clear that the records they are retaining to substantiate the reports have the same disaggregation requirements as the reports themselves.

Subsection (a)(1) through (4)

The purpose of these subsections is to identify records that the PRO must keep: specifically, records of the total weight of covered material, by covered material category sold, distributed, or imported in or into the state, the total number of plastic components, by covered material category sold, distributed, or imported in or into the state, the total weight of covered material, by covered material category recycled, and the total number of plastic components, by covered material category recycled. Pursuant to section

42052(a) of the PRC, the PRO has to report this information to CalRecycle. In order to report the information, the PRO needs to rely on records that support the reports. In order to ensure that the reporting is correct and that the PRO is complying with the Act, CalRecycle may need to see the records that support the PRO's reporting. As demonstrated by Section 42052(d)'s requirement that a PRO shall maintain records that CalRecycle determines are necessary to determine if a producer is in compliance with the Act, the Legislature contemplated that CalRecycle might need to see these records.

Subsection (a)(5)

The purpose of this subsection is to identify records that the PRO must keep specifically, the total weight of covered material not recycled, including but not limited to, covered material disposed by processors and end markets. The rationale for requiring the keeping of these records is that the information contained therein is necessary to determine recycling rate; if the recycling rate reported is to be backed up by evidence there must be records to substantiate it.

Subsection (a)(6)

The purpose of this subsection is to identify records that the PRO must keep specifically, the total weight of expanded polystyrene food service ware, by covered material category, sold, distributed, or imported in or into the state. Pursuant to the Act, the PRO has to report this information to CalRecycle. In order to report the information, the PRO needs to rely on records that support the reports. In order to ensure that the reporting is correct and that the PRO is complying with the Act, CalRecycle may need to see the records that support the PRO's reporting. As demonstrated by section 42052(d)'s requirement that a PRO shall maintain records that CalRecycle determines are necessary to determine if a producer is in compliance with the Act, the Legislature contemplated that CalRecycle might need to see these records.

Subsection (a)(7) and subsections (a)(7)(A) through (a)(7)(D)

The purpose of this subsection is to identify records that the PRO must keep concerning take-back, drop-off, and alternative collection programs. Specifically, this provision requires retaining information concerning the total weight of covered material and the total number of plastic components, by covered material category, that are collected by the program, as well as the total weight of covered material and the total number of plastic components, by covered material category, collected by the program that are recycled.

CalRecycle needs the PRO to maintain data demonstrating take-back and dropoff and alternative collection and recycling program performance that will allow section 42052(a)(3) of the PRC to be satisfied This is further necessary to facilitate CalRecycle's implementation and enforcement of this chapter, allowing CalRecycle to conduct investigations and perform audits of the PRO to determine producers' progress and compliance with the requirements of this chapter, including, among other things, the

recycling rates set forth in section 42057 of the PRC. This record retention requirement mirrors the records retained in subsections (a)(1) through (a)(4).

Subsection (a)(8)

The purpose of this subsection is to identify specific records that the PRO must retain minutes, books, and records that clearly reflect the activities and transactions of the PRO as required by Section 42054(a) of the PRC. This provision is necessary for clarity and is intended to give completeness to the record retention provisions. Section 42054(a) requires a PRO to keep minutes, books, and records that clearly reflect the activities and transactions of the PRO. In order to ensure that the PRO is clear about the need to keep these records and does not forget to keep them because they were not referenced in these regulations, it is necessary to draw its attention to this statutory requirement here. Furthermore, because the minutes and books retention requirement are placed in a section of the PRC that is distant from the sections that pertain to the other recordkeeping requirements treated in this article of the regulations, it is necessary for clarity and completeness to mention them here. If the PRO does not have a complete list of records that must be retained, it may fail to satisfy its obligation. Having access to such records is necessary to facilitate CalRecycle's implementation and enforcement of this chapter, allowing CalRecycle to conduct investigations and perform audits of the PRO to determine its progress and compliance with the requirements of this chapter, including, among other things, the PRO's compliance with the reporting requirements of section 42052 of the PRC.

Subsection (a)(9)

The purpose of this subsection is to specify that the PRO must maintain records of all contracts and agreements made with entities including end markets, recycling service providers, and intermediate supply chain entities. Part of compliance with the Act is ensuring that a certain amount of covered material ends up in a responsible end market. In order to substantiate that the PRO is meeting these requirements, the PRO needs to retain records that substantiate recycling at responsible end markets. This provision is necessary for CalRecycle to verify that the material is being recycled at a responsible end market.

The purpose of this subsection is to specify that the PRO must maintain supporting records for reports. In order to report the information, the PRO needs to rely on records that support the reports. In order to ensure that the reporting is correct and that the PRO is complying with the Act, CalRecycle may need to see the records that support the PRO's reporting.

Subsection (a)(11)

The purpose of this subsection is to specify that the PRO must maintain records of information obtained in proposed regulations section 18980.4.2 (end market verification). Under the Act, the PRO has responsibilities regarding the use of responsible end markets. In order to substantiate its reporting on these activities, it is necessary for the PRO to have supporting records. If CalRecycle is to verify the PRO's

compliance regarding the use of responsible end markets, it is necessary for the PRO to keep these records and have them available for review upon request.

Subsection (a)(12)

The purpose of this subsection is to specify that the PRO must maintain copies of information obtained in proposed regulations section 18980.4.3 (concerning auditing and responsible end markets). Under the Act, the PRO has responsibilities regarding the use of responsible end markets. In order to substantiate its reporting on these activities, it is necessary for the PRO to have supporting records. If CalRecycle is to verify the PRO's compliance regarding the use of responsible end markets, it is necessary for the PRO to keep these records and have them available for review upon request.

Subsection (a)(13)

The purpose of this subsection is to specify that the PRO must maintain records of information obtained in proposed regulations section 18980.3.3(c)(4)(C) (concerning materials comprised of fiber and not incorporating any plastics or polymers). That provision requires the producer to make a demonstration to the PRO that the material is comprised of fiber and does not incorporate any plastics or polymers. In order to make a demonstration, the regulation requires that there will be documentation provided to the PRO to support the claim. If CalRecycle is to ensure that the PRO is appropriately carrying out the required processes and that the items truly meet the established standard, CalRecycle needs these records to be available for review upon request.

Subsection (b)

The purpose of this subsection is to specify the unit of measurement for all recorded "weights" must be in tons. This unit of measurement for all recorded weights will be necessary for consistency of existing data related to covered material.

Subsection (c)

One purpose of this subsection is to specify that Independent Producers must maintain the records required by this article for a minimum duration of 3 years. This is necessary to ensure that CalRecycle will have access, upon request, to the relevant records it may reasonably rely upon to conduct its investigation or perform its audit of the PRO's compliance under this chapter. That this proposed regulation requires all PRO records to be maintained for a minimum period of three years is necessary because, in CalRecycle's experience implementing and enforcing other EPR programs, three years of records covers a reasonable and sufficient period of time to assist in CalRecycle's investigation without causing any undue burden to the regulated entity.

Another purpose is to explain how CalRecycle will request records and how they will be provided. Specifically, the entity with the records will, pursuant to a written request from CalRecycle, immediately provide CalRecycle records necessary to determine compliance. The rationale for immediate provision is that CalRecycle needs to make timely compliance determinations based on many complex factors and the information

contained within these records will facilitate those determinations. Further, this requirement is reasonable as these records are required to be maintained in a manner that will facilitate immediate provision to CalRecycle upon request. Additionally, at CalRecycle's option, records shall be provided either by allowing physical access during normal business hours to CalRecycle or other duly authorized regulatory agency or by submitting them to CalRecycle by electronic means. If regulated entities are to comply with this requirement, they need to know when and where the documents need to be provided. Business hours are a frequently used time of inspection for administrative warrantless searches. The rationale for providing access to another duly authorized agency is to facilitate timely provision of documentation to determine compliance. In some circumstances, records may be needed from a facility that is better or more quickly accessed by another agency (such as a properly designated and local enforcement agency). Allowing such an agency to collect records on behalf of CalRecycle will hasten the provision of such records to CalRecycle while saving travel time and expense. Finally, the provision allowing for the production of records by electronic means at CalRecycle's option is necessary because, in some instances as determined by CalRecycle, electronic means will allow for the most affordable and timely method for the submission of the requested records.

ARTICLE 7. REQUIREMENTS FOR INDEPENDENT PRODUCERS

§18980.7. INDEPENDENT PRODUCER RESPONSIBILITY PLAN SUBMISSION

Subsection (a)

The purpose of this subsection is to specify that Independent Producers approved by CalRecycle are required to prepare and submit a plan within six months for CalRecycle to review and approve as defined in sections 42051.2 and 42051(b) of the PRC. Section 42051.2 of the PRC sets forth the required process for a PRO to submit a producer responsibility plan. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan. A continuing timeline for submittal of an Independent Producer plan, rather than a deadline of a date certain, is necessary because, under this chapter, there is no deadline for an entity to apply to become an Independent Producer. That an Independent Producer is allotted six months to submit its plan following approval is necessary because CalRecycle has determined that such timeline allows reasonable and sufficient opportunity for an Independent Producer to design and submit its plan without allowing it additional time to delay compliance with this chapter. This timeline is also necessary because it is consistent with the compliance timelines set forth in section 42051(b) of the PRC (allowing six months for entities who become producers after January 1, 2027 to become a participant of a PRO and comply with this chapter) and proposed regulation section 18980.5.1(c) (allowing six months following CalRecycle's denial of an Independent Producer application for that denied Independent Producer to join a PRO or cease selling, offering for sale, importing, or distributing covered materials in the state).

Subsection (b)

In furtherance of the section's purpose of explaining to the Independent Producer how it should submit its proposed plan, the purpose of this subsection is to point the Independent Producer to the regulatory requirements that pertain to the Independent Producer's producer responsibility plan and are thus relevant to the contents of a plan submission, that is, proposed sections 18980.8 and to specify that CalRecycle will not approve a plan that does not meet these requirements. This provision is necessary to facilitate the Independent Producer's ability to find the appropriate requirements for a submittable plan; if the Independent Producer does not know where to find the requirements, it will not be able to draft a plan which should be submitted or that could be approved by CalRecycle.

Subsection (c)

The purpose of this subsection is to specify that the Independent Producer must make the producer responsibility plan publicly available for comment on a website after submitting the plan to the Advisory Board. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including requirements relating to the public posting of a proposed plan. Section 42051.2 of the PRC anticipates that there will be comments from the public on the proposed plan but does not specify how the public will be aware of the contents of the plan. The rationale for this provision is that the public will be able to see the plan if it is posted on the Independent Producer's internet website. In the Act, the Legislature endorsed the posting of other documents on the Independent Producer's internet website to ensure that the public is aware of the Independent Producer's actions; posting of this proposed plan will be just as accessible to the public.

Additionally, CalRecycle received feedback from interested parties during the informal rulemaking process in March 2023 and July 2023 when presenting concepts on Independent Producers and producer responsibility plan requirements; these parties were in favor of creating opportunities for public input in general and, in particular, public involvement and awareness in the development of plans, plan updates, and plan amendments. This provision is responsive to that feedback.

Subsection (d)

One purpose of this subsection is to specify what the Independent Producer will submit to CalRecycle once the Independent Producer receives public and advisory board comment: the Independent Producer will prepare a revised plan, a summary of comments from the advisory board and from members of the public, public comments responses, and any other steps taken by the Independent Producer relative to these comments, including amendments that the Independent Producer made in response to the comments. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including requirements relating to advisory board and public comments. Pursuant to section 42051.2(a) of the PRC, the

PRO is obligated to consider the comments of these entities; in order to verify that this was done, CalRecycle needs to know the content of the comments (in summary format), the response to comment, and the changes made as a result of these comments.

This section also requires the plan to be made available for public review by posting the revised proposal on a website prior to an approved plan. This provision makes clear that this is the minimum requirement, and that an Independent Producer can do more to make the revised proposal available to the public. This provision is responsive to requests made by members of the public in the informal workshops to foster public involvement and transparency in the plan development process and is necessary to promote transparency of Independent Producer activities with the regulated public and the public at large. Without this provision, the public would not be able to learn, prior to finalization, what the Independent Producer did as a result of its comments, nor would it know, prior to finalization, what changes resulted from the review of the advisory board. In the Act, the Legislature endorsed the posting of other documents on the Independent Producer's internet website to ensure that the public is aware of the Independent Producer's actions; posting of this revised and proposed plan will be just as accessible to the public.

Subsection (e)

One purpose of this subsection is to specify the process for terminating an Independent Producer's producer responsibility plan. This subsection requires the Independent Producer to submit a written notice of intent to terminate its plan to CalRecycle. This is necessary because the statute does not explicitly set forth a process for terminating an Independent Producer's plan. While section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, and section 42051.1(f) of the PRC sets forth the requirements for the closure or transfer of a PRO's plan, the statute is not clear whether those closure or transfer requirements apply when terminating an Independent Producer's plan. This subsection is thus necessary to offer guidance to Independent Producers seeking to terminate their plan. That the Independent Producer must submit a written notice of intent to terminate its plan to CalRecycle is necessary to ensure that CalRecycle receives notice of such termination and to ensure that there will be a written record that will be relevant to any future enforcement proceedings relating to such termination.

Another purpose of this subsection is to establish the effective dates applicable to the different situations involving termination. It provides that, where a plan termination is conditioned upon the Independent Producer joining a PRO, the termination will become effective on the date CalRecycle receives written notice that the Independent Producer has joined a PRO. In all other cases, it provides that the plan termination will become effective on the date CalRecycle receives the Independent Producer's written notice of intent to terminate the plan. Because section 42051(b) of the PRC provides that a producer may not sell, offer for sale, import, or distribute covered materials in the state

unless it participates in a PRO (subsection (b)(1)) or is an Independent Producer (subsection (b)(2)), this proposed regulation is necessary to offer guidance to Independent Producers who are seeking to terminate their plan without risking noncompliance under the Act. By establishing the effective dates for plan termination, this subsection notifies Independent Producers that they will be in violation of the Act if they terminate their plan without joining a PRO and then continue to sell, offer for sale, import, or distribute covered materials in the state after submitting their written notice of intent to CalRecycle. Meanwhile, this subsection ensures Independent Producers will not fall out of compliance with section 42051(b) of the PRC if they terminate their plan in order to join a PRO.

§ 18980.7.1. INDEPENDENT PRODUCER RESPONSIBILITY PLAN APPROVAL

Subsection (a), subsections (a)(1), and (a)(2)

The purpose of these subsections is to develop a process for Independent Producer plan revision when the plan is conditionally approved. These subsections require an Independent Producer whose plan has been conditionally approved to provide CalRecycle with an estimated date for resubmittal of the revised plan (subsection (a)(1)) and status updates addressing each condition of the conditional approval (subsection (a)(2)) on or before the last day of each month following the conditional approval. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including the review, update, and approval process and requirements relating to the conditional approval of such plans. Pursuant to section 42051.2(b)(3) of the PRC, following CalRecycle's conditional approval of an Independent Producer plan, the Independent Producer must ensure the conditions are met and resubmit a revised plan within 12 months. However, the Act does not specify the intermediate steps that must be taken by the Independent Producer to ensure these conditions are met or that the appropriate coordination between the Independent Producer and CalRecycle occurs. In CalRecycle's experience with other EPR programs, the conditional approval process requires regular condition-specific updates and the Independent Producer's realistic evaluation of the time needed to complete the work if the Act's requirements are to be met by the statutory deadline. An estimated date for resubmittal of the revised plan and status updates of each condition, submitted to CalRecycle monthly, are necessary to ensure CalRecycle can effectively monitor the Independent Producer's progress toward satisfying the conditions under section 42051.2(b)(3). If the Independent Producer did not provide condition-specific updates, the PRO's resubmittal might fail to address those conditions, leaving the Independent Producer and CalRecycle with a plan that cannot be approved. That the Independent Producer must submit these updates on or before the last day of each month is necessary to ensure the Independent Producer is afforded the maximal time each month to prepare and submit the updates. If the interval were set shorter, it would likely prove too burdensome to the Independent Producer; if it were longer, CalRecycle might not be able to identify problems until it was too late to remedy the defect. Additionally,

this is necessary because statute does not define a process when Independent Producer plans are conditionally met, and CalRecycle is required to implement section 42051.2 of the PRC.

Subsection (b)

The purpose of this subsection is to make the meaning of conditional approval clearer. Specifically, this provision makes clear that conditional approval is a preliminary determination that certain elements of the plan do not meet applicable requirements, but that, if certain conditions are met, final approval will be warranted. Such conditions may include, without limitation, clarification to remove ambiguities or addition of information or data demonstrating that particular requirements have been met. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including the review, update, and approval process and requirements relating to the conditional approval of such plans. Section 42051.2(b)(2) of the PRC allows for the conditional approval of Independent Producer plans but does not explicitly define that term. Therefore, CalRecycle must fill in the details of what constitutes a conditional approval if CalRecycle and Independent Producers are to be able to differentiate between the conditional and final approval of Independent Producer plans and to identify when the additional requirements that pertain to conditionally approved plans are triggered. If CalRecycle did not define conditional approval this way, the Independent Producer might believe that such approval was a final determination. The non-exclusive examples in this subsection are based on CalRecycle's experience in other EPR programs and are needed to help the Independent Producer and CalRecycle identify typical defects in conditionally approvable submissions, but it is also necessary not to make the list exclusive because there may be other defects that prevent final approval but do not require disapproval.

Subsection (c)

The purpose of this subsection is to make specific that the expiration date for an approved plan is five years from the date of approval by CalRecycle. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including the review, update, and approval process. Section 42051.2(d) of the PRC specifies that an approved plan is valid for five years but does not explicitly state when this five-year period begins and ends. In order for the Independent Producer to understand when its plan will expire and when it needs to submit a proposed updated plan, it is necessary for the Independent Producer to know when a five-year timeline starts or expires. The rationale for selecting the approval date as the date from which the five-year period begins is that this date will be memorialized by CalRecycle on paperwork and in its electronic files, making it accessible to CalRecycle. Moreover, the date will also be prominently communicated to the Independent Producer, making it well known and useful for the Independent Producer.

§ 18980.7.2. REVIEW OF UPDATED INDEPENDENT PRODUCER RESPONSIBILITY PLAN

Subsection (a)

The purpose of this subsection is to make specific when an Independent Producer is required to submit updated plans for review by the advisory board; this provision requires the proposed update to be provided to the advisory board at least one year in advance of expiration. Section 42051.2 (d)(2) of the PRC prohibits the submission of a revised plan less than 180 calendar days prior to expiration but does not bar CalRecycle from requiring even earlier submission. By setting an expiration date, giving CalRecycle the discretion not to extend a previously approved plan, and requiring submission of an update proposal to the advisory board prior to the expiration date, the Legislature demonstrated its belief in the value of having an up-to-date plan, its concerns about having a plan that is over five years old, and the need for time to evaluate and process an updated plan proposal.

In CalRecycle's experience with EPR programs, one year is the minimum amount of time in which a plan update can have a reasonable chance of being processed, modified, and approved prior to the expiration of the previous plan. In order to avoid the lapsing of one plan without an approved and up-to-date plan being able to take its place seamlessly, this provision is necessary.

Subsection (b)

The purpose of this subsection is to establish the endpoint of the advisory board comment period for the proposed updated Independent Producer plan as "no later than" 60 calendar days after the Independent Producer's submission of the proposed update to the advisory board. The Act establishes a timeline for the advisory board's consideration of an initial proposal (60 calendar days pursuant to Section 42070(h) of the PRC) but does not explicitly address a timeframe for the advisory board's consideration of the update. This provision is needed to make clear that Section 42070(h) applies to updated plans just as it applies to initial plans, and that the comment period for the advisory board is the same in both instances.

Another purpose of this subsection is to specify that the Independent Producer must make the proposed updated producer responsibility plan publicly available for comment on a website after submitting the plan to the Advisory Board. Section 42051.2 of the PRC anticipates that there will be comments from the public on the proposed initial plan but did not specify how the public will be aware of the contents of the plan; CalRecycle provided a public posting responsibility under the rationale that the public will be able to see the plan if it is posted on the Independent Producer's internet website. In order to make clear that the same public comment provisions of 42051.2 apply, and that the means for providing the document to the public is the same, CalRecycle needed to include this provision.

Subsection (c)

One purpose of this subsection is to specify what the Independent Producer will submit to CalRecycle once the Independent Producer receives public and advisory board comment: the Independent Producer will prepare a revised plan, a summary of comments from the advisory board and from members of the public, public comments responses, and any other steps taken by Independent Producers relative to these comments, including amendments that the Independent Producer makes in response to the comments. Pursuant to section 42051.2(a) of the PRC, the Independent Producer is obligated to consider the comments of these entities; in order to verify that this was done, CalRecycle needs to know the content of the comments (in summary format), the response to comment, and the changes made as a result of these comments.

Another purpose is to make clear the timeline for Independent Producer submission to CalRecycle. (120 days). Section 42051.2(b)(1) of the PRC establishes this timeline for plans but does not make clear that the timeline applies to updated plans. In order to make it clear that updated plans are reviewed and processed in the way required by section 42051.2(b)(1) of the PRC, this provision is necessary.

This section also requires the plan to be made available for public review by posting the revised proposal on a website prior to an approved plan. This provision makes clear that this is the minimum requirement, and that an Independent Producer can do more to make the revised proposal available to the public. This provision is necessary to promote transparency of Independent Producer activities with the regulated public and the public at large. Without this provision, the public would not be able to learn, prior to finalization, what the Independent Producer did as a result of its comments, nor would it know, prior to finalization, what changes resulted from the review of the advisory board. In the Act, the Legislature endorsed the posting of other documents on the Independent Producer's internet website to ensure that the public is aware of the Independent Producer's actions; posting of this revised and proposed plan will be just as accessible to the public.

Subsection (d)

The purpose of this subsection is to reference the regulatory and statutory expectations of plan approval when updating the Independent Producer plan. This is necessary for completeness; if the Independent Producer does not have the requirements explicitly provided by the Legislature in statute and the regulatory provisions that fill in the details of those statutory provisions, the Independent Producer will be unable to update its plan in a way that will allow it to be approved by CalRecycle.

Subsection (e)

The purpose of this subsection is to make specific that the expiration date for an approved revised plan is five years from the date of approval by CalRecycle. Section 42051.2(d)(1) of the PRC specifies that an approved updated plan has a lifespan of five years but does not explicitly state when the five-year period begins and ends. The rationale for selecting the approval date as the date from which the five-year period begins is that this date will be memorialized by CalRecycle. Moreover, the date will also

be prominently communicated to Independent Producers, making it easily accessible to the Independent Producers.

Subsection (f)

The purpose of this subsection is to make specific when updated and approved Independent Producer's plans are to be made publicly available on the Independent Producer's website: within 5 calendar days of Department approval. In order for the public to see the approved, updated plan and ensure that the Independent Producer's actions are consonant with it, the plan needs to be available. That the Independent Producer must post the updated plan to its internet website within five calendar days of approval is necessary because the Independent Producer will already have an internet platform established for posting its plan and five calendar days is a sufficient and reasonable amount of time to require the Independent Producer to post its updated plan without being so long as to allow any undue delay in notifying the public of an approved updated plan.

§ 18980.7.3. INDEPENDENT PRODUCER RESPONSIBILITY PLAN AMENDMENTS

Subsection (a)

The purpose of this subsection is to establish that Independent Producers are subject to the requirements of section 42051.2(e)(1) of the PRC with respect to proposed significant amendments of their plans. This clarification is necessary because section 42051.2(e)(1) of the PRC does not expressly refer to Independent Producers, but that provision necessarily applies to Independent Producers pursuant to section 42051(b)(2)(B) of the PRC, which expressly provides that they are subject to the Act's plan review, update, and approval process applicable to the PRO. This subsection also establishes a 60-day period for review of the proposed amendment by the advisory board. This is necessary because section 42051.2(e)(1) of the PRC requires submission of the amendment to the board for review but does not set forth the specific timeline for that process. Section 42051.2(d) of the PRC, regarding updates of plans before they expire, is similar, in that it also requires the advisory board review and comment process without specifying the applicable timeline. In contrast to those specific circumstances, section 42051.2(a) of the PRC does set forth a specific period (90 calendar days) for the advisory board's opportunity to review and comment before CalRecycle considers a plan. Taking section 42051.2 of the PRC as a whole, the only reasonable interpretation is that the timeline set forth in section 42051.2(a) of the PRC applies generally to plan updates.

Subsection (b)

The purpose of this subsection is to require that Independent Producers seeking to amend their plan inform CalRecycle of the comments they receive from the advisory board and corresponding actions, if any, taken by the producers. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including the review, update, and approval process. Section

42051.2(e)(1) requires an Independent Producer to submit any proposed amendment to its plan to the advisory board for comment. That Independent Producers seeking to amend their plan must submit a summary of comments received by the advisory board and any steps taken by the Independent Producer relative to those comments is necessary for implementation and enforcement of the Act because, without it, CalRecycle would not know whether Independent Producers had complied with the Act's requirements regarding plan amendments. This provision is also necessary to fill in the details not addressed by statute and to ensure that CalRecycle has the benefit of the advisory board's consideration of the plan amendment.

Subsection (c)

The purpose of this subsection is to make clear when an amended plan expires. The Act anticipates that the plans may be amended but does not explicitly discuss what amendment does to the expiration date of the plan. This provision fills in that missing detail by providing that the original expiration date remains in effect. The rationale for retaining the plan's original expiration date is that doing so ensures that unamended plan features receive periodic review no later than the time anticipated by the Legislature; moreover, it is a date already well known to the Independent Producers and CalRecycle.

Subsection (d)

The purpose of this subsection is to ensure that sufficient steps are taken by the Independent Producer to provide notice to the public that the previously approved plan has been changed. In order for the public to see the approved, amended plan and ensure that the Independent Producer's actions are consonant with it, the plan needs to be available. Since the Legislature has required in the Act that approved plans be posted to the Independent Producer's website, the public will know to look for the amended plan there. That the Independent Producer must post the amended plan to its internet website within five calendar days of approval is necessary because the Independent Producer will already have an internet platform established for posting its plan and five calendar days is a sufficient and reasonable amount of time to require the Independent Producer to post its amended plan without being so long as to allow any undue delay in notifying the public of approved plan amendments.

§ 18980.7.4. INDEPENDENT PRODUCER ANNUAL REPORT AND ANNUAL BUDGET

Subsection (a)

The purpose of this subsection is to specify the due date of the Independent Producer annual report and budget by April 1 of each year. Section 42051.3 of the PRC requires the submission of an annual report and budget but does not specify a time. In order to provide certainty to the Independent Producer and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the Independent Producer is in breach of its obligations under the Act, CalRecycle needs to provide a due date for submission. April 1 was selected because it is consistent with the initial due date of the

PRO plan under section 18980.6.1(a) of these proposed regulations and the data reporting deadline for PROs and Independent Producers under section 18980.10.1(b) of these proposed regulations. This is necessary because it implements section 42051.3 of the PRC, and doing so requires CalRecycle to adopt regulations.

Subsection (b)

The purpose of this subsection is to clarify that Independent Producers are required to make the submitted, but not yet approved, annual report and budget publicly available on the Independent Producer's website until it is replaced with the approved report and budget. Section 42051.3 of the PRC requires an Independent Producer to submit annual reports and budgets and make them publicly available on its website but does not explicitly say whether this applies to the submitted report and budget and the approved report and budget, or just the submitted report and budget, or, alternatively, to the approved report and budget. In order to ensure that Independent Producers know what to post, CalRecycle needs to fill in this detail and specify that the posting requirement applies both to the submitted and approved report and budget. Independent Producers need to publish the submitted report and budget and the approved report and budget to create transparency between themselves, the public, and Advisory Board and because showing the submitted report and budget and approved report and budget illustrates how Independent Producers are implementing the approved plan.

Subsection (c)

The purpose of this subsection is to reference the annual report and budgetary requirements of proposed section 18980.9. This is necessary for completeness; this subsection concerns the process of submitting and needs to acknowledge the substance that will make for an approvable submittal. If the Independent Producer is unable to find the relevant substantive requirements, it will be unable to provide an approvable report.

Subsection (d)

The purpose of this subsection is to specify that the Independent Producer annual report and budgets must be published on the Independent Producer website within 5 calendar days of CalRecycle approval. In order to provide certainty to the Independent Producer and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the Independent Producer is in breach of its obligations under the Act, CalRecycle needs to provide a date for posting. That the Independent Producer must post the annual report and budget to its internet website within five calendar days of approval is necessary because the Independent Producer will already have an internet platform established for posting its annual report and budget and five calendar days is a sufficient and reasonable amount of time to require the Independent Producer to post its annual report and budget without being so long as to allow any undue delay in notifying the public of an approved annual plan and budget.

§18980.7.5. INDEPENDENT PRODUCER DOCUMENT SUBMITTALS

Subsection (a)

The purpose of this subsection is to specify the procedures and criteria for when the Independent Producer submits documents to CalRecycle. This applies to Independent Producer submissions (*i.e.*, the producer responsibility plan, updated producer responsibility plan, plan amendments, initial program budget, annual report, and other associated documents) to CalRecycle. This provision is necessary to provide clarity about electronic submission, date of receipt, the public nature of the documents, the meaning of completeness and correctness, and the submission under penalty of perjury, each addressed in the subsections that follow as a list. The rationale for beginning this list is that this organizational method will be clearer to the Independent Producer as opposed to a more narrative paragraph. An Independent Producer will be able to go through the list and determine whether they have all of the required components.

Subsection (a)(1)

One purpose of this subsection is to specify that documents submitted to CalRecycle must be submitted electronically. This is necessary to meet the contemporary standards of submitting documents and establish a consistent format of submission. Moreover, the specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, allows for the appropriate departmental personnel to review the documentation, provides consistency with other internal processes of CalRecycle, and minimizes the cost and time burden associated with mailing.

Another purpose is to specify the date of receipt for an electronic submittal. The purpose of this subsection is to make specific when receipt occurs. In order to provide certainty to the Independent Producer and CalRecycle, as well as aiding the enforcement of the Act by providing clarity as to when the Independent Producer is in breach of its obligations under the Act, CalRecycle needs to provide a date for receiving the Independent Producer's electronic submission. Because electronic transmissions are nearly instantaneous, it is reasonable to assume that an electronic transmission is received on the same day it is submitted.

Subsection (a)(2)

The purpose of this subsection is to explain that the California Public Records Act (Division 10 of Title 1 of the Government Code) applies to plans submitted to CalRecycle, subject to exemptions that may apply, and to direct parties to section 18980.15, which addresses the Public Records Act in greater detail, including with respect to trade secret protections. This is necessary because, while the Public Records Act applies regardless of the regulation, Independent Producers may not understand how that law applies or how to identify records they claim to be exempt from its mandatory disclosure provisions.

This subsection also establishes how CalRecycle will implement the exemption from the mandatory disclosure requirements of the Public Records Act provided in section

42051.2(b)(5) of the PRC, which exempts “financial, production, or sales data” contained in PRO plans. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO’s producer responsibility plan, including the review, update, and approval process. For the same reasons that support application of this exemption to PRO plans, this exemption must also apply to Independent Producer plans. The exemption does not apply to information in summary form that cannot be attributed to specific entities, but this provision is not relevant to the context of Independent Producer plans. This subsection requires that portions of Independent Producer plans that the Independent Producer claims contain such financial, production, or sales data information must specifically be identified, and that a cover letter must be submitted along with the plan setting for the basis for all such claims. These requirements are necessary because CalRecycle might not know the full scope of what the Independent Producer claims to constitute financial, production, or sales data that can be attributable to the Independent Producer. Moreover, it is necessary that these provisions apply to all plan submissions, not just the approved plan. Although section 42051.2(b)(5) expressly refers only to the approved plan, the Public Records Act exemption itself logically must apply generally to all plans submitted to CalRecycle, or else the exemption would be effectively meaningless.

Subsection (a)(3)

One purpose of this subsection is to require that all documents subject to section 18980.7.5 are complete and correct. In order for CalRecycle to rely on the reports and documentation provided by the Independent Producer, it needs to be able to trust that the documents are complete and correct. If the reports and other documents are incomplete, CalRecycle will lack important information. Moreover, section 42051.3(b)(2) of the PRC explicitly requires completeness for annual reports. Given that the Act does not specify the meaning of this term, it is necessary for CalRecycle to make it clear. If the reports and other documents are incorrect, CalRecycle will believe it has accurate information when that information is actually incorrect. Completeness and correctness requirements are often used in CalRecycle regulatory and EPR programs (see, e.g., 27 CCR, section 21563); it is used here to maintain consistency with those programs.

Another purpose of this subsection is to introduce the criteria for what CalRecycle defines as a complete and correct document submittal. This is necessary to ensure that the Independent Producer can find the definitions of completeness and correctness that follow.

Subsection (a)(3)(A)

The purpose of this subsection is to specify that a document is complete if it contains provisions intended to meet all requirements in proposed sections 18980.7, 18980.7.2, 18980.7.3, and 18980.7.4 (as applicable to each document) and if it contains sufficient detail for CalRecycle to determine if the requirements in the referenced sections have been met. The rationale for requiring completeness is that CalRecycle will be unable to approve an incomplete document. The rationale for why completeness was defined this

way is set forth herein. With regard to subsections 18980.7, 18980.7.2, and 18980.7.4, these are the appropriate sections because they contain reference to the relevant statutory provisions, cross-reference applicable regulations, and identify supporting documents. With regard to subsection 18980.7.3, which addresses plan amendments, it is implicit in that regulation that the process must yield a document that is sufficient for CalRecycle to yield a determination; because it cannot anticipate the type or subject of an amendment to specify a form, there is no better location but this procedural section to address completeness for a plan amendment.

Subsection (a)(3)(B)

The purpose of this subsection is to specify that a document is correct if all information provided is accurate, exact, and is certified as directed in the following subsection (“I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge.”). The rationale for this is that one potential reason for disapproving a document submittal is if CalRecycle determines that it is not correct based on the document not meeting the requirements specified in this subsection. Additionally, CalRecycle, in other existing adopted regulations, such as other EPR programs or solid waste regulations under 27 CCR, section 21563(d)(2), specify what is considered “correct” for the purpose of approving or denying certain documents.

Subsection (a)(4)

One purpose of this subsection is to require that all documents subject to section 18980.7.5 are signed. This provision is necessary to ensure that a person with signatory authority on behalf of an Independent Producer takes responsibility for the truthfulness and correctness of the document. A signature is appropriate to this end because it is a recognized individual and personalized mark. Without signature required, the Independent Producer might submit an untruthful or incorrect submission because no individual can be held directly accountable for the untruthfulness or incorrectness.

Another purpose of this subsection is to specify that to which the person signing the document is attesting. Specifically, the signatory must sign: “I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge.” The rationale for this is to model this requirement based on existing EPR regulations that require a certification statement for document submittals, as specified in 14 CCR, section 18973(e).

Another purpose is to make clearer who can sign the document. The signature must be from a party, with signatory authority, who is responsible for the contents of the document. The individual needs to be someone empowered by the Independent Producer to make the claims about the truthfulness and correctness of the document, thus it is necessary for the person signing it to have signatory authority. In order for someone to attest that the document is true and correct, they need to be responsible for the contents of the document. If the person is not responsible for the contents of the

document, it is unlikely that they will have sufficient knowledge that would make their statement about its truthfulness and correctness valuable.

§ 18980.7.6. INDEPENDENT PRODUCER ENVIRONMENTAL MITIGATION FEE

Subsection (a)

The purpose of this subsection is to specify the formula used to calculate the amount an Independent Producer shall pay towards the California Plastic Pollution Mitigation Fund, pursuant to section 42064(h) of the PRC, which shall be determined by CalRecycle using the formula provided to CalRecycle by a PRO. While the PRO is given discretion to establish the formula for calculating the amount of surcharge it will impose on its participants under section 42064(f) of the PRC, section 42064(h) of the PRC expressly instructs CalRecycle to determine the amount of surcharge to impose on Independent Producers. That this proposed regulation instructs CalRecycle to use the formula provided to it by the PRO when calculating the amount of surcharge to impose on Independent Producers is necessary to ensure that participant producers and Independent Producers are treated similarly under the Act and that neither type of entity is required to pay more than its fair share into the California Plastic Pollution Mitigation Fund based on different formulas. This is also necessary to provide a clear, consistent, and transparent formula by which Independent Producers shall calculate the amount to pay toward the California Plastic Pollution Mitigation Fund, which is not specified in the Act.

Subsection (b)

One purpose of this subsection is to clarify that CalRecycle must use information reported from an Independent Producer to calculate the amount owed by an Independent Producer to the California Plastic Pollution Mitigation Fund. This is necessary for completeness and to specify what information CalRecycle must use to calculate the amount owed by an Independent Producer to the California Plastic Pollution Mitigation Fund. That CalRecycle must use information reported by the Independent Producer in calculating such amount is also necessary because section 42064(h) of the PRC provides that the amount must be based on both the number of weight and plastic covered material the Independent Producer offers for sale, sells, distributes, or imports in or into the state, and the Independent Producer will be in the best position to collect and provide the most recent, accurate, and complete data on this topic. Another purpose of this section is to provide that CalRecycle may request additional information from an Independent Producer. This is necessary to ensure CalRecycle receives all pertinent data when calculating the amount an Independent Producer must pay towards the California Plastic Pollution Mitigation Fund.

§18980.7.7 INDEPENDENT PRODUCER RECORDKEEPING AND REPORTING REQUIREMENTS

Subsection (a)

The purpose of this subsection is to list all the records, set forth in subsections (a)(1)-(a)(13), that the Independent Producers must retain. The rationale for this list is that this organizational method will be clearer to Independent Producers, as opposed to a more narrative paragraph. An Independent Producer will be able to go through the list and determine whether it has retained all the applicable records. This list is necessary to implement the plan requirements, including section 42052(d) of the PRC, which requires Independent Producers to maintain records of covered materials offered for sale, sold, distributed, or imported in or into the state in a form and manner established by CalRecycle, and to meet the data collection requirements of the statute. That this information must be retained by Independent Producers is necessary to enable CalRecycle to review such records and determine if an Independent Producer is in compliance with this chapter.

Subsection (a)(1) through (a)(4)

The purpose of these subsections is to identify the records the Independent Producers must retain regarding covered materials. The required records include the total weight of covered materials sold, distributed, or imported in or into the state ((a)(1)), the total weight of such covered materials that are recycled ((a)(3)), the total number of plastic components sold, distributed, or imported in or into the state ((a)(2)), and the total number of such plastic components that are recycled ((a)(4)). Pursuant to section 42052(a) of the PRC, the Independent Producer must report this information to CalRecycle. In order to report the information, the Independent Producer must rely on records that support the reports. In order to ensure that the reporting is correct, and that the Independent Producer is complying with the Act, CalRecycle may need to review the records that support the Independent Producer's reporting. As demonstrated by the requirement set forth in section 42052(d) of the PRC that an Independent Producer must maintain records that CalRecycle determines are necessary to determine if an Independent Producer is in compliance with the Act, the Legislature contemplated that CalRecycle might need to see these records.

Subsection (a)(5)

The purpose of this subsection is to identify the records the Independent Producers must retain regarding covered materials. Specifically, the required records include the total weight of covered material not recycled, including but not limited to, covered material disposed by processors and end markets. The rationale for requiring the keeping of these records is that the information contained therein is necessary to determine the recycling rate; if the recycling rate reported by the Independent Producer is to be supported by evidence, there must be records to substantiate it. As demonstrated by the requirement set forth in section 42052(d) of the PRC that an Independent Producer must maintain records that CalRecycle determines are necessary to determine if an Independent Producer is in compliance with the Act, the Legislature contemplated that CalRecycle might need to see these records.

Subsection (a)(6)

The purpose of this subsection is to identify the records the Independent Producers must retain regarding covered materials. Specifically, the required records include the total weight of expanded polystyrene food service ware, by covered material category, that is sold, distributed, or imported in or into the state. Pursuant to the Act, Independent Producers are required to report this information to CalRecycle. In order to report the information, Independent Producers must rely on records that support the reports. In order to ensure that the reporting is correct and that the Independent Producers are complying with the Act, CalRecycle may need to review the records that support the Independent Producers' reporting. As demonstrated by the requirement set forth in section 42052(d) of the PRC that an Independent Producer must maintain records that CalRecycle determines are necessary to determine if an Independent Producer is in compliance with the Act, the Legislature contemplated that CalRecycle might need to see these records.

Subsection (a)(7) and subsections (a)(7)(A) through (a)(7)(D)

The purpose of these subsections is to specify the records relating to take-back, dropoff, and alternative collection programs the Independent Producers must retain by covered material category. The required records include the total weight of covered material and total number of plastic components collected by the programs. The required records also include the total weight of covered material and total number of plastic components that are recycled by the programs. This is necessary to ensure the Independent Producers maintain data demonstrating take-back, dropoff, and alternative collection programs and recycling program performance sufficient to satisfy the reporting requirement of section 42052(a)(3) of the PRC. This is further necessary to facilitate CalRecycle's implementation and enforcement of this chapter, allowing CalRecycle to conduct investigations and perform audits of Independent Producers to determine their progress and compliance with the requirements of this chapter, including, among other things, the recycling rates set forth in section 42057 of the PRC. This record retention requirement mirrors the records retained in subsections (a)(1) through (a)(4).

Subsection (a)(8)

The purpose of this subsection is to specify the records relating to an Independent Producer's activities and transactions that Independent Producers must retain. The required records include the minutes, books, and records that clearly reflect the activities and transactions of the Independent Producer. While section 42054(a) of the PRC only explicitly requires a PRO to maintain these records, it is appropriate to require Independent Producers to retain these records for similar reasons. This provision is necessary for clarity and is intended to give completeness to the record retention provisions. Section 42051(b)(2) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets all of the applicable requirements of a PRO's producer responsibility plan, including the recordkeeping requirements. Section 42054(a) requires a PRO to keep minutes, books, and records that clearly reflect the activities and transaction of a PRO. In order to ensure that the

Independent Producer is clear about the need to keep these records and does not forget to keep them because they were not referenced in these regulations, it is necessary to draw its attention to this statutory requirement here. Furthermore, because the minutes and books retention requirement are placed in a section of the PRC that is distant from the sections that pertain to the other recordkeeping requirements treated in this article of the regulations, it is necessary for clarity and completeness to mention it here. If the Independent Producer does not have a complete list of records that must be retained, it may fail to satisfy its obligation. Having access to such records is necessary to facilitate CalRecycle's implementation and enforcement of this chapter, allowing CalRecycle to conduct investigations and perform audits of Independent Producers to determine their progress and compliance with the requirements of this chapter, including, among other things, the Independent Producer's compliance with the reporting requirements of section 42052 of the PRC.

Subsection (a)(9)

The purpose of this subsection is to specify the records relating to all contracts or agreements established between Independent Producers and entities including but not limited to end markets, recycling services providers, and intermediate supply chain entities that Independent Producers must retain. Part of compliance with the Act is ensuring that a certain amount of covered material ends up in a responsible end market. In order to substantiate that Independent Producers are meeting this requirement; the Independent Producers must retain records that substantiate recycling at responsible end markets. This provision is necessary for CalRecycle to verify that covered material is being recycled at responsible end markets.

Subsection (a)(10)

The purpose of this subsection is to specify the records relating to the annual reports that Independent Producers must retain. Specifically, this subsection requires the Independent Producer to retain copies of all supporting records that were used in creating the submitted annual reports. In order to report the information contained in such reports, the Independent Producer must rely on records that support the reports. In order to ensure that the reporting is correct, and that the Independent Producer is complying with the Act, CalRecycle may need to see the records that support the Independent Producer's reporting. This is necessary to facilitate CalRecycle's implementation and enforcement of this chapter, allowing CalRecycle to request additional data, conduct investigations, and perform audits of Independent Producers to determine their progress and compliance with the requirements of this chapter, including, among other things, the Independent Producer's compliance with the annual reporting requirements set forth in section 42052 of the PRC and proposed regulation sections 18980.10.1 and 18980.10.2.

Subsection (a)(11)

The purpose of this subsection is to specify the records relating end market verification that Independent Producers must retain. It requires Independent Producers to retain all records of information obtained pursuant to the verification process set forth in proposed

regulation section 18980.4.2. Under the Act, Independent Producers have responsibilities regarding the use of responsible end markets. In order to substantiate their reporting on these activities, it is necessary for the Independent Producers to have supporting records. If CalRecycle is to verify the Independent Producers' compliance regarding the use of responsible end markets, it is necessary for the Independent Producers to keep these records and have them available for review upon request.

Subsection (a)(12)

The purpose of this subsection is to specify the records relating to annual end market audits and investigations that Independent Producers must retain. It requires Independent Producers to retain all records of information obtained pursuant to the annual end market audit and investigation process set forth in proposed regulation section 18980.4.3. Under the Act, the PRO has responsibilities regarding the use of responsible end markets. In order to substantiate its reporting on these activities, it is necessary for the PRO to have supporting records. If CalRecycle is to verify the Independent Producers' compliance regarding the use of responsible end markets, it is necessary for the Independent Producers to keep these records and have them available for review upon request.

Subsection (a)(13)

The purpose of this subsection is to specify the records relating to materials comprised of fiber and not incorporating any plastics or polymers that Independent Producers must retain. Specifically, Independent Producers must retain all records of information required to be maintained pursuant to proposed section 18980.3.3(c)(4)(D). That provision requires the Independent Producer to demonstrate to CalRecycle that the material is comprised of fiber and does not incorporate any plastics or polymers. In order to make this demonstration, the regulation envisions that there will be documentation provided to CalRecycle to support the claim. If CalRecycle is to ensure that the Independent Producer is appropriately carrying out the required processes and that the items truly meet the established standard, CalRecycle needs these records to be available for review upon request.

Subsection (b)

The purpose of this subsection is to specify that Independent Producers must record data consisting of weights in tons. This is necessary to ensure Independent Producers record data using the same metrics and to facilitate CalRecycle's ability to effectively monitor progress under the Act. This is also necessary to ensure consistency across the various data that must be reported and recorded under this chapter, including, for example, the annual reports that must report all weights in tons, as set forth in proposed regulation section 18980.10.2.

Subsection (c)

The purpose of this subsection is to specify that Independent Producers must maintain records required by this Article and Act for a minimum duration of three years. This is necessary to ensure that CalRecycle will have access, upon request, to the relevant

records it may reasonably rely upon to conduct its investigation or perform its audit of the Independent Producer's compliance under this chapter. The rationale for a three-year minimum retention period is consistent with other EPR regulations. That this proposed regulation requires all Independent Producer records to be maintained for a minimum period of three years is necessary because, in CalRecycle's experience implementing and enforcing other EPR programs, three years of records covers a reasonable and sufficient period of time to assist in CalRecycle's investigation without causing any undue burden to the regulated entity.

Subsection (d)

The purpose of this subsection is to explain how CalRecycle will request records from an Independent Producer and how those records must be provided in response to any such request. Specifically, CalRecycle will provide the Independent Producer with a written request for records and the Independent Producer must then immediately provide CalRecycle with the records necessary to determine its compliance with its requirements under this chapter. The rationale for immediate provision is that CalRecycle must make timely compliance determinations based on many complex factors and the information contained within these records will facilitate those determinations. Further, this requirement is reasonable, as the Independent Producers must maintain these records in a manner that will facilitate immediate provision to CalRecycle upon request. This subsection also requires Independent Producers to provide these records to CalRecycle either by allowing physical access during normal business hours to CalRecycle or other duly authorized regulatory agency or by submitting the records to CalRecycle by electronic means. This is necessary because, if Independent Producers are to comply with this reporting requirement, they must know when and where to provide the records. Business hours are a frequently used time of inspection for administrative warrantless searches. Moreover, the rationale for providing access to another duly authorized agency is to facilitate timely provision of documentation to determine compliance. In some circumstances, records may be needed from an Independent Producer that are better or more quickly accessed by another agency (such as a designated and certified local enforcement agency). Allowing such an agency to collect records on behalf of CalRecycle will hasten the provision of such records to CalRecycle while saving travel time and expense. Finally, the provision allowing for the production of records by electronic means at CalRecycle's option is necessary because, in some instances as determined by CalRecycle, electronic means will allow for the most affordable and timely method for the submission of the requested records.

ARTICLE 8. PRODUCER RESPONSIBILITY PLAN REQUIREMENTS

§18980.8. PRODUCER RESPONSIBILITY PLAN

Subsection (a)

The purpose of this subsection is to specify the criteria a producer responsibility plan must meet. An Independent Producer is only required to include applicable

requirements in their plan, as some of the requirements pursuant to section 42051.1 of the PRC and the proposed regulations are specific to an approved PRO. This is necessary because PRO's and Independent Producers are required to develop and implement a producer responsibility plan that must meet specific requirements for the purpose of compliance with the Act and the regulations.

Subsection (b)

The purpose of these subsections is to require additional information in the producer responsibility plan regarding technologies and means that will be utilized to achieve recycling requirements pursuant to section 42051.1(b)(3) of the PRC. This is necessary to include complete information and specificity in the requirements for how a PRO or Independent Producer describes the recycling technologies being utilized in their plan. The statute is vague in this regard, so CalRecycle proposed these regulations to obtain specific information required for a complete understanding of these technologies, and to determine whether they meet the conditions specified in the definition of "recycle" or "recycling" pursuant to section 42041(aa) of the PRC.

Subsection (b)(1)

The purpose of this subsection is to require that each technology be accompanied by an explanation of how that technology is employed in recycling. This is necessary to ensure that the plan describes how the technology will be utilized to achieve recycling requirements as well as meet the requirements of the Act.

Subsection (b)(2)

The purpose of this subsection is to require the specification of the covered materials that are recycled by the technology. This is necessary so that it is clear in the plan which specific covered materials the technology will be recycling.

Subsection (b)(3)

The purpose of this subsection is to require a description of the contamination the technology is able to tolerate. This is necessary because most covered materials sustain a certain amount of contamination, and that contamination often impacts whether those materials can be recycled. In order to understand whether the specific technology will be able to be adequately utilized to meet the Act's recycling requirements, it is necessary to understand what level of contamination the technology can tolerate.

Subsection (b)(4)

The purpose of this subsection is to require the inclusion of a list of overall inputs, including chemicals, if applicable. This is necessary to evaluate if the technology generates or produces significant amounts of hazardous waste, which may affect how this technology meets the conditions specified in the definition of "recycle" or "recycling" pursuant to section 42041(aa) of the PRC. This is also necessary to include based on

feedback from interested parties during the development of draft concepts during informal rulemaking.

Subsection (b)(5)

The purpose of this subsection is to require an account of end products, including quantities of byproducts or residuals and their respective dispositions. This is necessary for CalRecycle to evaluate whether the technology will achieve the requirements of the Act. If a technology creates a disproportionate amount of end products that have no other disposition than landfilling, it may render that technology unable to be considered recycling because too great of an amount of the covered material that is put into the process doesn't actually get returned to the marketplace and is instead disposed. This is also necessary to include based on feedback from interested parties during the development of draft concepts during informal rulemaking.

Subsection (b)(6)

The purpose of this subsection is to require specification of location and operational status for these technologies. This is necessary so it is clear in the plan where these technologies are currently being implemented, based on active operational status, or where these technologies are proposed to be implemented if they are still in planning stages. Plan implementation shall avoid or minimize negative environmental or public health impacts to entities in or outside of the state in accordance with the Act, so it is necessary to understand where and when these technologies are being utilized.

Subsection (b)(7)

The purpose of this subsection is to require specification on the potential environmental impacts to disadvantaged, low-income or rural communities as required by the Act. This is necessary to evaluate if plan implementation avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas and vulnerable communities outside the state. This is also necessary to include based on feedback from interested parties during the development of draft concepts during informal rulemaking.

Subsection (b)(8)

The purpose of this subsection is to require that each technology undergo an evaluation for how that technology is efficient in achieving recycling rates. This is necessary to ensure that the plan describes how the technology will be utilized to achieve recycling requirements, as well as the level of efficiency. This is also necessary to include based on feedback from interested parties during the development of draft concepts during informal rulemaking.

Subsection (b)(9)

The purpose of this subsection is to require information on the technology's financial viability, capacity and cost-effectiveness. This is necessary to determine if the technologies being utilized are potentially feasible and financially viable, as well as

maintain transparency of cost-effectiveness. This is also necessary to include based on feedback from interested parties during the development of draft concepts during informal rulemaking.

Subsection (b)(10)

The purpose of this subsection is to require a demonstration that the technology being utilized meets the conditions specified in the definition of “recycle” or “recycling” pursuant to section 42041(aa) of the Public Resources Code. This is necessary to ensure the technologies specified in the plan are consistent with the definition of “recycle” or “recycling” and also ensures compliance with section 42051.1(b)(3) of the public resources code.

Subsection (c)

The purpose of these subsections is to add additional items to the list of education and outreach efforts that may be described in the plan pursuant to section 42051.1(e) of the PRC. These additional items are examples of other education and outreach efforts specified in stewardship plans for CalRecycle’s other EPR programs, such as Pharmaceuticals and Sharps pursuant to proposed section 18973.2. This is necessary to provide additional specificity in the requirements pertaining to education and outreach information required in the plan, to align with other stewardship programs to the extent possible, and also takes into consideration and incorporates public feedback CalRecycle received.

Subsection (c)(1)

The purpose of this subsection is to require in the plan a description of what performance measures the PRO or Independent Producer will use to evaluate the performance of its education and outreach program. This requirement and the examples included in the subsection is necessary to ensure plans not only include an education and outreach program as required by the act, but that it be comprehensive and include a variety of performance metrics that allow the PRO or Independent Producer and CalRecycle to determine whether the education and outreach program is achieving its goals and purposes. This subsection also reflects and incorporates public feedback CalRecycle received.

Subsection (c)(2)

The purpose of this subsection is to require that the education and outreach materials provided to consumers are provided in a manner that ensures they are accessible to consumer language needs according to local demographics and consistent with section 7295 of the Government Code. This is not only consistent with other CalRecycle programs, but it is necessary to ensure that plans’ education and outreach programs are accessible to all Californians regardless of language. This subsection also reflects and incorporates public feedback CalRecycle received.

Subsection (d)

The purpose of this subsection is to require information described in the plan on the method by which PRO's and Independent Producers intend to identify and verify responsible end markets, based on the process established in proposed section 18980.4.1. This is necessary for completeness to maintain all plan requirements in one section.

Subsection (e)

The purpose of this subsection is to cross reference section 18980.3(f)(1)(A) and (f)(1)(B) to identify required content for PRO and Independent Producer plans, respectively. Those provisions concern the manner in which producers must establish how covered materials qualifies as recyclable pursuant to section 42355.51(d)(4) or (d)(5) of the PRC. These provisions, by their terms, are significant, substantive requirements for PRO and Independent Producer plans. Because this section generally sets forth requirements for plans, specifically delineating which provisions elsewhere in the regulations apply to PRO plans versus Independent Producer plans is necessary to ensure adequate specificity and clarity.

Subsection (f), (f)(1) and (f)(2)

The purpose of these subsections is to provide clarity and completeness regarding what must be provided in the plan, which includes the entirety of the then current version of the design guide referenced in section 42355.51(d)(3)(A) of the PRC. Inclusion of said guides will facilitate and accurate determinations of recyclability of covered materials, as set forth in section 18980.3(e), while also facilitating accomplishing the requirement under section 42053(d)(2) of the PRC which requires PRO's fees to account for the difficulty of recycling covered material caused by elements that are detrimental to recycling, as set forth in section 18980.6.7(d)(1)(E). This is necessary to provide additional specificity and clarity regarding the requirements of what the PRO must accomplish and include in their plan and ensure compliance with the Act and this chapter. The inclusion of (f)(2) is to identify additional publications which may be used and relied on in their entirety. This allows for the use and application of additional relevant and reliable data, again to facilitate accomplishing the requirements of PRC 42053(d)(2). This is necessary to account for the difficulty of recycling or composting covered material caused by elements that are detrimental to recycling or composting and facilitates compliance with this chapter and the Act by allowing for the use of the most accurate and applicable publications.

Subsection (g)

The purpose of these subsections is to provide and clear and complete description of what occurs if CalRecycle determines that a plan fails to comply with the Act. This is necessary to provide the PRO or Independent Producer a clear and complete description of what actions will be taken by CalRecycle in the event of plan disapproval, as well as a detailed description of how the PRO or Independent Producer may submit a revised plan with any additional information, modifications, or corrections to

CalRecycle. This is necessary to provide complete specificity and clarity to promote plan approval to ensure compliance with the Act and this chapter. The purpose of this subsection is also to provide specificity and complete clarity regarding when penalties shall begin accruing after the issuance of a notice of violation pursuant to proposed section 18980.13.5. This is required to ensure that the PRO or Independent Producer is aware of the process and penalties that may occur when a plan is disapproved, and until said PRO or Independent Producer submits a revised plan that is approved by CalRecycle. This is also necessary to provide additional specificity and clarity regarding the potential notice of violation and penalties associated with a disapproved plan, and to ensure compliance with the Act and this chapter.

§18980.8.1 PLAN REQUIREMENTS SPECIFIC TO A PRO

Subsection (a) and subsections (a)(1) through (a)(3)

The purpose of these subsections is to specify additional requirements that PRO's must include in their producer responsibility plan. This is necessary to make it clear these specific provisions are exclusive to PRO's and not Independent Producers. The purpose of subsection (a)(1) is to require PRO's to include a closure and transfer plan as part of their producer responsibility plan. This is necessary for compliance with the Act pursuant to section 42051.1(f) of the PRC.

The purpose of subsection (a)(2) is to require PRO's to include a fee schedule in their producer responsibility plan. This is necessary to ensure specification of the fees all participant producers are charged by the PRO as required in proposed section 18980.6.7 as is a part of the PRO's plan

The purpose of subsection (a)(3) is to require a PROs to describe in their plan how participant producers must demonstrate their items are considered reuseable or refillable, and therefore be excluded from the requirements of the Act and this chapter pursuant to proposed section 18980.2(a)(2)(A). This is necessary in order for a PRO to describe what criteria and methodology participant producers must use to demonstrate that their products are reuseable or refillable and therefore not considered covered material and excluded from the Act and this chapter. It is necessary that the PRO plan describe these criteria and methodology so that CalRecycle can use these criteria and methodology for making any determinations regarding reusability or refillability as described in proposed section 18980.2(a)(2)(A).

§18980.8.2 CLOSURE AND TRANSFER PLAN REQUIREMENTS

Subsection (a)

The purpose of this subsection is to specify the contents of the closure and transfer plan required by section 42051.1(f) of the PRC and to ensure the funding and establishment of the fund identified in section 42051.1(f) and section 42056 of the PRC. This is necessary for implementing section 42051.1(f) and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such plan, but without specifying its contents or operation. In order to ensure

that producers who are participants of the PRO plan will continue to meet their obligations in the event of a PRO's dissolution or revocation of a plan by CalRecycle, the closure and transfer plan needs to identify the relevant parties, to describe their roles, to facilitate the assignment of contracts, and to establish when the plan will be activated. Without this subsection, there would not be a process for notifying affected parties in the event of PRO dissolution, nor would there be certainty that the reserve funds will be sufficient.

This introduction to the requirements of the closure and transfer plan starts in this subsection with the beginning of a list. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether the plan has all of the required components.

Subsection (a)(1) and (a)(1)(A) through (a)(1)(E)

One purpose of this subsection is to identify the parties involved in the closure and transfer plan. This is necessary for implementing section 4205.1(f) and section 42056 of the PRC. Specifically, those provisions require the closure and transfer plan to include certain parties to undertake certain actions before and during the activation of the plan in order for the plan to ensure that producers who are participants of the PRO plan will continue to meet their obligations in the event of a PRO's dissolution or revocation of a plan by CalRecycle. Without identifying those parties, it will be impossible for them to carry out those necessary activities (e.g., it is necessary to identify the trustee or escrow agent, as they fulfill roles assigned under section 42056 of the PRC, and it is necessary to know the affected parties who will require notification pursuant to the process discussed in section 42051.1(f) of the PRC).

Another purpose of this subsection is to designate a successor trustee or agent who will be available to perform in the event that the initial trustee or agent will not serve. This is necessary to implement section 42056 of the PRC because it anticipates that there will be a trustee or agent but does not specify how that will be achieved if a trustee or agent declines to serve. If there is no trustee or agent ready to serve when the closure plan is activated, there will not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by CalRecycle.

Other purposes of this subsection are to clarify the role of the trustee or agent and further specify the relationship between the trustee or agent and CalRecycle. This is necessary for implementing section 42051.1(f) of the PRC which establishes various requirements related to the closure or transfer plan, including setting goals for such plan, but does not specify its contents or operation. Similarly, it is necessary because section 42056 of the PRC introduces the role of the trustee or agent and provides some of the actions that would need to be taken through that role but does not describe the entirety of actions necessary for the closure and transfer plan to be implemented.

Establishing what those actions are is necessary for the plan to achieve its statutory purpose of ensuring that the producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of the PRO's dissolution. Given the statutory purpose of the closure and transfer plan, to ensure that producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of the PRO's dissolution, CalRecycle needs to fill in the details of closure plan administration and the role of the trustee or agent to specify that the trustee is the implementer of the closure and transfer plan, with the advice of CalRecycle.

Similarly, CalRecycle needs to articulate its relationship to the trust because that relationship is not fully and explicitly defined in statute, and establishing it is necessary to ensure that the Act can be implemented and enforced. In particular, for the closure and transfer plan to be effective, it is necessary to establish CalRecycle's role as protector of the trust or account and its beneficiary, CalRecycle's relationship to the trust or account and trustee or agent, along as an advisor to the trustee or agent on the broad spectrum of matters the trustee or agent will take up, and CalRecycle's discretion to remove or replace the trustee or agent.

Finally, it is necessary for the closure and transfer plan to identify other key closure or transfer entities who may be affected by or have responsibilities pursuant to the initiation of the closure and transfer plan. This is necessary because there are a number of other entities such as participant producers, intermediate supply chain entities, local jurisdictions, recycling service providers, and responsible end markets that will be affected in the event a PRO's plan is dissolved or revoked. Furthermore, it is necessary to implement section 42051.1(f) of the PRC; in order to ensure that the notification required by that subdivision will be given to local jurisdictions and contractors performing recycling activities for the PRO, it is necessary for their names to be known to CalRecycle. While it is useful for the reader to see these examples of entities that may be affected, CalRecycle cannot anticipate at this juncture every entity which will be affected by the closure or which will have responsibilities under the plan; therefore, it is necessary that the list of entities be non-exclusive.

Subsection (a)(2)

The purpose of this subsection is to ensure that the closure and transfer plan is capable of being fully executed through a Trustee or Agent according to the requirements of the Act and its regulations, with the direction of CalRecycle.

This is necessary for implementing section 42051.1(f) of the PRC which establishes various requirements related to the closure or transfer plan, including setting goals for such plan, but do not specify its contents or operation. Similarly, it is necessary because section 42056 of the PRC introduces the role of the trustee or agent and provides some of the actions that would need to be taken through that role but does not describe the entirety of actions necessary for the closure and transfer plan to be implemented. Establishing what those actions are is necessary for the plan to achieve its statutory

purpose of ensuring that the producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of the PRO's dissolution.

While CalRecycle can provide oversight of an entity carrying out a transfer and closure plan, provide direction, and advise that entity, CalRecycle is not able to run the closure and transfer plan; thus, the plan must be capable of full execution by a Trustee or Agent. Moreover, this filling in of statutory details reflects the Legislature's intention that CalRecycle give direction to the Trustee or Agent in certain instances.

Subsection (a)(3)

The purpose of this subsection is to ensure that the closure and transfer plan suitably empowers the trustee or agent to carry out the closure and transfer plan. This is necessary for implementing section 42051.1(f) of the PRC which establishes various requirements related to the closure or transfer plan, including setting goals for such plan, but do not specify its contents or operation. Similarly, it is necessary because section 42056 of the PRC introduces the role of the trustee or agent and provides some of the actions that would need to be taken through that role but does not describe the entirety of actions necessary for the closure and transfer plan to be implemented. Establishing what those actions are is necessary for the plan to achieve its statutory purpose of ensuring that the producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of the PRO's dissolution.

As explained by the Legislature's discussion of the purpose of the plan's funding stream (to allow the PRO to satisfy all obligations in the event of dissolution of the PRO until the participants of the PRO's approved plan have become a participant of a different PRO's approved plan), obligations that would normally fall to the PRO will be borne by another entity with the goal of handing off those responsibilities to a successor PRO. CalRecycle needs to fill in the details of closure plan administration to specify that the plan must be drafted in a way that the Trustee or Agent is the entity that is empowered to satisfy the obligations that would have fallen to the PRO if it were still serving.

Subsection (a)(4)

The purpose of this subsection is to ensure that the plan is drafted in such a way that it facilitates the Trustee's or Agent's transfer of administration to the successor PRO or PROs. As evidenced by the Legislature's arrangement for a transfer of funds to a successor PRO and its desire that the former PRO members become members of a new PRO, the closure and transfer plan is intended to be a bridge. Twelve months after the closure and transfer plan's activation, the fund may be insufficient to ensure that producers who are participants of the former PRO's plan will continue to meet their obligations unless a successor PRO is selected. In order to ensure that a successor PRO will be selected within the twelve-month window and that producers who were participants of the former PRO's plan will continue to meet their obligations in the event of dissolution or revocation of a plan by CalRecycle, the plan must facilitate the transfer of administration to the successor PRO or PROs.

Subsection (a)(5)

One purpose of this provision is to ensure that all contracts are fully assignable to the Trustee or Agent. As explained by the Legislature's discussion of the purpose of the plan's funding stream (to allow the PRO to satisfy all obligations in the event of dissolution of the PRO until the participants of the PRO's approved plan have become a participant of a different PRO's approved plan), obligations that would normally fall to the PRO will be borne by another entity with the goal of handing off those responsibilities to a successor PRO. Taking this into account, CalRecycle has identified the Trustee or Agent as the entity who is best suited to carry this out. In order to fulfill this task, the Trustee or Agent will need to be assigned the PRO's contracts.

Another purpose of this subsection is to ensure that the trustee is empowered to assign contracts to the successor PRO, which is necessary to ensure that the Act can be implemented and enforced. Twelve months after the closure and transfer plan's activation, the fund may be insufficient to ensure that producers who are participants of the former PRO's plan will continue to meet their obligations unless a successor PRO is selected. Contracts administered by the trustee or agent must be assignable to the successor PRO to ensure that a successor PRO will be selected within the twelve-month window and that producers who were participants of the former PRO's plan will continue to meet their obligations in the event of dissolution or revocation of a plan by CalRecycle.

Subsection (a)(6)

The purpose of these subsections is to specify what full funding of the trust fund or account entails, the period in which it must exist, how it will be supplemented in case initial funding is insufficient, and how unexpended funds will be added to the fund or account if closure is initiated. This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such a fund, but does not specify its contents or operation. This introduction to the requirements of funding for the closure and transfer plan starts in this subsection with the beginning of a list. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components.

Subsection (a)(6)(A)

The purpose of this subsection is to ensure that the plan provides at all times for the full funding of the activities necessary to perform the PRO's obligations during at, minimum, a twelve-month period in which the Closure and Transfer Plan may be active. This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such a fund, but does not specify its contents or operation. These specifics are necessary to implement the Act because, without them, it could not be demonstrated that there are sufficient reserve funds in the trust fund or escrow account to allow the

PRO to satisfy all obligations in the event of dissolution as required by section 42051.1(f) of the PRC. A twelve-month period is appropriate for the fund's expected endurance because it matches the Legislature's intent, as demonstrated in section 42056 of the PRC, that major reconsideration of the bridge provided by the fund can occur at the one-year mark. By adding clarity to the fund's effective timeframe, this subsection will allow CalRecycle to verify that the PRO properly maintains an adequate reserve; absent these specifics, the PRO might underfund the closure and transfer plan and render it inoperable or overfund it at the expense of other current program operations.

Subsection (a)(6)(B)

The purpose of this subsection is to ensure that the fund exists continuously from the time at which the PRO Plan is first approved to the transfer to the Trustee or Agent in an account dedicated solely to satisfying the obligations of the PRO during the closure period and maintained separately from the PRO's other accounts. This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such a fund, but does not specify its contents or operation. These specifics are necessary to implement the Act because, without them, it could not be demonstrated that there are sufficient reserve funds in the trust fund or escrow account to allow the PRO to satisfy all obligations in the event of dissolution as required by section 42051.1(f) of the PRC. Without this provision, the PRO might temporarily suspend the fund or commingle funds in such a way that one could not rely on the funding to actually be available if the plan becomes active.

Subsection (a)(6)(C)

The purpose of this subsection is to ensure that the fund is supplemented in order to achieve the funding requirements of subsection (a)(6)(A). This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such a fund, but does not specify its contents or operation. These specifics are necessary to implement the Act because, without them, it could not be demonstrated that there are sufficient reserve funds in the trust fund or escrow account to allow the PRO to satisfy all obligations in the event of dissolution as required by section 42051.1(f) of the PRC. Without this provision, the PRO might not fully understand that it is responsible for adding supplemental funds that meet the (a)(6)(A) goal.

Subsection (a)(6)(D)

The purpose of this subsection is to require the PRO to deposit unexpended funds into this account in the event that closure is initiated. Pursuant to Section 42051.1(f), the plan and its fund are intended to allow the PRO to satisfy all obligations in the event of dissolution of the PRO until the participants of the PRO's approved plan have become a participant of a different PRO's approved plan. If the plan is initiated, the funds of the PRO must be allocated to the satisfaction of its obligations and the carrying out of the

closure and transfer plans. In order to ensure that these funds are allocated in this account.

Subsection (a)(7)(A)

The purpose of this subsection is to elicit the PRO's planned approach for providing CalRecycle and the trustee or agent with required documents and information. The documents addressed in this subsection are necessary to fulfill, in part, section 42051.1(f) of the PRC notice of dissolution requirement, facilitate the trustee or agent's carrying out of section 42056(b) of the PRC, and otherwise ensure that the closure and transfer plan provides the means of settling the affairs of the PRO in a way that producers who are participants of the PRO plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan. In order to ensure that the documents and information transfer smoothly at plan activation, the PRO needs to inform CalRecycle in advance of its planned approach.

Subsection (a)(7)(B)

The purpose of this subsection is to elicit the PRO's methodology for its financial computation and modeling assuring fund solvency, including how it calculates the cost of satisfying its obligations over a twelve-month period. This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the closure or transfer plan, including setting goals for such a fund, but does not specify its contents or operation. These specifics are necessary to implement the Act because, without them, it could not be demonstrated that there are sufficient reserve funds in the trust fund or escrow account to allow the PRO to satisfy all obligations in the event of dissolution as required by section 42051.1(f) of the PRC. By eliciting the PRO's methodology and calculations for ensuring fund solvency, these subsections will allow CalRecycle to verify that the PRO properly maintains and will maintain an adequate reserve; absent these specifics, the PRO might underfund the closure and transfer plan and render it inoperable or overfund it at the expense of other current program operations.

Subsection (a)(7)(C)

The purpose of these subsections is to ensure that the plan explains how the PRO will communicate with key entities about the activation and carrying out of the closure and transfer plan. The communications addressed in these subsections are necessary to fulfill, in part, section 42051.1(f) of the PRC notice of dissolution requirement, facilitate the trustee or agent's carrying out of section 42056(b) of the PRC, and otherwise ensure that the closure and transfer plan provides the means of settling the affairs of the PRO in a way that producers who are participants of the PRO plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan. In order to ensure that the communications reach the right entities with the right message content, the PRO needs to inform CalRecycle in advance of its planned approach.

Subsection (a)(8) and subsections (a)(8)(A) through (a)(8)(C)

The purpose of these subsections is to ensure that the closure and transfer plan describes how the trustee or agent will perform its tasks and receive payment for its services; specifically, the plan will describe the Trustee or Agent's statement of work, the process for revising a Trustee or Agent's statement of work, and how the PRO and Trustee or Agent will independently confirm payment of the Trustee or Agent.

The availability and contractual commitment of a trustee or agent to fulfill the statutory role is necessary to effectuate section 42056 of the PRC. If the PRO does not arrange for a trustee or agent and the closure plan is activated, or if the trustee or agent has committed to something less than is necessary to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by CalRecycle. In order to be assured that a Trustee or agent will be in place and will have committed to the full extent of what is necessary to perform the role, the plan needs to explain the Trustee or Agent's scope of work and to provide transparency as to how that scope might be revised so that CalRecycle will not be surprised by any changes. Additionally, in order to be assured that the Trustee or Agent will be available and knowing that the Trustee or Agent will only perform if paid, the plan needs to explain how CalRecycle will be aware that the Trustee or Agent is being paid.

Subsection (a)(9)

The purpose of this subsection is to set the date on which the closure and transfer plan will self-execute. Section 42051.1(f) of the PRC assumes that the closure and transfer plan has the potential to become effective at a particular date; establishing it is necessary to ensure that the Act can be implemented and enforced. Without such a date, the closure and transfer plan could not become active. Based on CalRecycle's previous experience with Extended Producer Responsibility programs, an appropriate timeframe for self-execution is the earlier of 30 business days of notice of pending termination or plan revocation, or five business days after actual termination or revocation of the plan. Where there is advance notice, a thirty-day window will allow necessary preparatory work to be done for the smooth and seamless implementation of the plan. Where the plan is triggered abruptly by actual termination or revocation, the plan must be activated quickly or there will be no hope of a comprehensive assumption of responsibilities by the trustee; taking this into account, five days from actual termination or revocation of the PRO plan is appropriate.

Subsection (b)

The purpose of this subsection is to identify the actions the PRO needs to take in support of the closure and transfer plan. The necessity for each provision is specified in the appropriate subsection.

This introduction to the obligations of the PRO with regard to the closure and transfer plan starts in this subsection with the beginning of a list. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more

narrative paragraph. A PRO will be able to go through the list and determine whether they are complying with all of the components.

Subsection (b)(1)

The purpose of this subsection is to ensure that the PRO develops contracts in a way that will allow for the trustee or agent to fulfill its responsibilities under section 42056(b) of the PRC if the plan is activated and to facilitate the transfer of contracts to the successor PRO or PROs at the conclusion of the closure and transfer plan. If contracts do not allow for assignment to the trustee or agent, the trustee or agent will not be able to fulfill its obligations under section 42056(b) of the PRC and CalRecycle will be unable to ensure that producers who are participants of the PRO's plan will continue to meet their obligations. Twelve months after the closure and transfer plan's activation, the fund may be insufficient to ensure that producers who are participants of the former PRO's plan will continue to meet their obligations unless a successor PRO is selected. If the contracts administered by the trustee or agent are also assignable to the successor PRO, the likelihood of a successor PRO's selection during the twelve-month window is increased, thereby helping to ensure that producers who are participants of the former PRO's plan will continue to meet their obligations in the event of dissolution or revocation of a plan by CalRecycle. In order to ensure that the goals of the Act are met through a successor PRO, it is necessary for the contracts to be assigned by the trustee to the successor PRO.

Subsections (b)(2) and (b)(2)(A) through (b)(2)(B)

The purpose of these subsections is for the PRO to provide information to CalRecycle substantiating the sufficiency of the reserve fund and notifying the agency at any point that the reserve fund is insufficient. Specifically, the PRO must provide evidence that, at any given time, the current contents of the Closure Fund can fully satisfy the PRO's obligations during a twelve-month period in which the Closure and Transfer Plan may be active, including financial modeling that assures fund solvency through twelve months of Closure and Transfer Plan implementation, based on current program activity levels and most recent cost data. This information must be provided to CalRecycle on a quarterly basis and at any time upon the request of CalRecycle.

Unless the PRO provides information to substantiate the sufficiency of the reserve fund, CalRecycle will be unable to verify that the reserve fund is adequate or that the PRO is complying with the act. In the event that funding falls below the statutory levels, it is necessary for the PRO to alert CalRecycle so that CalRecycle can ensure that the closure and transfer plan will be sufficiently funded as required by section 42051.1(f) of the PRC. Without sufficient funding, the closure and transfer plan will not comply with the statutory mandate, nor will it be capable of execution if needed.

Since the fund is intended to allow for operation in the future and the exact costs are not known, the PRO needs to understand certain assumptions that CalRecycle expects (that the values are based on current program activity and recent cost data) and to

understand the requirement to model and project these costs into the future over the previously established life of the fund.

The rationale for requiring this information on a quarterly basis is that the data may require time to assemble (requiring a timespan of greater than one month) but that leaving it to annual verification could create circumstances in which the fund is needed but the sufficiency of the fund is unverified. Moreover, the intention is to promote efficiency for the PRO and coincide with its quarterly business activities. Nevertheless, there may be special circumstances, especially where CalRecycle has reason for concern about the adequacy of the fund, that require verification on a different timeframe, and this provision is necessary to allow that opportunity.

Subsections (b)(3) and (b)(4)

The purpose of these subsections is to make explicit the PRO's obligations for keeping CalRecycle informed about its arrangements for a trustee or agent who can administer the closure and transfer plan. Specifically, the PRO must notify CalRecycle of any proposed changes to its scope of work and seek the approval of CalRecycle, then notify CalRecycle when changes to the scope of work are finalized. The availability and contractual commitment of a trustee or agent to fulfill the statutory role is necessary to effectuate section 42056 of the PRC. Changes to the scope of work by the PRO or trustee or agent or contractual disputes bring into question a trustee or agent's ability to perform its responsibilities. If the PRO does not arrange for a trustee or agent and the closure plan is activated, or if the trustee or agent has committed to something less than is necessary to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's plan will continue to meet their obligations in the event of dissolution of the PRO or revocation of a plan by CalRecycle. The rationale for CalRecycle having approval responsibility is that CalRecycle will be able to block any inappropriate changes to the scope of work. For its recordkeeping and monitoring of the program, it is appropriate for the PRO to provide notice when the changes are finalized.

Subsection (b)(5)

The purpose of this subsection is to introduce circumstances in which the PRO must notify CalRecycle. This is accomplished via a list; a list is necessary to ensure that the PRO can easily identify its reporting requirements.

Subsection (b)(5)(A)

The purpose of this provision is to ensure that the PRO, immediately upon discovery that the current contents of the Closure Fund are insufficient to support the estimated cost to fulfill the PRO's obligations over the next twelve months, notifies CalRecycle. In order for CalRecycle to ensure that the PRO responds appropriately to shortfalls in contingency funding, CalRecycle needs the PRO to inform it when the PRO believes those circumstances are present. The rationale for requiring this to be done immediately

is that the PRO cannot operate for any significant length of time without a fully funded reserve fund; if the problem is to be remedied quickly, the announcement of the problem must be even speedier.

Subsection (b)(5)(B)

The purpose of this provision is to ensure that the PRO notifies CalRecycle no more than five business days after the PRO determines that the Trustee or Agent has breached its contract. The availability and contractual commitment of a trustee or agent to fulfill the statutory role is necessary to effectuate section 42056 of the PRC. If either the PRO or the Trustee or Agent has breached its contract, the trustee or agent will be unable to fulfill its role, and there may not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's plan will continue to meet their obligations in the event of dissolution of the PRO or revocation of a plan by CalRecycle. The rationale for requiring notification in five business days is to allow the PRO and the Trustee or Agent brief time to confer on the existence of the breach to avoid overreporting problems that could be quickly cleared up. Nevertheless, it is necessary for the timespan not to exceed five days; if it did, the plan may need to be activated at a time when CalRecycle is unaware that a Trustee or Agent is not available to fulfill its role.

Subsection (b)(6)

The purpose of this subsection is to prohibit the PRO from spending funds until it has replenished the Closure Fund. This provision is necessary to fulfill the Act's requirement, pursuant to section 42051.1(f) of the PRC, that sufficient reserve funds are available in the event of PRO dissolution or plan revocation. If the PRO continues to spend first in other areas without replenishing the reserve fund, the PRO will be out of compliance with the Act and the participants of the PRO's approved plan may not be able to continue to meet their obligations in the event of plan activation. The rationale for requiring this to occur immediately is so that the PRO will be prepared first for the worst-case scenario. If the PRO funded other activities first and the PRO's funds are limited, the Closure Fund might never be adequately funded.

Subsection (b)(7)

The purpose of this subsection is to delineate how the PRO will make CalRecycle aware of a decision to dissolve and when the PRO will be considered dissolved by CalRecycle. Specifically, In the event of the dissolution of a PRO, the PRO must submit a written notice of intent to dissolve a PRO which shall include, at a minimum, a detailed description of how the entity shall meet the requirements pursuant to section 42051.1(f) of the PRC and provide CalRecycle with progress updates of the implementation of the closure and transfer plan at a frequency approved by CalRecycle. The effective date shall be the postmarked date that CalRecycle responds in writing to the notice of intent to dissolve a PRO.

Without a provision explaining how the PRO will inform CalRecycle of its intended dissolution, the effective date of the closure and transfer plan would not be

ascertainable. Moreover, this provision fulfills, in part, section 42051.1(f) of the PRC requirement to describe a process for notifying CalRecycle of the PRO's dissolution. The rationale for providing a written notice of intent is to ensure that the PRO's choice is deliberate and to create the opportunity for dialogue before the PRO considers itself dissolved. The rationale for requiring the PRO to describe how it plans to meet its statutory requirements is that the PRO will have more up-to-date information that will inform how it implements the Closure and Transfer Plan. In order to ensure that the PRO follows through on its commitments, it is necessary to have periodic updates. Finally, it is necessary to establish an effective date of dissolution. Given the need for the PRO to address outstanding matters to address with CalRecycle and knowing that CalRecycle can respond to the PRO when these matters are completed, CalRecycle's response date will be an appropriate juncture for establishing the date of dissolution.

Subsections (b)(8) and b(8)(A) through b(8)(C)

The purpose of these subsections is to ensure that CalRecycle is aware of the major steps a PRO might take toward corporate or organizational dissolution. Specifically, these subsections require immediate notification in the following three circumstances: the governing entity of the PRO takes action (e.g., by vote, consent, adoption of resolution, or any other method) to dissolve the organization, in pursuit of dissolution, an organization serving as the PRO seeks a waiver concerning dissolution from the California State Attorney General or the Attorney General of the state in which the organization is incorporated or organized, and three, in pursuit of dissolution, an organization serving as the PRO files documents related to dissolution with the California Secretary of State or any other governmental agency, including tax authorities providing tax clearances and governmental agencies in the state in which the organization is incorporated or organized. These are the three major steps a 501(c)(3) organization would take in California to dissolve; nevertheless, given that the PRO might be incorporated or organized in a different jurisdiction, notification in similar circumstances is required here. In order to ensure that the PRO does not dissolve without satisfying its obligations to CalRecycle and that CalRecycle can so that it can involve itself in the relevant proceeding, if necessary, it is necessary that the CalRecycle gets notice at each juncture. A PRO's dissolution without properly addressing its obligations to CalRecycle would create significant compliance and enforcement challenges; thus, it is appropriate that the notification be immediate.

Subsection (b)(9)

The purpose of this subsection is to require the PRO to carry out all actions assigned to it under the Closure and Transfer Plan, unless directed otherwise in writing by CalRecycle. In order for the Closure and Transfer Plan to be effective, the PRO will need to undertake preparatory actions (e.g., notifying the key plan entities and handing over documents). This provision is necessary to achieve that goal. Nevertheless, there may be unique circumstances in which the plan has not been updated and plan actions are obsolete or counterproductive; in these instances, CalRecycle needs to relieve the PRO of the obligation to carry out the action. In order to ensure that a request from

CalRecycle to desist from an action is clear and unambiguous, this provision specifies that the request will be in writing.

Subsection (b)(10)

The purpose of this provision is to provide CalRecycle and the Trustee or Agent with all records necessary to implement the Closure and Transfer Plan, including contract records. It is necessary for the Trustee or Agent to have these records if it is to implement the Closure and Transfer Plan. CalRecycle will need this information in order to advise the Trustee or Agent and ensure that it is appropriately carrying out its responsibilities. Record delivery is required no later than five working days of notice of pending termination or revocation of the PRO plan, or no later than five working days of actual termination or revocation of the PRO plan, whichever is earlier. A timespan of five days was selected in acknowledgement that it might not be able to provide these documents immediately but that a greater period could frustrate the trustee or agent's ability to assume its responsibility.

Section (b)(11)

The purpose of this provision is for the PRO to immediately cease spending upon notification of revocation or termination. If a PRO is revoked or terminated, its obligation is to move towards the implementation of the Closure and Transfer Plan. In order to ensure that the PRO moves towards the implementation of that plan and does not make new and unnecessary expenditures that would inhibit the PRO's full funding of the transfer fund, it is necessary for the PRO to immediately cease spending in these circumstances.

Section (b)(12)

The purpose of this provision is to require the PRO to provide CalRecycle and the Trustee or Agent with a preliminary accounting of the Closure Fund, including its balance and status, and any other PRO accounts and assets. This must occur no later than five working days of notice of pending termination or revocation of the PRO plan, or no later than five working days of actual termination or revocation of the PRO plan, whichever is earlier. In order for the Trustee or Agent to assume its role, administer the fund, and implement the plan, it needs to understand the PRO's financial circumstances. This provision is necessary to achieve that objective. A timespan of five days was selected in acknowledgement that it might not be able to provide these documents immediately but that a greater period could frustrate the trustee or agent's ability to assume its responsibility.

Subsection (b)(13)

The purpose of this section is to specify PRO actions that need to be taken immediately upon self-execution of the Closure and Transfer Plan. This introduction to the requirements upon self-execution starts in this subsection with the beginning of a list. The rationale for beginning this list is that this organizational method will be clearer to the PRO as opposed to a more narrative paragraph. A PRO will be able to go through the list and determine whether they have all of the required components.

Subsection (b)(13)(A)

The purpose of this subsection is to ensure that, immediately upon self-execution, the PRO delivers all necessary contact information for Producers, responsible end markets, MRFs, contractors, local jurisdictions, and other Key Closure and Transfer Entities to CalRecycle. CalRecycle and the Trustee or Agent will need to coordinate with these entities in order to ensure that producers continue to meet their compliance obligations without the PRO. In order to communicate with them, CalRecycle needs their contact information. Given the diminished role of the PRO after self-execution of the plan, it is necessary for the information to be provided immediately. Moreover, the PRO will have suitable notice to arrange this information because of the timeline for self-execution identified elsewhere in these regulations.

Subsection (b)(13)(B)

One purpose is to ensure that the Closure and Transfer Fund, complete with all unexpended funds, is provided to CalRecycle immediately on the execution date of the Closure and Transfer Plan and provide a complete accounting of the fund balance, along with accounts payable and receivable. In order for the trustee or agent to effectively manage the plan, it needs the designated funds and an understanding of the accounting related to those funds. Given the diminished role of the PRO after self-execution of the plan and the potential for PRO misuse of funds after termination, it is necessary for the funds to be provided immediately. Moreover, the PRO will have suitable notice to arrange all of this because of the timeline for self-execution identified elsewhere in these regulations.

Another purpose of this provision is to obtain from the PRO any additional financial information concerning the plan received by the PRO. After initiation of the transfer and closure plan, there may be a lag-period in which the PRO continues to receive financial information that most properly goes to the trustee or agent. In order to ensure that this information goes to the trustee or agent and CalRecycle, this provision is necessary.

Subsection (b)(13)(C)

The purpose of this provision is to assign all third-party contracts to the Trustee or Agent contemporaneously with the transfer of the Closure Fund. In order for the trustee or agent to effectively manage the plan, it needs to be assigned the contracts that carry out plan activities. Given the diminished role of the PRO after self-execution of the plan, it is necessary for the contracts to be provided immediately. Moreover, the PRO will have suitable notice to arrange all of this because of the timeline for self-execution identified elsewhere in these regulations.

Subsection (c)

The purpose of this subsection is to give a process for selecting an initial trustee or agent and a successor trustee or agent. Here, the provision specifies that, prior to the adoption of the Closure and Transfer Plan, the PRO shall propose an Initial Trustee or Agent and Successor Trustee or Agent to CalRecycle for its approval.

Section 42056 of the PRC contemplates that there will be a trustee or agent, but does not specify how they might be selected, nor does the statute address what happens if a trustee or agent declines to serve, for example, at the time of the closure and transfer plan's activation. The rationale for this approach is that the PRO, based on its expertise, will be able to identify a competent trustee or agent, but that CalRecycle will need to provide oversight by approving the Trustee or Agent. Additionally, this provision begins the more detailed specification regarding trustee selection that follows. With regard to the successor trustee, any agent or trustee will require significant familiarity with the PRO's operations in order to carry out its statutory duties; taking this into account, it is necessary for a backup trustee or agent to be available if the primary trustee or agent declines to serve.

Subsection (c)(1)

The purpose of this section is to ensure that the proposed Trustees or Agents have the requisite industry knowledge, financial experience, and skill in contract administration to carry out the Closure and Transfer Plan. This provision is necessary to ensure that the trustee or agent have the appropriate credentials and ability to fulfill the role envisioned by the Legislature.

Subsection (c)(2)

The purpose of this section is to specify when (at the time of the Closure and Transfer Plan's proposal), the PRO will furnish the credentials of its proposed Initial Trustee or Agent and Successor Trustee or Agent and sufficient evidence of their willingness and ability to carry out all duties. In order for the Trustee or Agent to fulfill its role under the Act, it needs the requisite skills and abilities; in order to verify that the Trustee or Agent possesses these, CalRecycle needs to consider the prospective Agent or Trustee's credentials. Moreover, the prospective Trustee or Agent must be willing to serve; otherwise, they cannot be relied upon to fulfill their responsibilities under the Act. The rationale for requiring this concurrent with the plan's proposal is that CalRecycle will be able to examine the credentials at the same time as it is considering the completeness of its overall closure and transfer plan and will be able to match the skills of the trustee or agent with the actions identified in the draft plan.

Subsection (c)(3)

The purpose of this section is to make clear that the Closure and Transfer Plan shall not be deemed complete until the Trustees or Agents and their scope of work have been approved by CalRecycle. In order for the plan to be actionable, CalRecycle needs a trustee or agent to assist in carrying out and administration. If there is no appropriately qualified person or entity to carry this out, the plan cannot be implemented and is therefore not approvable.

Subsection (d)

The purpose of this subsection is to establish a process for ascertaining that the Trustee or Agent continues to possess the necessary skills and qualifications and persists in willingness to serve as trustee or agent if the closure and transfer plan is activated. If

the PRO does not arrange for a trustee or agent with the appropriate qualifications and is willing to serve and this comes to light at the time of the plan's activation, CalRecycle may not have sufficient time for to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by CalRecycle.

The rationale for ordinarily confirming this information annually, absent extraordinary circumstances, is that the credentials and willingness of the trustee or agent is unlikely to change within one year, but that leaving it to verification beyond one year could create circumstances in which the information that CalRecycle has is out of date. Nevertheless, there may be special circumstances, especially where CalRecycle has reason for concern about the willingness of the Trustee or Agent to serve or its credentials, that require verification on a different timeframe, and this provision is necessary to allow that opportunity.

Another purpose of this provision is to ensure that the PRO immediately notifies CalRecycle if the Initial Trustee or Agent or Successor Trustee or Agent becomes unwilling or unable to serve. The goal of this provision is that CalRecycle will be confident that a trustee or agent is available to assume its responsibilities; if a trustee or agent is unable or unwilling to serve, CalRecycle needs to take steps to obtain a new trustee or agent. This provision is necessary to obtain the relevant information.

Subsection (e)

The purpose of this subsection is to outline the responsibilities of the trustee or agent. Here, CalRecycle starts a list to describe the trustee or agent's responsibilities. The rationale for establishing the required information in this organizational and hierarchical manner is to ensure the regulated community understands the trustee or agent's responsibilities and this organizational structure will provide that clarity.

Subsections (e)(1)

The purpose of this subsection is to require the trustee or agent to inform CalRecycle about contractual disputes or changes in the scope of work that might inhibit the activation of the closure and transfer plan. If the PRO does not arrange for a trustee or agent and the closure plan is activated, or if the trustee or agent has committed to something less than is necessary to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by CalRecycle. Thus, the trustee or agent needs to notify CalRecycle of contractual breaches. Moreover, this provision provides a time frame in which the notification will occur; five days is appropriate for ensuring that CalRecycle has early warning so that it can take corrective steps, if necessary, but still provides enough time for the parties to ensure that they are not acting with undue haste in notifying CalRecycle.

Subsection (e)(2)

The purpose of this subsection is to require the trustee or agent to inform CalRecycle about changes in the scope of work that might impact the closure and transfer plan. If the PRO does not arrange for a trustee or agent and the closure plan is activated, or if the trustee or agent has committed to something less than is necessary to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will it be able to ensure that producers who are participants of the PRO's plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by CalRecycle. Thus, the trustee or agent needs to notify CalRecycle of any proposed changes to its scope of work. Additionally, this is necessary so that CalRecycle can fulfill its approval role regarding any changes in the scope of work.

Subsections (e)(3) through (e)(5)

The purpose of these subsections is to specify the main activities of the trustee or agent if the closure and transfer plan is activated: receiving and administering the reserve fund, assuming or accepting the assignment of all PRO contracts and agreements, implement the most recent producer responsibility plan (as modified by CalRecycle), and adjusting the fee schedule. While section 42051.1(f) of the PRC sets goals for the closure and transfer plan, it does not specify its contents or operation. Section 42056 of the PRC introduces the role of the trustee or agent and provides some of the actions that would need to be taken through that role but does not describe the entirety of actions necessary for the closure and transfer plan to be implemented. It is necessary to fill in these details if the Act is to be implemented and enforced. If the PRO dissolves without the trustee or agent having the power to be assigned PRO contracts or facilitate the transfer of fund administration to the successor PRO, the trustee or agent will not be able to fulfill its obligations under section 42056(b) and (d) of the PRC.

Given the statutory goals of ensuring that producers who are participants of the PRO's plan will continue to meet their obligations and obtaining a successor PRO in the event of the initial PRO's dissolution, CalRecycle needs to fill in the details of closure plan administration and the role of the trustee or agent to specify that the trustee is empowered to execute and implement the closure and transfer plan with the advice of CalRecycle, implement the PRO's most recent plan as amended by CalRecycle, modify the fee schedule, as well as to transfer the entire administration of the program, and not merely the fund, to the successor PRO. CalRecycle's proposed regulations made this clear in its explanation of the closure and transfer plans contents; those provisions create corresponding obligations on the part of the trustee or agent. This provision is necessary to make clear that the trustee or agent has obligations that correspond to those plan provisions.

Subsection (e)(6)

The purpose of this provision is to make clear that the trustee or agent must make changes to the fee schedule and all appropriate components thereof to ensure that the plan operates as written and further modified by CalRecycle. Pursuant to proposed

regulations contained in (a)(2) and (a)(3) of this section, the trustee or agent will need to fully execute the plan and fulfill the role the PRO would have provided if closure and transfer had not occurred. Making changes to the fee schedule and all appropriate components thereof is an important aspect of fulfilling that role. In order to guide the trustee or agent in carrying out of these responsibilities, CalRecycle provides the standard to which the trustee or agent's actions must be calibrated: the changes need to be made so that the plan operates as written and further modified by CalRecycle. The fact that the plan may be further modified by CalRecycle is made clear in subsection (f)(5) of these regulations.

Subsection (e)(7)

One purpose of this subsection is to require the trustee or agent to immediately provide CalRecycle with the records necessary to determine compliance with the Act and its implementing regulations upon written request. This is necessary to ensure that CalRecycle has full and immediate access to all records the trustee or agent has regarding its implementation of the plan so that CalRecycle can actively monitor the implementation of the plan and ensure it is being implemented as required by the Act. The rationale for requiring a written request is to follow departmental past practice in producer responsibility programs and to match the similar provision that applies to the PRO. The rationale for immediate provision is that CalRecycle needs to make timely compliance determinations to ensure that participant producers continue to meet their obligations in the event of dissolution of the PRO or revocation of a plan by CalRecycle, as set forth under section 42051.1(f) of the PRC, and to ensure that the trustee or agent complies with the requirements of section 42056(b) of the PRC within 30 calendar days, as required by that provision. Given that the trustee or agent for an activated closure and transfer plan is the entity that is empowered to satisfy the obligations that would have fallen to the PRO if it were still serving, CalRecycle will need the trustee or agent's documents available to it for similar reasons and in a similar way as the PRO's documents are available to CalRecycle before the activation of the closure and transfer plans. This provision is necessary to make clear that the obligations of the trustee and agent to make documents available is similar to the PRO's obligations under section 18980.6.8 of these regulations.

Another purpose of this subsection is to specify that, at CalRecycle's option, the trustee or agent must provide the requested records either by allowing physical access to CalRecycle or other duly authorized regulatory agency during normal business hours or by submitting them to CalRecycle by electronic means. If regulated entities are to comply with this requirement, they need to know when and where the documents need to be provided. Business hours are a frequently used time of inspection for administrative warrantless searches. The rationale for providing access to another duly authorized agency is to facilitate timely provision of documentation to determine compliance. In some circumstances, records may be needed from a facility that is better or more quickly accessed by another agency (such as a properly designated and

certified local enforcement agency). Allowing such an agency to collect records on behalf of CalRecycle will hasten the provision of such records to CalRecycle while saving travel time and expense. Finally, the provision allowing for the production of records by electronic means at CalRecycle's option is necessary because, in some instances as determined by CalRecycle, electronic means will allow for the most affordable and timely method for the submission of the requested records.

Subsections (e)(8) and (e)(9)

In order to ensure compliance with the Act, CalRecycle needs the trustee or agent to meet with and report to CalRecycle on an appropriate timeline. The Act anticipates coordination between CalRecycle and the trustee or agent but does not make it clear how this will happen. This provision provides a default timeframe in which the written and verbal coordination will apply; weekly meetings and monthly reports are an appropriate default timeframe to ensure that CalRecycle is aware of the trustee or agent's actions but not so onerous that the trustee or agent will be impeded from work. The regulations allow for CalRecycle to obtain updates more frequently if special circumstances warrant it; this is needed to address circumstances in which closer coordination with the trustee or agent is needed, especially if there are concerns with trustee or agent performance.

Subsection (e)(10)

The purpose of these subsections is to specify trustee or agent responsibilities regarding the termination of the closure and transfer plan. Specifically, the trustee or agent will oversee the dissolution of the reserve fund account if the trustee or agent and CalRecycle concur that funds are insufficient to continue the implementation of the Closure and Transfer Plan or if CalRecycle exercises its discretion not to continue the Closure and Transfer Plan beyond the initial twelve-month period. Section 42056 of the PRC is primarily aimed toward transferring to a successor PRO, but also contemplates that significant adjustments to the program may be needed, especially where the closure and transfer plan has been in place for more than one year. Implicit in section 42056(c) of the PRC is the authority for CalRecycle to decide not to continue the bridge of the closure and transfer plan to a successor PRO if such a successor cannot be found after one year of closure. If CalRecycle is ever to act on this authority, it needs a process for interacting with the trustee or agent about the action. Furthermore, neither section 42051.1(f) nor section 42056 of the PRC explicitly addresses what should happen if the funds estimated to be necessary for one year are actually insufficient to support the program during the life of the closure plan.

Here, CalRecycle needs to fill in the details of closure plan administration to specify what the trustee or agent will do if the reserve fund becomes insufficient to carry out operations or if CalRecycle declines to continue the bridge for one year. The rationale

for the concurrence process for the insufficiency of funds is that the trustee or agent, who provides the day-to-day operation of the plan, has certain expertise regarding the fund's sufficiency and can propose the dissolution to CalRecycle, while CalRecycle has a deeper understanding of what is necessary to fulfill the purposes of the Act and insight into how the plan can be modified to allow continued operation.

However, CalRecycle has the sole responsibility of calling for the account to be closed if CalRecycle exercises its discretion not to continue the Closure and Transfer Plan beyond the initial twelve-month period. The rationale for this is that this decision is wholly within the domain of CalRecycle, and that knowledge of day-to-day operations is not necessary for a strategic decision.

Subsection (e)(11)

The purpose of this subsection is to task the trustee or agent with transferring all responsibilities to the Successor PRO or PROs if they are approved prior to the end of the Closure and Transfer Plan and assign all contracts and agreements to the appropriate entity. Pursuant to Section 42051.1(f), the most desirable result of the closure and transfer plan is the arrival of a successor PRO or PROs that can carry out a plan for participant producers. In order for that successor PRO to operate the program, it will need the Trustee or Agent to transfer responsibilities to it and assign all contracts or agreements to it.

Subsection (f)

The purpose of this subsection is to outline the responsibilities of CalRecycle regarding the closure and transfer plan. Here, CalRecycle starts a list to describe the trustee or agent's responsibilities. The rationale for establishing the required information in this organizational and hierarchical manner is to ensure the regulated community understands CalRecycle's responsibilities; this organizational structure will provide that clarity.

Subsections (f)(1) through (f)(3)

The purpose of these subsections is to add clarity to the relationship between CalRecycle and the trustee or agent, including CalRecycle's role in directing, dismissing, and appointing trustees or agents. Section 42056 of the PRC establishes the role of trustee or agent and provides for certain direction to the trustee or agent but does not explain the other ways in which CalRecycle will interact with the trustee and the agent, nor does it address how CalRecycle should respond to a trustee or agent who fails to serve appropriately or is unable to serve. CalRecycle needs to fill in these unspecified areas.

As acknowledged previously, CalRecycle is not able to fulfill the closure and transfer plan's day-to-day obligations. Nevertheless, the Legislature did envision that CalRecycle could give direction to the trustee or agent. This filling in of statutory details reflects the Legislature's intention that CalRecycle give direction to the Trustee or Agent in certain instances. In order to provide its oversight responsibilities CalRecycle needs

to be able to unseat and replace a trustee or agent that is not accomplishing the tasks set out herein.

Subsection (f)(4)

The purpose of this subsection is to specify CalRecycle's role in finding that the fund is no longer sufficient to support the closure and transfer plan. CalRecycle addresses this fully in subsection (e)(10) of this section of the regulations. In order to ensure clarity on the role of CalRecycle, its corresponding responsibilities are listed here.

Subsection (f)(5)

The purpose of this subsection is to make clear CalRecycle's ability to modify the most recent plan during the life of the closure and transfer plan. Given that defects in the original PRO plan may have led to the activation of the closure and transfer plan or that circumstances may arise during the life of the closure and transfer plan requiring adaptive response, this provision is necessary if the plan is to achieve the goal of ensuring that participants of the PRO's approved plan will continue to meet their obligations in the event of a PRO's dissolution or revocation of a plan by CalRecycle.

Subsection (f)(6)

The purpose of this subsection is to make clear CalRecycle's ability to extinguish or continue the plan after one year of closure. Implicit in section 42056(c) of the PRC is the authority for CalRecycle to decide not to continue the bridge of the closure and transfer plan to a successor PRO if such a successor cannot be found after one year of closure. If CalRecycle is ever to act on this authority, it needs a process for interacting with the trustee or agent about the action.

§18980.8.3. SOURCE REDUCTION BASELINE ADJUSTMENTS

Subsection (a)

The purpose of this subsection is to interpret the requirement that "source reduction" compares production of covered material to a "baseline" as allowing for methods to control for confounding variables (*i.e.*, variables that affect measurements of source reduction but are unrelated to actual source reduction efforts). The two general categories of confounding variables addressed are economic conditions and the number of participating producers. Without the ability to control for these variables, measurements of source reduction may be artificially high or low based on, for example, macroeconomic conditions that cause purchasing and consumption to increase, or an increase or decrease in the number of producers whose production is accounted for in the calculation. Given that it is the general policy of the state (*e.g.* section 41790.01 of the PRC) and the obvious purpose of the Act (*e.g.*, section 42057 of the PRC) to achieve significant source reduction, the Act necessarily does not contemplate source reduction to be driven by such variables. As such, permitting source reduction measurements to account for them is necessary for effective implementation and enforcement of the Act.

Subsection (b)

The purpose of this subsection is to specify the requirements that apply to all of the adjustment factors and methods that the PRO chooses to use. This is necessary so that the general guidelines for how the PRO's accounting for confounding factors may affect source reduction measurements are clear.

Subsection (b)(1)

The purpose of this subsection is to specify that one of the requirements for adjustment factors and methods applied to the annual source reduction calculations is that the factors and methods must not result in bias with respect to their effect on the measurement of source reduction. This restriction is necessary so that the factors and methods are designed with the purpose of calculating a more accurate value to represent source reduction efforts, as opposed to solely making the source reduction targets more easy or difficult to attain. For example, adjustment methods that are more sensitive to artificial *decreases* in source reduction measurements than they are to artificial *increases* in such measurements are prohibited.

Subsection (b)(2)

The purpose of this subsection is to specify that one of the requirements for adjustment factors and methods applied to the annual source reduction calculations is that once the factor or methods are included as an element of an approved source reduction plan in the producer responsibility plan, the factors and methods must continue to be applied until the approval of a new producer responsibility plan. This is necessary to ensure that application of the adjustment factors and methods are consistent between calendar years and not just applied during the years when they are deemed advantageous to apply, as well as giving CalRecycle the ability to review any adjustment factors and methods before they are applied.

Subsection(b)(3)

The purpose of this subsection is to ensure that inaccuracies in source reduction measurements are detected and corrected by requiring annual review and correction, via subsequent annual reports, of previous applications of any adjustment factors and methods. Requiring such corrections when the information or data on which such adjustments relied is necessary for the integrity of source reduction measurements and CalRecycle's assessments of compliance with source reduction requirements.

Subsection (b)(4)

The purpose of this subsection is to establish that the PRO must correct any errors made in previous applications of adjustments permitted under this section. Requiring those corrections to be made is necessary for the integrity of source reduction measurements and CalRecycle's assessments of compliance with source reduction requirements. It is also necessary to have these corrections noted in the annual report so that they are made publicly available for public awareness and transparency.

Subsection (c)

The purpose of this subsection is to specify the requirements that apply to controls for fluctuations in economic conditions. The restrictions, as set forth in subsections (c)(1)

through (c)(4), are necessary to ensure that the adjustment factors fulfill their purpose to isolate source reduction activity from unrelated factors.

Subsection (c)(1)

The purpose of this subsection is to specify that overall effect that controls fluctuations in economic conditions must have. In particular, they must control the effect of how the economic factors affecting the calendar year being compared to those factors' effects on the 2023 calendar year baseline to which it is compared. This is necessary to ensure any normalization or other methods are applied appropriately to result in a more accurate assessment of how source reduction methods, and not confounding factors, resulted in the change in covered material production from the baseline year to the year being assessed.

Subsection (c)(2)

The purpose of this subsection is to specify that one of the requirements for controls for fluctuations in economic conditions is that that they may only rely on economic indicators published by California or federal government agencies. This is necessary to ensure that any adjustment factors or methods consider reliable, unbiased data that was not gathered solely for the purposes of such factors or methods, as well as to ensure that the data are relevant specifically to the economic conditions of jurisdictions affected by the Act.

Subsection (c)(3)

The purpose of this subsection is to specify that one of the requirements for controls for fluctuations in economic conditions is that the source reduction plan must demonstrate how such indicators reflect market conditions affecting the amount of covered material sold, offered for sale, or distributed in the state. Requiring such justification is necessary for CalRecycle to understand how the chosen data source was chosen and deemed appropriate and to anticipate how it might be applied during the five-years effective period for the producer responsibility plan, which includes the source reduction plan.

Subsection (c)(4)

The purpose of this subsection is to require that adjustment factors concerning dollar amounts account for inflation. This is necessary so that such factors do not render source reduction measurements less accurate.

Subsection (d)

The purpose of this subsection is to specify the requirements that apply to controls for increases or decreases in participant producers. The restrictions, as set forth in subsections (d)(1) through (d)(3), are necessary to ensure that the adjustment factors fulfill their purpose to isolate source reduction activity from unrelated factors.

Subsection (d)(1)

The purpose of this subsection is to prohibit adjustment factors and methods controlling for increases or decreases in participant producers from merely considering changes in the number of participating producers without regard to how such changes relate to the actual activities of participating producers. More specifically, an adjustment method

cannot assume that the amount of covered material produced changes in direct proportion with the number of producers. These requirements are necessary to ensure that such factors and methods do not permit artificial or irrelevant changes in the number of producers to affect source reduction assessments. For example, failing to accurately consider the true effect of events like mergers or spinoffs would result in less accurate source reduction assessments because such events affect the number of participant producers without necessarily or proportionally affecting the amount of covered material relevant to source reduction.

Subsection (d)(2)

The purpose of this subsection is to specifically describe the effect that adjustment factors and methods accounting for increases or decreases in the number of participant producers must have. They must account for the extent to which increases or decreases in the amount of covered material produced is attributable solely in the number of producers considered, as opposed to the effects of the source reduction efforts of participating producers. This is necessary to ensure that the PRO's methods of assessing source reduction more accurately reflect the extent to which it and the producers are achieving source reduction through the statutorily mandated methods.

Subsection (d)(3)

The purpose of this subsection is to require that adjustment factors concerning dollar amounts account for inflation. This is necessary so that such factors do not render source reduction measurements less accurate.

Subsection (e)

The purpose of this subsection is to address how the concepts set forth in this section relate to Independent Producers, who may choose to use the same adjustment factors and methods that the PRO incorporates into its plan under the same conditions and during the same period in which the plan is effective. This is necessary to minimize variation between methods used for assessing source reductions, resulting in more an accurate understanding of source reduction progress by particular parties and in the state overall.

ARTICLE 9. ANNUAL REPORT AND PROGRAM BUDGET

§18980.9. SOURCE REDUCTION BASELINE REPORTING

Subsection (a)

The purpose of this subsections to make specific that reporting entities must include in the total amount of plastic covered material by weight and number of plastic components produced in California in the 2023 calendar year in their annual reports for the year 2027. This is necessary to update the source reduction baseline for participating producers because section 42057(b) of the PRC requires the source reduction baseline to be based off the amount of plastic covered material for which the reporting entity is a producer. Section 42051(b) of the PRC requires that producers who choose not to comply individually pursuant to section 42051(2) of the PRC must join a

PRO by January 1, 2027. Implementing a reporting requirement in 2027 specifically addressing 2023 is necessary because CalRecycle anticipates that the 2027 statutory deadline will lead to a large influx of producers during the 2026 calendar year, and the influx will likely have significant impact on the source reduction baseline.

Subsection (b)

The purpose of this subsection is to specify that the data reported by the PRO in subsection (a) of this section must be disaggregated by the participant producer. This is necessary because the source reduction plans, and annual reports are also disaggregated by participant producer. Disaggregation across the baseline, plans, and annual reports allows for measures of source reduction targets to be assessed individually.

Subsection (c)

The purpose of this subsection is to specify that all information required by subsections (a) and (b) of this section will be used to update the 2023 baseline. This is necessary to make clear the use and value of the information and because interpret the requirement in section 42057(b) of the PRC to permit such updates is required to avoid the unreasonable result that an inaccurate source reduction baseline and related assessments of source reduction could not be fixed based on more complete information becoming available.

§18980.9.1. ANNUAL REPORT AND ANNUAL BUDGET

Subsection (a)

The purpose of this subsection is to specify what needs to be included in an annual report and annual budget. The information specified for the annual budget is the information expressly required under section 42051.3(a)(2) and (3) of the PRC, as applicable to a PRO or Independent Producer. Referencing those requirements is necessary to ensure that the PRO and producers are aware of them and for completeness. This is also necessary to ensure that the PRO and Independent Producers will understand the relationship between the annual report and budget by addressing potential ambiguity in statute. Section 42051.3(a)(1) of the PRC refers to submission of an “annual report and budget,” but section 42051.3(a)(2) and (a)(3) of the PRC appear to refer to the “annual report” in isolation. However, section 42051.3(a)(3)(B) of the PRC makes clear that the annual report itself must include the “updated budget.” This subsection excludes sections 42051.3(a)(2)(A) and (a)(3)(B) from the information that Independent Producers must include in their reports and budgets, which is necessary because those provisions logically cannot apply with respect to Independent Producers’ obligations under the Act.

Subsection (b)

The purpose of this subsection is to specify additional information that must be included in annual reports. Additional information is necessary so CalRecycle will be able to

assess how PROs and Independent Producers are implementing the requirements of the Act and this chapter.

Subsection (b)(1)

The purpose of this subsection is to set forth one of the additional required components of annual reports. Requiring reports to include changes to the fee schedule pursuant to section 42053(e) of the PRC is necessary so CalRecycle has up-to-date information regarding fee schedules, which it requires to assess how the requirements of the Act and this chapter are being implemented.

Subsection (b)(2)

The purpose of this subsection is to set forth one of the additional required components of annual reports. Requiring inclusion of the recycling rate of all expanded polystyrene is necessary to determine whether producers are meeting the recycling rates mandated by section 42057(i) of the PRC.

Subsection (b)(3)

The purpose of this subsection is to set forth one of the additional required components of annual reports. Requiring the information described in proposed section 18980.4.2(b) (regarding end market verification) is necessary for determining whether PROs and Independent Producers are complying with proposed section 18980.4.2(b) and to determine whether markets being utilized continue to meet the requirements to be considered a responsible end market.

Subsection (b)(4)

The purpose of this subsection is to set forth additional required components for a PRO's annual reports. Requiring the information identified, which concerns progress towards meeting source reduction goals, is necessary for determining source reduction progress and compliance with source reduction requirements because the information expressly required by section 42057(c) of the PRC might not be sufficient for making such determinations.

Subsection (b)(4)(A)

The purpose of this subsection is to specifically identify additional source reduction information required in annual reports. Disclosure of the PRO's calculated percentage of reduction across all participant producers and how adjustments, if any, were used to make that calculation is necessary for determining source reduction progress and compliance with source reduction requirements because the information expressly required by section 42057(c) of the PRC might not be sufficient for making such determinations.

Subsection (b)(4)(B)

The purpose of this subsection is to specifically identify additional source reduction information required in annual reports. The annual report must include a qualitative description of the progress toward achieving source reduction goals and the factors affecting such efforts, including a specific comparison of the extent of utilization of the

various source reduction strategies. This requirement is necessary for determining whether the PRO is effectively and in good faith implementing its plan because the information expressly required by section 42057(c) of the PRC might not be sufficient for making such determinations.

Subsection (b)(5)

The purpose of this subsection is to specifically identify the additional information that a PRO must include in annual reports. In particular, the annual reports must include information described in proposed section 18980.3(f)(1)(B) and (f)(1)(C). Because that section also identifies contents of annual reports, expressly incorporating those provisions in this section is necessary to avoid confusion as to the full scope of the content requirements for annual reports.

Subsection (b)(6)

The purpose of this subsection is to specifically identify the additional information that an Independent Producer must include in annual reports. In particular, the annual reports must include information described in proposed section 18980.3(f)(2)(B). Because that section also identifies contents of annual reports, expressly incorporating that information into this section is necessary to avoid confusion as to the full scope of the content requirements for annual reports.

Subsection (c)

The purpose of this subsection is to specify a timeline for CalRecycle's completeness determinations. The 90-day timeline is necessary because it is mandated by section 42051.3(b)(1) of the PRC. Including the timeline ensures that this subsection includes the procedural framework for the more specific provisions set forth in subsections (c)(1) and (c)(2).

Subsection (c)(1)

The purpose of this subsection is to specify the consequences of a determination by CalRecycle that an annual report is incomplete determination. In particular, this subsection interprets the reference to a "notice" in section 42051.3(b)(1) of the PRC to mean that CalRecycle may issue a notice of violation once it deems an initial annual report to be incomplete. Because the Act expressly requires submittal of a complete annual report meeting the requirements of section 42051.3 of the PRC, any failure to do so constitutes an ongoing violation, and section 42081 of the PRC expressly authorizes issuance of a notice of violation in such circumstances. Interpreting statute in this way is necessary because, otherwise, a PRO could effectively abrogate its obligation to submit a satisfactory report for at least 180 days without being subject to any penalty. This would be possible because, under the timelines set by section 42051.3(b) of the PRC, the following course of events would be possible: the PRO could submit an initial incomplete report; CalRecycle could then take up to 90 days to review the report; the PRO could then take up to 60 more days to correct the annual report; CalRecycle would then require some further period to reevaluate the report; and, if CalRecycle then still found the report to be incomplete, only then would it issue a notice of violation, and penalties would only begin accruing 30 days later (per section 42081(a)(3) of the PRC). Such a sequence of events would severely undercut efforts to enforce the Act and could

not reasonably have been intended. This subsection also states that the violation described will be deemed to have occurred only until the submission date of an annual report that CalRecycle subsequently finds complete. This is necessary so the violation would not be deemed to have persisted past the point at which action by the PRO had substantively corrected it.

Subsection (c)(2)

The purpose of this subsection is to require CalRecycle to review an annual report for approval following a “complete” determination. Such a review is necessary because the Act expressly requires CalRecycle to review the report for compliance (section 42051(b)(3) of the PRC). Also, referring to this requirement is necessary so that this subsection makes clear to the reader the next step in the review process once the violation, if any, described in subsection (c)(1) is resolved.

ARTICLE 10. DATA REPORTING REQUIREMENTS

§ 18980.10. REGISTRATION AND MAINTAINING ADDRESS ON FILE

Subsection (a)

The purpose of this subsection is to establish the process by which each producer must register with CalRecycle, as authorized by section 42051(c) of the PRC. This subsection requires each producer to register electronically with CalRecycle and to maintain its most current address on file with CalRecycle. This is necessary to ensure CalRecycle receives and maintains accurate information necessary to implement and enforce the Act. CalRecycle must have accurate contact information on file for all producers that are subject to the Act in order to effectively enforce the Act, including by issuing notices of violation and serving producers with an accusation initiating administrative enforcement proceedings. More generally, this is necessary because section 42060 of the PRC expressly requires there to be registration and reporting procedures.

Subsections (a), (a)(1) and subsections (a)(1)(A) through (a)(1)(F)

The purpose of these subsections is to require producers to ensure CalRecycle has current and accurate typical contact information. This requirement is necessary because the needs complete information to identify the producer for the purposes of implementing and enforcing the Act.

Subsection (a)(2)

The purpose of this subsection is to require a PRO to register on behalf of its participating producers who do not choose to be reporting entities themselves. under section 18980.1(a)(35)(A). This is necessary to ensure that the PRO and producers understand their respective obligations and because section 42060 of the PRC expressly mandates that a PRO operating on behalf of a producer registers with and reports to CalRecycle.

Subsection (a)(3)

The purpose of this subsection is to require producers to ensure CalRecycle has current and accurate typical contact information. This requirement is necessary because the

needs complete information to identify the producer for the purposes of implementing and enforcing the Act. Including this requirement is further necessary because, otherwise, it would not be clear that producers have the ultimate responsibility for accuracy of the contact information on file. Producers must have this responsibility because a PRO acting on its behalf would necessarily rely on information provided by producers, so only producers can reasonably ensure that information provided on their behalf is accurate and current.

Subsection (a)(3)(A)

The purpose of this subsection is to establish producer obligation with respect to ensuring that CalRecycle has current and accurate contact information. Upon CalRecycle's request, a producer must either resubmit registration information or verify the accuracy of existing information, and the failure to do so, or otherwise the failure to cooperate with CalRecycle's investigatory authority under section 42080 of the PRC, is a violation of the Act. This is necessary to ensure that producers are aware of the consequences of not providing the information required in this section. Those consequences, moreover, are the necessary legal result of not complying with this section because the obligations described are expressly imposed by statute.

Subsection (a)(3)(B)

The purpose of this subsection is to establish that failing to meet the requirement to notify CalRecycle of a change in address within 30 days is a violation of section 42052(c) of the PRC. Requiring that a producer is obligated to notify CalRecycle of such changes within 30 days is necessary because it is expressly mandated under section 42051(c) of the PRC. Including it here ensures that producers are aware of this statutory obligation and do not read subparagraph (A) as implying that it does not apply.

Subsection (a)(3)(C)

The purpose of this subsection is to establish the effect of a PRO's inclusion of a producer's business address in a plan, plan update, annual report, or other written notice to CalRecycle. Allowing such inclusion to satisfy a producer's obligation to maintain an address on file with CalRecycle is necessary because section 42051(c) of the PRC expressly requires it to have that effect. This section also provides that a producer is ultimately responsible for ensuring that its current contact information is on file with CalRecycle, even if a PRO has purported to submit such information on the producer's behalf. This is necessary to account for the possibility that the PRO might submit erroneous information. Whatever the cause for such an error, the producer is the only party that can reasonably detect and correct it. CalRecycle must have accurate contact information on file for all producers in order to effectively enforce the Act, including by issuing notices of violation and serving producers with an accusation initiating administrative enforcement proceedings.

Subsection (a)(4)

The purpose of this subsection is to establish a registration process for an entity who becomes a producer and joins a PRO after January 1, 2027. The PRO must register the

producer with CalRecycle within 30 days of the producer joining. This requirement is necessary because statute does not expressly provide the applicable time frame for such registrations. A 30-day time frame is appropriate in light of the general requirement that changes in a producer's address must be communicated to CalRecycle within such a time frame.

Subsection (a)(5)

The purpose of this subsection is to establish when entities that become producers after January 1, 2027, and seek to comply independently as an Independent Producer must register. In such an instance, the producer must register with CalRecycle when it applies to be considered an Independent Producer pursuant to Article 5 of these regulations. This is necessary because statute does not expressly address the timing of the registration requirement in such a scenario. Requiring the producer to register at the time of the application under Article 5 is appropriate because, at the time of that application, the producer is necessarily already providing information to CalRecycle.

Subsection (b)

The purpose of this subsection is to provide guidance on the registration process for producers whose registration status was inactivated under subdivision (c) or (d) but who once again become subject to the reporting requirements of this chapter. It requires such producers to request that CalRecycle reactivate their registration status within 30 days of again becoming subject to the reporting requirements of this chapter and to resume reporting in the following reporting cycle. These requirements are necessary because it otherwise would be unclear how registration requirements would apply to such producers, and a clear, reasonable timeline is necessary for the purposes of ongoing implementation and enforcement of the Act. More generally, this is necessary because section 42060 of the PRC expressly requires there to be registration and reporting procedures. The 30-day timeframe is appropriately consistent with the requirements applicable to registration of new producers and mandatory updates to contact information.

Subsection (c)

The purpose of this subsection is to establish the process for inactivating the reporting system registration for participant producers whose activities have changed such that they are no longer subject to registration and reporting requirements. Establishing a process is necessary because statute does not provide for one, but the practicalities of implementing and enforcing the act require there to be one. More generally, this is necessary because section 42060 of the PRC expressly requires there to be registration and reporting procedures.

Subsection (c)(1)

The purpose of this subsection is to establish the process and timeline for inactivating the reporting system registration for participant producers who are reporting entities under proposed section 18980.1(a)(35)(A). The producer must request that CalRecycle inactivate their reporting system registration within 30 days and must demonstrate why

they should no longer be registered. Although section 42060(a)(2)(A) of the PRC establishes producers' registration and reporting requirements, statute is silent on the process for inactivation when a producer's activities have changed such that they are no longer subject to those requirements. This subsection is therefore necessary because the practicalities of implementing and enforcing the Act require there to be a process for handling these circumstances, and that the process provide notice to CalRecycle of a producer's assertion that they are no longer required to register and report. The 30-day timeframe is appropriately consistent with the requirements applicable to the other requirements of this section concerning changes in status affecting registration and reporting requirements and changes in contact information.

Subsection (c)(2) and subsections (c)(2)(A) and (c)(2)(B)

The purpose of these subsections is to establish the process and timeline for inactivating the reporting system registration for participant producers who are not reporting entities under proposed section 18980.1(a)(35)(A). The producer must notify the PRO within 30 days, and the PRO must submit a request to CalRecycle for the producer's registration to be inactivated and demonstrate why the producer should no longer be registered. Although section 42060(a)(2)(A) of the PRC establishes producers' registration and reporting requirements, statute is silent on the process for inactivation where a participant producer's activities have changed such that they are no longer subject to those requirements. These subsections are therefore necessary because the practicalities of implementing and enforcing the Act require there to be a process for handling these circumstances, and that the process provide notice to CalRecycle of the assertion that a producer is no longer required to register and report. The 30-day timeframes are appropriately consistent with the requirements applicable to the other requirements of this section concerning changes in status affecting registration and reporting requirements and changes in contact information.

Subsection (d)

The purpose of this subsection is to establish a notification process and timeline for Independent Producers who no longer meet the registration and reporting requirements of the Act or these proposed regulations. This is necessary because registration and reporting procedures are expressly required under section 42060(a)(2)(A) of the PRC, and the practicalities of implementing and enforcing the Act require that there be a process for handling these circumstances, and that the process provide notice to CalRecycle of the assertion that a producer is no longer required to register and report. The 30-day timeframe is appropriately consistent with the requirements applicable to the other requirements of this section concerning changes in status affecting registration and reporting requirements and changes in contact information.

Subsection (e)

The purpose of this subsection establishes that inactivation of a registration cannot take effect before CalRecycle receives the request. This is necessary because producers otherwise would not have clear guidance when they are no longer required to comply

with reporting requirements. The inactivation cannot necessarily take effect before the request because that would effectively excuse noncompliance with registration and reporting obligations retroactively and undermine CalRecycle's implementation and enforcement of the Act.

Subsection (f)

The purpose of this subsection establishes that all reporting obligations must be met before CalRecycle is required to inactivate a registration. This is necessary, as a practical matter, because inactivation of registration before full compliance would effectively make it impossible for the producer to fulfil outstanding reporting obligations.

Subsection (g)

The purpose of this subsection is to clearly explain that exemptions from other requirements under the Act and these regulations do not obligations to register and maintain contact information on file with CalRecycle. This is necessary because, if such exemptions negated the obligation to register and report, CalRecycle's ability to investigate potential violations of the Act, such as by assessing the ongoing validity of exemptions, would be severely limited. Interpreting exemptions to have that effect would clearly undermine the purpose of the Act and CalRecycle's implementation and enforcement of it.

§ 18980.10.1. DATA REPORTING SUBMISSION

Subsection (a)

The purpose of this subsection is to establish the process for reporting entities' submission of data reports to CalRecycle under section 42052(a) of the PRC. This subsection provides that data reports shall be submitted annually starting in 2026 and that the reporting entity shall certify that the information is accurate and complete. Because section 42052(a) requires annually submission of reports to CalRecycle but does not specify the timeline or process for doing so, these subsections are necessary to inform reporting entities of their reporting obligations under the Act. It is necessary to require annual reporting to commence in 2026 because section 42062(a) of the PRC requires CalRecycle to begin reviewing and assessing data in 2026 for the purpose of adjusting recycling rates. Commencing data reporting in 2026 also ensures that reporting entities have as much time as possible to prepare to report information while also ensuring CalRecycle receives the data it needs to fulfill its statutory obligations. This subsection is also necessary to ensure CalRecycle receives accurate and complete data from reporting entities.

Subsection (a)(1)

The purpose of this subsection is to specify the information that must be used by a reporting entity when preparing its data reports under section 42052(a) of the PRC. It provides that a reporting entity must use information available at the time the report is

due. This is necessary to ensure that reporting entities are not relying upon outdated or hypothetical information when submitting their data reports and to ensure that CalRecycle can implement and enforce the Act based on the most complete and accurate information that is available at the time of the report's submission.

Subsection (a)(2)

The purpose of this subsection is to establish the requirement that a reporting entity must submit a revised report upon identifying an error in a previously submitted report. If the reporting entity identifies such an error, it must revise and correct the error within 10 business days. Requiring this is necessary because the reporting entity is best positioned to revise and correct errors in its data, and because the effective implementation and enforcement of the Act depends on the integrity of the data reported to CalRecycle. The 10-day period is required to accommodate the reasonable time the reporting entity may need to make corrections. It allows the reporting entity time to identify and correct errors without letting too much time lapse that the errors in reporting will impact the data used by CalRecycle from those reports.

Subsection (a)(3)

The purpose of this subsection is to establish the requirement that a reporting entity must submit a revised report upon being notified by CalRecycle of an error in a previously submitted report. If CalRecycle notifies the reporting entity of such an error, the reporting entity must revise and correct the error within 10 business days. Requiring this is necessary because the reporting entity is best positioned to revise and correct errors in its data, and because the effective implementation and enforcement of the Act depends on the integrity of the data reported to CalRecycle. The 10-day period is required to accommodate the reasonable time the reporting entity may need to make corrections. It allows the reporting entity time to identify and correct errors without letting too much time lapse that the errors in reporting will impact the data used by CalRecycle from those reports.

Subsection (b) and subsections (b)(1) through (b)(3)

The purpose of these subsections is to establish the required process, timeline, and contents for the submission of reports under section 42052(a) of the PRC. The subsections provide that data reports must be submitted electronically using CalRecycle's online reporting system and are due annually on April 1. It further provides that report data must pertain to the previous calendar year and must use the CMC list that was current as of December 31 of the previous calendar year. Providing these parameters is necessary to give effect to the requirements set forth in section 42052(a) of the PRC, and to ensure that reporting entities understand their basic reporting obligations and how to comply with them, which in turn ensures CalRecycle receives reports in a manner that will best enable it to implement and enforce the Act. April 1 was chosen as the due date because CalRecycle needed to establish a deadline to submit the reporting data, and April 1 is consistent with the initial due date of the PRO plan under section 18980.6.1(a) of these proposed regulations and the annual report and

annual budget, as specified in 18980.6.5(a) and 18980.7.4(b) of these proposed regulations. It is necessary to specify that reports shall use report data pertaining to the previous calendar year and the CMC list that was current as of December 31 of the previous calendar year to ensure that the reports are using the most current and accurate data and are not relying on earlier, out of date data.

Subsection (c)

The purpose of this subsection is to establish that data reporting requirements continue to apply to producers who have been approved for inactivation from the reporting system. Such producers must still report data through the effective date of inactivation, and they must enable the PRO to report on their behalf up to the date CalRecycle approves the inactivation request. This is necessary to offer guidance to inactivated producers as to the length of time for which they remain subject to their reporting requirements under the Act and to ensure CalRecycle continues to receive data for inactivated producers until they are no longer subject to those reporting requirements.

Subsection (d)

The purpose of this subsection is to specify the required data report contents. It requires all data reports to contain the elements specified in proposed section 18980.10.2. This is necessary to inform producers of the mandatory contents of their data reports under section 42052 of the PRC.

§ 18980.10.2. DATA REPORT CONTENTS

Subsection (a) and subsections (a)(1) and (a)(2)

The purpose of these subsections is to specify the required scope and contents for data reports under section 42052(a) of the PRC. Subsection (a) requires reporting entities to submit a data report for all covered material it produced and that was sold, distributed, or imported into the state during the previous calendar year. This is necessary because, while section 42052(a) of the PRC requires the annual submission of data reports, it does not identify the period of time that each data report must address. CalRecycle chose the previous calendar year as the period of time each data report must address because annual reporting is consistent with the other reporting requirements in the Act and less onerous and less burdensome than more frequent reporting while still ensuring CalRecycle receives regular, accurate, and current data. These subsections also require data reports to include data on the total weight of covered material by covered material category ((a)(1)) and the total number of plastic components by covered material category ((a)(2)). This is necessary to inform entities as to the type of data they must report to CalRecycle and because this type of data is explicitly required to be reported under section 42052(a) of the PRC. Such data is also necessary to ensure CalRecycle can effectively implement and enforce the provisions of this chapter, including the source reduction requirements under section 42057(a) of the PRC.

Subsection (b)

The purpose of this subsection is to specify the recycling rate data that must be reported. It provides that data reports must contain the total weight of covered material recycled by covered material category and the total number of plastic components recycled by covered material category. This is necessary to inform reporting entities as to the type of recycling data they must report to CalRecycle and because this type of recycling data is explicitly required to be reported under section 42052(a)(2) of the PRC. Such data is also necessary to ensure CalRecycle can effectively implement and enforce the provisions of this chapter, including the recycling rate requirements under section 42050(c) of the PRC.

Subsection (c) and (c)(1)

The purpose of these subsections is to require reports to include information pertaining to covered material that is collected and recycled through a program other than curbside collection programs. This section is necessary to inform reporting entities as to their 18980.2

reporting requirements for such programs and because this type of data is explicitly required to be reported under section 42052(a)(3) of the PRC. Such data, including identification of the program itself, is also necessary to ensure CalRecycle can effectively implement and enforce the provisions of this chapter, including the recycling rate requirements under section 42050(c) of the PRC.

Subsections (c)(2)(A) through (c)(2)(D)

The purpose of these subsections is to specify the data that must be reported pertaining to covered material that is collected and recycled through a program other than curbside collection programs. These subsections require the data report for program to include the total weight of covered material and total number of plastic components that are collected ((c)(2)(A)-(B)) and the total weight of covered material and total number of plastic components that are recycled by the program ((c)(2)(C)-(D)). These requirements are necessary because they cover the data explicitly required to be reported under section 42052(a)(3) of the PRC. Such data is also necessary to ensure CalRecycle can effectively implement and enforce the provisions of this chapter, including the recycling rate requirements under section 42050(c) of the PRC.

Subsection (d)

The purpose of this subsection is to specify that data reports must include the total weight of covered material not recycled. This is necessary because the reporting entity is best positioned to determine the total weight of covered material not recycled, and such information is required for evaluation of whether core requirements of the Act are being met, including the achievement of recycling rates under section 42050(c) of the PRC.

Subsection (e)

The purpose of this subsection is to specify the data that must be reported by producers of expanded polystyrene food service ware. Requiring data on the sale, distribution, and import of such materials necessary for implementation and enforcement of the Act's requirement that the material achieve the recycling rates stated in section 42057(i) of the PRC.

Subsection (f)

The purpose of this subsection is to specify that data consisting of weights must be reported in tons. This is necessary to ensure reporting entities submit data using the same metrics and to facilitate CalRecycle's ability to effectively monitor progress under the Act.

Subsection (g)

The purpose of this subsection is to specify that data must be reported in monthly increments. CalRecycle determined reporting in monthly increments is necessary to ensure reporting entities submit data using the same metrics and to facilitate CalRecycle's ability to effectively monitor progress with the greatest accuracy possible. Monthly increments allow CalRecycle to better analyze trends in data and provide the most accurate and granular information. Also, reporting entities should have this data in a way that can easily be reported in monthly increments, so this should not be too onerous for reporting entities. In addition, monthly increments are consistent with the way data is reported in CalRecycle's Beverage Container Recycling Program as required by sections 14550 and 14575(g) of the PRC and 14 CCR sections 2240, 2310, and 2425 , and CalRecycle has found having that program data in monthly increments best facilitates CalRecycle's oversight and implementation of that program.

Subsection (h)

The purpose of this subsection is to define the term "recycled" as used in this article. The definition of "recycled" is necessarily the one established in 18980.3.2(a)(1) because the data being reported is for use in determining recycling rates as described therein, and this is included for clarity and completeness.

ARTICLE 11. REQUIREMENTS FOR LOCAL JURISDICTIONS AND RECYCLING SERVICE PROVIDERS

§ 18980.11. EXEMPTION FOR LOCAL JURISDICTIONS AND RECYCLING SERVICE PROVIDERS

Subsection (a)

The purpose of this subsection is to establish a process for local jurisdictions or recycling service providers to request an exemption under section 42060.5(b) of the PRC. Process is necessary because section 42060.5(b) of the PRC requires CalRecycle to grant extensions or exemptions based on a certain written showing but does not specifically provide the relevant process. Applications are required to be submitted electronically because electronic submission of the application will allow for

an efficient means for CalRecycle to receive, assign, and evaluate the application. This is necessary to meet the contemporary standards of submitting documents and establish a consistent format of submission. Moreover, the specification of electronic submission is necessary because it provides instantaneous transmission (which gives applicants greater time to review and certify their information, as opposed to a process which is not instantaneous), best facilitates document retention by CalRecycle, allows for the appropriate departmental personnel to review the documentation, provides consistency with other internal processes of CalRecycle, and minimizes the cost and time burden associated with mailing.

Subsection (a)(1)

The purpose of this subsection is to specify information that must be included in an application for an exemption. An application is required to identify the covered materials for which an exemption or extension is being sought so that CalRecycle can consider the request. Allowing the application to identify covered material categories is necessary because exemptions will, as a practical matter, likely concern entire categories, so requiring exemption requests for every relevant covered material would be impractical.

Subsection (a)(2)

The purpose of this subsection is to specify information that must be included in an application for an exemption. Requiring applications to address local conditions, circumstances, or challenges preventing compliance with section 42060.5(a) of the PRC is necessary because those are the express bases stated in statute on which the exemption may be granted. This subsection also sets forth specific issues that the application must address to justify the granting of an exemption. The specific issues to be addressed cover both the practical compliance barriers (imposed as a result of the contents of a plan pursuant to section 42051.1(l)(1) of the PRC) and the public policy concerns that the Act embodies, such as those expressly mentioned in section 42041(ad) of the PRC for responsible end markets and section 42041(aa)(5) of the PRC, which expressly requires regulations to consider such matters.

Subsection (a)(3), subsection (a)(3)(A), and subsections (a)(3)(A)(i) through (a)(3)(A)(iv)

The purpose of these subsections is to specify the contact information for the person responsible for signing and submitting the request that must be submitted to CalRecycle with an application. CalRecycle requires this information in the proposed subsections so that it can identify the appropriate person to contact and the means by which to contact them.

Subsection (a)(3)(B) and subsections (a)(3)(B)(i) through (a)(3)(B)(iii)

The purpose of these subsections is to specify the required information for the entity or entities represented by the person identified in section 18980.11(a)(3)(A) that must be submitted to CalRecycle with an application. CalRecycle requires this information in the

proposed subsections so that it can identify the relevant entity or entities seeking an exemption under section 42060.5(b) of the PRC when considering the application.

Subsection (b)

The purpose of this subsection is to require the entity requesting the application to confer with the relevant PRO and affected Independent Producers. Requiring the entity to do so is necessary because section 42060.5(b) of the PRC expressly provides that a PRO may object to an exemption, and the exemption is likely to affect the PRO's and Independent Producers' efforts to implement their plans and otherwise comply with the Act. Because section 42060.5(b) expressly provides that the PRO must arrange for alternative means for handling the covered materials at issue, involving PROs and Independent Producers by permitting them to review and comment on an application is necessary as a practical matter, and it could also result in greater efficiency because it might eliminate the need for the exemption.

Subsection (b)(1) and subsections (b)(1)(A) through (b)(1)(C)

The purpose of these subsections is to specify how PROs and any Independent Producers may engage with the applicant, including setting the time for such engagement. A 90-day period, with flexibility for the parties to mutually extend the period, for such engagement is necessary to ensure meaningful review and comment can take place. Expressly specifying that responses to the applicant may be in writing is necessary to ensure that, if desired by the PRO or Independent Producer, a written record of the review and comment process can be included in the application submitted to CalRecycle.

Subsection (b)(2) and subsections (b)(2)(A) and (b)(2)(B)

The purpose of these subsections is to ensure that the application submitted to CalRecycle incorporates the review and comment, if any, resulting from the process required in this subsection. Requiring the comments and how the applicant addressed or considered them is necessary to demonstrate whether the applicant satisfied its meet and confer obligation in good faith and to ensure that CalRecycle is informed of circumstances relevant to its consideration of whether to grant an exemption.

Subsection (c)

The purpose of this subsection is to specify when the exemption becomes effective and its duration. The two-year effective period is necessary because it is expressly prescribed in statute. Specifying that the exemption takes effect upon approval is necessary so that jurisdictions, recycling service providers, PROs, and Independent Producers will have clear expectations as to how and when requests for exemptions might affect their obligations under the Act.

Subsection (d)

The purpose of this subsection is to establish the process for extending exemptions granted by CalRecycle pursuant to this section. Establishing such a process is

necessary because statute expressly requires CalRecycle to consider whether to extend previously granted exemptions but does not specifically set forth the process for it do so.

Subsection (d)(1)

The purpose of this subsection is to require the local jurisdiction or recycling service provider to give notice of its intent to obtain an extension to PROs and Independent Producers. Requiring notice is necessary because the exemption may affect how PROs and Independent Producers continue to fulfill their statutory obligations.

Subsection (d)(2)

The purpose of this subsection is to establish the process and substantive requirements for requesting a two-year extension. Conditioning the extension on there being no change to the basis previously established for the exemption is necessary because the same statutory conditions apply to the extension as applied to the initial granting of the exemption. Requiring the extension request to be in writing, signed under penalty of perjury, is necessary to ensure that there is a documented basis for granting an extension and means for holding the applicant accountable for the representations on which the extension is based. Requiring the extension request to be submitted between 120 and 90 days before expiration of the exemption is necessary to ensure that applications are submitted in reasonable proximity to when CalRecycle may grant it and so that CalRecycle has sufficient time to review the request before the exemption becomes no longer effective.

Subsection (d)(3)

The purpose of this subsection is to require that, if circumstances on which a previously granted exemption was based have changed, a wholly new request must be submitted. This is necessary to ensure that any exemption granted by CalRecycle satisfies the express statutory requirements for the exemption.

§ 18980.11.1. EXEMPTION FOR RURAL COUNTIES AND RURAL JURISDICTIONS

Subsection (a)

The purpose of this subsection is to require a county or jurisdiction to notify CalRecycle within 14 calendar days of its adoption of a resolution under section 42060.5(c) of the PRC. This is necessary because CalRecycle's implementation and enforcement authority under the Act necessarily requires it to know which counties and jurisdictions claims to be exempt from its requirements.

Subsection (b)

The purpose of this subsection is to establish that whether a county or jurisdiction is exempt from section 42060.5(a) is subject to CalRecycle's determination of whether the county or jurisdiction qualifies as "rural" pursuant to section 42649.8. This is necessary because section 42060.5(c) of the PRC exemption is only available to those rural counties or rural jurisdictions that meet the section 42649.8 of the PRC definition, and

CalRecycle's authority to implement and enforce it necessarily requires application of provisions governing who is subject to it.

ARTICLE 12. REQUIREMENTS FOR THE ADVISORY BOARD

§ 18980.12. MEMBERSHIP TERMS AND APPOINTMENTS

Subsection (a)

The purpose of this subsection is to establish when the appointment of an individual to the advisory board becomes effective. This is necessary because statute does not expressly provide for such details, such that it is not clear whether the appointment becomes effective upon the director's official decision to appoint an individual or upon the individual's acceptance. The most logical application of the statute is that the membership commences once the appointment has been accepted in writing. This subsection also provides that the director can, upon written notice, revoke an individual's appointment. This is necessary because section 42070 of the PRC does not expressly state when an appointee's membership may end other than with respect to their three-year term. It would be unreasonable, however, to interpret section 42070 as not empowering the director to remove appointees. Under such an interpretation, members of the advisory board could not be replaced even if they were to engage in misconduct, even gross misconduct or ceasing to participate in advisory board business entirely or become ineligible to serve on the board because they no longer fall within any of the categories listed in section 42070(a). As such, the authority to appoint members necessarily includes the discretion to revoke those appointments.

Subsection (b)

The purpose of this subsection is to interpret the statutory language establishing that advisory board members are appointed for three-year terms. Section 42070(b) of the PRC does not specify whether the "terms" are predefined periods into which memberships fit or periods that begin as of the appointment's effective date and ends three years later. The latter interpretation is impractical because, in any given year, there could be up to thirteen terms expiring on different dates throughout the year. Having such irregular membership turnover would be highly likely to impair the advisory board's ability to perform its duties. For example, the advisory board could at any time be tasked with reviewing a plan amendment, on which it has only 60 days to review and offer comment. Depending on their timing and whether they result in temporary vacancies, multiple membership changes throughout that period could effectively marginalize one or more of the required to be represented on the board under section 42070(a) of the PRC. In contrast, interpreting statute such that membership turnover due to term expirations all occur on the same date each year will significantly, if not completely, mitigate such continuity problems, lessen CalRecycle's administrative burden, and ensure that the advisory board can perform its functions fully and fairly. As such, it is necessary to interpret "three-year terms" as periods that necessarily begin on

the same calendar day (for administrative convenience, the first day of the year) and expire three years later.

Subsection (c)

The purpose of this subsection is to establish that a member's reappointment to the advisory board requires the director's approval of an application to be reappointed. Statute does not provide any specific procedural requirements that a current member must satisfy in order to be reappointed. However, requiring a formal request is necessary for CalRecycle to board members whose terms are expiring but that might not need to be replaced. It also ensures that the members reconfirm their eligibility to continue serving on the advisory board in the representative capacity for which they were appointed, as required under section 42070(a) of the PRC.

ARTICLE 13. ENFORCEMENT OVERSIGHT BY THE DEPARTMENT AND ADMINISTRATIVE CIVIL PENALTIES

§ 18980.13. COMPLIANCE EVALUATION AND DETERMINATION

The purpose of this section is to establish processes related to CalRecycle's enforcement of the Act, including investigations and inspections and related assessments of compliance. The Act itself, including the enforcement provisions of sections 42080 through 42084 of the PRC, do not prescribe the specific processes for CalRecycle to use to exercise its authority for such enforcement. Nor does the Act provide details of how to apply the Act's penalty provisions, which do not clearly address how per-day penalties shall apply to various types of violations and related scenarios that may occur. For example, it is not clear from statute how to identify when noncompliance results in separate, repeated violations as opposed to a single violation that occurs continuously over multiple days. This section is therefore necessary for CalRecycle's implementation and enforcement of the Act.

Subsection (a)

The purpose of this subsection is to establish that CalRecycle's exercise of its authority to enforce the Act includes the authority to enter premises of entities subject to the Act and, for example, to review and copy records related to compliance. This is necessary because CalRecycle's duty to enforce the Act cannot reasonably be exercised unless its enforcement authority is interpreted to carry out such actions.

Subsection (b)

The purpose of this subsection is to establish that CalRecycle's assessment of civil penalties requires it to address two issues: how many violations occurred and the number of days over which each violation occurred. The Act does not specifically address the difference between various types of violations and related scenarios that may occur. For example, some violations occur as a result of separate, discrete acts, whereas others result from a continuous course of conduct. Because these two

scenarios are fundamentally different, it is necessary to specifically set forth each scenario in order for CalRecycle to implement and enforce the Act.

Subsection (c)

The purpose of this subsection is to establish how, except as otherwise provided, CalRecycle will count the number of violations that have been committed. In particular, the violating a discrete requirement of the Act, this chapter, or a PRO plan is a single, distinct violation, whether resulting from a single action or a course of action. This general rule is necessary because it is consistent with the general framework described in section 42081 of the PRC and to provide a consistent expectation of how penalties will be assessed.

Subsection (d)

The purpose of this subsection and its subparts is to address assessment of penalties for two types of violations: those committed through discrete actions and those resulting from a continuous course of action or conditions. The Act does not provide specific details of how to apply the Act's penalty provisions, which do not clearly address how per-day penalties shall apply to various types of violations and related scenarios that may occur. For example, it is not clear from statute how to identify when noncompliance results in separate, repeated violations as opposed to a single violation that occurs continuously over multiple days. This sub section is therefore for CalRecycle's implementation and enforcement of the Act.

Subsection (d)(1)

The purpose of this subsection is to address assessment of penalties where a violation results from discrete, separate actions that violate the Act. In such a scenario, each separate action is a new violation of the Act for purposes of calculating penalties, which will accrue each day the actions are committed, beginning with the thirtieth day after a notice of violation is issued. Identifying the number of violations and how they will accrue in this way is necessary for reasonable implementation of the per-day penalty provision of section 42081 of the PRC and the requirement that penalties accrue only after 30 days have passed since the notice of violation. For example, assessing penalties for each day on which the violation occurs is reasonable even where the discrete action might be understood as occurring many times on any particular day because, under the latter approach, a violation could be considered to occur an unlimited number of times on that day, such as by selling a large volume of mass-produced, noncompliant product throughout the state. The more reasonable approach is to consider accruing a single day of penalties, with the size of the penalties reflecting the breadth and nature of the violating actions, as expressly permitted under section 42081(c). Moreover, under a different interpretation of the Act's enforcement and penalty provisions, each discrete action violating the Act might be considered to trigger a new requirement for CalRecycle to issue a notice of violation, with a thirty-day period applying to each single action that violates the Act. That interpretation would render it impossible for CalRecycle to reasonably implement and enforce the Act when an entity

repeatedly commits the same violation after CalRecycle puts the entity on notice that violations will begin to accrue the series of violations.

Subsection (d)(2)

The purpose of this subsection is to address assessment of penalties where the persistence of a course of action or condition constitutes a continuous violation of the Act. In such a scenario, each course of action or condition is a single violation that results in penalties accruing on each day it persists, the after thirtieth day after a notice of violation is issued. Identifying the number of violations and how they will accrue in this way is necessary for reasonable implementation of the per-day penalty provision of section 42081 of the PRC and the requirement that penalties accrue only after 30 days. For example, violating the Act by offering a noncompliant product for sale, but not necessarily actually selling the product, clearly violates the Act but cannot logically be identified as occurring multiple times. The same problem arises where an action required by the Act or a PRO plan is not completed, or where a condition that must be met is not satisfied. In such instances, it is impossible to identify any logical number of times the violation occurred. Rather, the only reasonable approach is to consider the violation to be a single, continuous violation that persists continuously over many days, with the size of the penalties reflecting the breadth and nature of the violating actions, as expressly permitted under section 42081(c) of the PRC. The approach established in this subsection is therefore necessary for the reasonable implementation and enforcement of the Act.

Subsections (e) and subsections (e)(1) and (e)(2)

The purpose of these subsections is to address assessment of penalties where violations relate to the obligation to maintain records and provide them to CalRecycle upon demand. These are specific scenarios where the violation is a continuous failure to take a specific action (*i.e.*, to provide records) or to maintain a particular condition (*i.e.*, to maintain records). Specifically addressing them is necessary because the Act does not expressly address how violations should be deemed to occur and accrue penalties in either scenario. As addressed in paragraph (2) of this subsection, identifying the violations for the mere failure to comply with a demand for records is straightforward. The violation comes into existence only after the demand, and each day a PRO or producer fails to produce records in its possession is identifiable another day the violation persists.

On the other hand, if CalRecycle demands records but a PRO or producer cannot possibly comply with the demand because records were not maintained, the producer might have committed a significant and longstanding violation of the Act, for example, by not complying with recordkeeping protocols of a plan pursuant to section 42051.1(m)(4) of the PRC. However, if penalties could not be based on the number of days the condition persists after 30 days following issuance of a notice, producers could intentionally violate the Act, by not maintaining any proof that they ever complied with it, without being subject to any penalties until after they receive a notice of violation.

Interpreting and applying the statute in that way would directly, and possibly massively, undercut the Act and CalRecycle's enforcement of it. Paragraph (1) of this subsection addresses this problem by making clear that the violation itself will be deemed to have occurred throughout the period during which the violation persisted. In this way, the size of the penalties could still reflect the nature and breadth of the violation, as expressly permitted under section 42081(c) of the PRC, while still only accruing after 30 days have passed since issuance of a notice of violation. These provisions are necessary to ensure that entities subject to the Act understand the contrasting ways records-related violations may occur and to establish a reasonable interpretation of the enforcement provision of the Act that enables CalRecycle to effectively implement and enforce it.

Subsection (f)

The purpose of this subsection is to establish the number of violations that will be deemed to occur when a PRO violates the Act in such a way that results in participants of its plan to also violate the Act. The Act's enforcement provisions do not expressly address such a scenario. This subsection provides that, when a PRO acts on behalf of multiple participants and violates the Act in doing so, it commits multiple violations: one for each producer on behalf it acted.

This interpretation is necessary because it logically implements the concept of the PRO acting on behalf of its constituent producers. If each producer has violated or continuously violates the Act through the actions committed on its behalf, the PRO necessarily was responsible for multiple violations. To avoid double counting such violations, however, the PRO will not be deemed to have committed violations where CalRecycle has issued notices to individual producers. These provisions are necessary to ensure that entities subject to the Act understand how the PRO-participant relationship affects how violations of the Act will be identified and to establish a reasonable interpretation of the enforcement provisions of the Act that enables CalRecycle to effectively implement and enforce i

Subsection (g)

The purpose of this subsection is to address a scenario that is similar to the one addressed in subsection (g) but must be addressed separately to avoid confusion as to the proper application of statute. In particular, it addresses requirements that apply universally to the PRO and all of its participants. For example, when a PRO, through its actions and the collective actions of all or some of its participants, fail to achieve the mandatory goals set forth in section 42050 of the PRC, statute does not expressly address how to identify the number of violations that have occurred and the entities who committed them. This subsection provides that the outcome is similar to the one provided in subsection (f), with the limitation that the failure to satisfy the Act's requirements will be considered to constitute violations by the PRO only for each participant who is a producer of the covered materials at issue.

This interpretation is necessary to ensure that the scope of the violations deemed to have been committed by the PRO is in proportion with the number of entities that are themselves committing violations of the Act. To avoid double counting such violations, the PRO will not be deemed to have committed violations for which CalRecycle has issued notices to individual producers. These provisions are necessary to ensure that entities subject to the Act understand how the PRO-participant relationship affects how violations of the Act will be identified and to establish a reasonable interpretation of the enforcement provisions of the Act that enables CalRecycle to effectively implement and enforce it.

Subsection (h)

The purpose of subsection (h) is to address how violations will be identified and penalties addressed where the violations relate to non-compliant products. This is necessary because section 42081(a)(2) expressly authorizes violations to be identified based on products that do not comply with the Act but doing so requires greater specificity than provided in that section.

Subsection (h)(1)

The purpose of this subsection is to provide the methods by which CalRecycle will identify the specific products that it has deemed noncompliant. As a general matter, products will be identified according to the characteristics identified in section 42081(a)(2) of the PRC. Those characteristics, however, are not described in sufficient detail to explain how CalRecycle will distinguish the specific products deemed to be noncompliant from other products. For example, section 42081(a)(2) states that a violation may be determined based on a “brand name” and “product line,” but those broad characteristics are likely to describe many specific products, not all of which will necessarily be identified by CalRecycle as violating the Act. Therefore, it is necessary for CalRecycle to rely on more specific characteristics that, taken together, will uniquely identify the products deemed to be subsections. In particular, use of stock keeping unit numbers or universal product codes may uniquely identify products. This subsection also provides that CalRecycle may consider groups of products to be the same, unique product, where they vary in trivial ways not related to compliance with the Act. For example, product packaging may have variations where the only differences are the words used on the packaging. In such instances, there is no logical reason why they would be considered different products for the purposes of the Act. 42081(a)(2) of the PRC to distinguish and uniquely identify non-compliant products, and that each non-compliant product shall constitute a distinct violation regardless of the number of distributed or sold products. These provisions are necessary to ensure that entities subject to the Act understand how CalRecycle will apply section 42081(a)(2) of the PRC and other provisions of the Act related to enforcement and to establish a reasonable interpretation of those provisions that enables CalRecycle to effectively implement and enforce the Act.

Subsection (h)(2)

The purpose of this subsection is to establish the duration during which violations based on particular products will be deemed to occur. Such violations are deemed to occur every day they are offered for sale or are in distribution in the state. This is necessary because section 42050 expressly states that violations occur when items are “offered for sale” or “distributed,” not just when they are actually sold. This subsection limits such violations, however, when a producer has ceased to further manufacture and distribute the non-compliant product. This limitation is required because a producer that manufactures a product otherwise would be deemed to continue to violate the Act due to activities of other entities that might be considered producers of products but are not controlled by the manufacturer. Under that interpretation, a manufacturer could remain in violation indefinitely because the products it manufactured in the past might be offered for sale any time in the future. These provisions are necessary to ensure that entities subject to the Act understand how CalRecycle will apply section 42081(a)(2) of the PRC and other provisions of the Act related to enforcement and to establish a reasonable interpretation of those provisions that enables CalRecycle to effectively implement and enforce the Act.

Subsection (h)(3)

The purpose of this subsection is to limit when a producer can be deemed to be in violation of section 42050(c) of the PRC based on a specific product. That section states overall requirements for “all plastic covered material,” but it is not specific as to how the requirements apply on a producer-by-producer, product-by-product basis. For example, when an entity is the producer of a product that falls within a covered material category that does not satisfy the applicable threshold in section 42050(c), it may nonetheless be able to prove to CalRecycle that its specific product is recycled at a rate that satisfies such threshold. In that scenario, the producer itself cannot logically be said to be violating section 42050(c), even though products in the same covered material category might otherwise be the basis for noncompliance. These provisions are necessary to ensure that entities subject to the Act understand how CalRecycle will apply section 42050(c) and to establish a reasonable interpretation that enables CalRecycle to effectively implement and enforce the Act.

Subsection (i)

The purpose of this subsection is to establish how the Act’s enforcement provisions apply to local jurisdictions. Doing so is necessary because the Act references obligations of local jurisdictions (e.g., section 42060.5 of the PRC) without directly specifying how the Act’s enforcement provisions apply to them. Those provisions do apply to local jurisdictions because section 42081(a) of the PRC expressly states that “any entity not in compliance” with the Act or this chapter may be issued a notice of violation and penalized accordingly.

Subsection (i)(1)

The purpose of this subsection is to establish that a local jurisdiction commits a violation of the Act for each covered material category it fails to collect, as required under section 42060.5(a) of the PRC. This is necessary because the requirement of that section

directly relates to the lists published by CalRecycle. Those lists contain covered material categories, so the requirement can logically only apply on a category-by-category basis.

Subsection (i)(2)

The purpose of this subsection is to establish how penalties will accrue for a local jurisdiction's violations of the collection requirement of section 42060.5(a) of the PRC. The penalties will accrue for each day the jurisdiction's collection and recycling programs do not include the covered material category at issue. This is necessary because the violation is a continuous one based on a condition that fails to satisfy the Act's requirements, not discrete actions that do so. As such, the only logical application of the Act's enforcement provisions is to hold the jurisdiction in violation every day that the condition remains unfulfilled.

Subsection (j)

The purpose of this subsection is to establish how the Act's enforcement provisions apply to recycling service providers. Doing so is necessary because the Act references obligations of recycling service providers (*e.g.*, section 42060.5 of the PRC) without directly specifying how the Act's enforcement provisions apply to them. Those provisions do apply to recycling service providers because section 42081(a) of the PRC expressly states that "any entity not in compliance" with the Act or this chapter may be issued a notice of violation and penalized accordingly. This subsection incorporates the rules stated in subdivision (i) to recycling service providers. This is necessary because local jurisdictions and recycling service providers are interchangeable for purposes of the obligations imposed under section 42060.5(a).

§ 18980.13.1. CORRECTIVE ACTION PLAN

Subsection (a)

The purpose of this subsection is to establish that corrective action plans may be proposed once CalRecycle grants permission to submit a proposal in a notice of violation or in response to a written request. Establishing these basic procedures is necessary as Section 42081(b) of the PRC expressly authorizes CalRecycle to allow corrective action plans in lieu of assessing penalties but does not specify a process by which CalRecycle must do so. This subsection further provides that CalRecycle may identify specific conditions that proposals must satisfy before CalRecycle will consider them. Examples of such conditions are provided, relating to the nature of an entity's noncompliance under the Act and how the proposal will demonstrate that a corrective action plan will correct such noncompliance. This is necessary for effective implementation and enforcement of the Act because, without setting substantive requirements tailored to the specific circumstances of the noncompliance at issue, there would be a high likelihood that proposals will fail to adequately address those circumstances in a manner that will justify approval of the proposal. This subsection also specifies that CalRecycle may refuse to review a proposed corrective action plan unless it satisfies the condition of this section, which is necessary to notify an entity that the ability to have CalRecycle consider a corrective action plan is done so at

CalRecycle's discretion; therefore, failing to meet the requirement laid out in this section nullify CalRecycle's obligation to review a submitted plan.

Subsection (a)(1)

The purpose of this subsection is to set forth the minimum content required in submissions to CalRecycle requesting corrective action plans. This is necessary because Section 42081(b) of the PRC expressly authorizes CalRecycle to allow corrective action plans in lieu of assessing penalties but does not specify a process by which CalRecycle must do so or the specific details that corrective action plans must include.

Subsection (a)(1)(A) and (a)(1)(B)

The purpose of this subsection is to set forth two of the requirements for submissions to CalRecycle requesting corrective action plans. Subparagraph (A) requires contact information, which is necessary as a practical matter. Subparagraph (B) requires the requester to identify the violations for which it is requesting a corrective action plan to avoid imposition of penalties. This is also required as a practical matter, as it identifies the subject of the request.

Subsection (a)(1)(C)

The purpose of this subsection is to require the requester to identify the specific actions that the requester proposes to be required under the corrective action plan. Requiring the requester to lay out such actions and explain how they will resolve the violations at issue is necessary so that CalRecycle can evaluate the merits of the proposed action plan, the express purpose of which under section 42081(b)(1) of the PRC is to achieve compliance with the Act. A timeline, interim milestones, and an end date are also required. These are necessary because section 42081(b)(12) expressly limits the duration of corrective action plans, and such details will enable CalRecycle to reasonably assess the effectiveness of corrective action plans and whether they are being followed.

Subsection (a)(1)(D)

The purpose of this subsection is to require the requester to state whether it consents to penalties for violations that have already occurred or for violations that may persist despite the corrective action plan. Requiring this information is necessary because a requester's consent to penalties will indicate its good faith cooperation with CalRecycle's enforcement efforts. Moreover, a requester's consent to be penalized for violations that are not resolved by the corrective action plan will indicate the requester's confidence in the feasibility of the plan and serve as strong incentive for complying with it.

Subsection (a)(1)(E)

The purpose of this subsection is to prevent the preceding subparagraphs to be construed as setting forth all the requirements that a corrective action plan submittal must satisfy. Avoiding such an interpretation is necessary because corrective action plans are by definition consensual, both for the requesting producer or PRO and

CalRecycle. In other words, CalRecycle has no authority to require any producer or PRO to implement a corrective action plan, nor is CalRecycle required to approve them or even allow them to be submitted. As such, the Act leaves the details of corrective action plans entirely to the discretion of CalRecycle and the producer or PRO to determine what terms are mutually acceptable, subject only to the express requirements stated in section 42081(b). Those requirements include, for example, that the plan details how compliance will be achieved, that penalties shall not be assessed if the corrective action plan achieves that goal, and that the corrective action plan has a 2-year initial duration.

Subsection (a)(2)

The purpose of this subsection is to establish CalRecycle’s potential actions once it receives a corrective action plan. This is necessary to convey that CalRecycle may, rather than simply approving or rejecting a proposal, establish conditions under which it will consider a modified proposal. As described above with respect to subsection (a)(1)(E), the establishment of a corrective action plan depends on the mutual consent of CalRecycle and the producer or PRO, subject to each party’s discretion. CalRecycle cannot require entities to submit corrective action plan proposals, and it is authorized *not* to approve or even consider a plan. Rather, entities are free to correct their noncompliance without proposing a plan or to challenge assertions by CalRecycle that such correction is necessary, and CalRecycle is expressly authorized by statute to proceed with imposition of civil penalties without permitting submission of corrective action plans. As such, it is within CalRecycle’s discretion to establish conditions under which it will again consider a corrective action plan.

Subsection (a)(3)

The purpose of this subsection is to prevent the mere submission of a corrective action and CalRecycle’s decision to consider it from being construed to mean that a producer or PRO is exempted or excused from any requirements of the Act or that accrual of penalties for violations have been paused. This is necessary because, otherwise, corrective action plan submittals could be used to avoid penalties in all circumstances. Moreover, even if CalRecycle approves a corrective action plan, the corrective action plan would not create an exemption from the Act or excuse noncompliance. Rather, the only effect of a corrective action plan is that it might enable the avoidance of penalties for the violations addressed by it.

Subsection (a)(4)

The purpose of this subsection is to establish the binding effect of submitting a corrective action plan. In other words, once a plan is submitted and CalRecycle approves it, the plan becomes effective as described in section 42081(b) of the PRC, and the entity subject to the plan must comply with it or else may be deemed to commit additional penalties. This is necessary for effective enforcement of the Act because corrective action plan proposals otherwise could be submitted and then withdrawn even when CalRecycle accepts them, thereby wasting CalRecycle resources. Providing this detail is necessary because statute does not establish a specific process for submission

and approval of corrective action plans. As such, this section must put those who request a corrective action plan that, by submitting one, they agree to be bound by it.

This section also provides that CalRecycle may impose certain additional requirements on corrective action plans that it approves. Such requirements must concern the demonstration of an entity's adherence to the plan. This is necessary because CalRecycle's enforcement role requires it to be able to monitor compliance with the Act's requirements, and reporting requirements otherwise imposed under the Act might not inform CalRecycle regarding compliance with a particular corrective action plan. The ability to monitor compliance with corrective action plans may be particularly important, for example, when the plan establishes interim benchmarks or goals that the entity must meet to be considered compliant.

Subsection (a)(5)

The purpose of this subsection is to establish the means by which CalRecycle will give notice of approval and the effect of that approval. The notice will be provided in writing and will include a copy of the approved corrective action plan, which will be deemed the official governing version of the corrective action plan. This is necessary so that there will be no uncertainty as to the official terms of the corrective action plan.

Subsection (a)(6)

The purpose of this subsection is to prevent corrective action plan submission and approval to mean that a producer or PRO is exempted or excused from any requirements of the Act or that the corrective action plan can affect penalties for any violations not covered by it. This is necessary because the Act expressly requires corrective action plans to be for the purpose of achieving compliance with the Act, not for exempting persons from any requirement altogether or from generally reducing penalties for new violations. In other words, corrective action plans might result in avoidance of penalties for certain violations, but they do not apply to any other violations or mean that any requirements of the Act no longer apply to the producer or PRO.

Subsection (b)

The purpose of this subsection is to establish how extensions may be requested when noncompliance with a corrective action plan resulted from extenuating circumstances. This is necessary because section 41081(b)(2) expressly authorizes CalRecycle to grant extensions in such scenarios but does not provide a process for it to do so. This subsection states that CalRecycle may, notwithstanding the submission of such a request, proceed with imposition of penalties and that extension requests are subject to the same conditions and limitations set forth in this section with respect to initial proposals and approvals. This is necessary for the same reasons set forth with respect to submissions of initial proposals and CalRecycle's approval of proposals. In particular, this subsection puts entities on notice that the mere request for an extension has no effect on the consequences for violating the corrective action plan or other requirements of the Act or this chapter.

This subsection also explains that an approved extension effectively modifies the corrective action plan. This is necessary because statute requires the extension to be based on “steps and a timeline” that CalRecycle provides for the corrective action plan to result in compliance.

Subsection (b)(1)

The purpose of this subsection is to require the entity to provide a description of its substantial efforts, including how such efforts will be updated if the extension is granted, to comply with the associated violations and the extenuating circumstances. This is necessary to ensure that the request has the content necessary for CalRecycle to apply statute, which states that extensions may be granted if the producer or PRO made a substantial effort to comply.

Subsection (b)(2)

The purpose of this subsection is to require extension requests to explain how extenuating circumstances prevented compliance. This is necessary because statute expressly requires noncompliance to have been caused by such circumstances. This subsection requires explanation of how the circumstances were beyond the control of the entity, which is necessary because statute requires them to be “extenuating” and to have “reasonably prevented” compliance. A circumstance that was within the control of the entity necessarily could have been avoided, such that compliance was reasonably possible, and thus cannot be considered to extenuate a violation.

Subsection (b)(3)

The purpose of this subsection is to require any updates, if there are any, to be included in the original proposal. This is necessary to ensure that the proposed extended corrective plan continues to accurately and completely describe the contents of the plan that are now being sought for extension.

Subsection (c)

The purpose of this subsection is to establish how a corrective action plan relates to notices of violation and the accrual of penalties. This is necessary because Section 42081(b) of the PRC expressly authorizes CalRecycle to allow corrective action plans in lieu of assessing penalties but does not expressly state how the violations at issue will be identified. Corrective action plans necessarily must address specific violations that were cited in notice of violations because that is the means by which CalRecycle will identify violations and notify a producer or PRO that they will be subject to penalties for them. This subsection specifies that the penalties that might be avoided under a corrective action plan are limited to the those for the violations cited in the notice and specifically addressed in the plan. This is necessary to give effect to section 42081(a) and (b), which, read together, concern penalties only with respect to violations identified in the notice.

Moreover, while statute provides that penalties will not be assessed if a producer complies with a corrective action plan, it does not directly address how the producer will be penalized if they fail to comply with the plan, such that the producer continues to

violate the Act without taking all of the agreed-upon actions necessary to correct such violation. This subsection provides that the existence of a corrective action plan will be interpreted as pausing the accrual of penalties that occurred before the corrective action plan took effect, with accrual resuming if the entity fails to comply with the plan. This is necessary to give effect to section 42081(b)(1) of the PRC, which expressly states that penalties shall not be assessed “if the producer complies with the corrective action plan.”

This subsection further provides that accrual of penalties will resume when the corrective action plan becomes no longer in effect, as would occur upon expiration of its term or otherwise according to the conditions set in the corrective action plan itself. This is necessary to avoid a corrective action plan from contradicting the Act’s other penalty provisions by effectively excusing violations that were not ultimately corrected via the plan.

Subsection (d)

The purpose of this subsection is to establish that violations of a corrective action plan are types of violation of the Act and may be the subject of notices of violation and penalties, regardless of whether the corrective action plan remains in effect. This is necessary because statute does not directly address application of the enforcement provisions of the Act when an entity fails to comply with a corrective action plan that, despite the current failure to adhere to it, it might ultimately still succeed in achieving compliance with the Act. Because the Act requires compliance with a corrective action plan, the function of which is to enable an entity to avoid penalties for violations, the failure to comply with the plan logically must be considered a violation of the Act, and nothing in the Act restricts CalRecycle from imposing penalties for such violations.

Subsection (e)

The purpose of this subsection is to establish how the provisions of section 42081(a) of the PRC, concerning notices of violation and accrual of penalties, apply to violations of a corrective action plan, as described in subsection (d). In particular, issuance of a notice of violation will result in the resumption of penalty accrual as described in section 42081(a)(3), but the tolling effect of a corrective action plan may be reinstated if the entity corrects the violation of the corrective action plan. Giving effect to notices of violation in this way is necessary because it applies the Act’s notice and penalty accrual requirements consistent with the express purpose and effect of corrective action plans.

§ 18980.13.2. ADMINISTRATIVE CIVIL PENALTIES

The purpose of this section is to make specific the provisions in the Act concerning imposition of administrative civil penalties. This section establishes how accusations initiating administrative proceedings shall be served and how statute will be applied. Making such provisions more specific is necessary because sections 42080 and 42081 of the PRC do not address certain details regarding imposition of penalties.

Subsection (a)

The purpose of this subsection is to interpret the scope of CalRecycle’s authority under the Act’s enforcement sections and the consequences of noncompliance. Such clarification is necessary because section 42081 establishes that CalRecycle may penalize “any entity” that violates any provisions of the chapter or CalRecycle’s regulation. Because the Act and these regulations impose obligations on local jurisdictions, the enforcement proceedings necessarily apply to such entities and as specified in this subsection, fall within the scope of CalRecycle’s authority under section 42081.

Moreover, it is necessary to specifically state that PRO participants are not exempt from penalties where their failure to satisfy obligations placed on them were caused more directly by the PRO acting on their behalf because statute cannot logically be interpreted otherwise. At its most general, the Act broadly contemplates the PRO acting on behalf of its participants because section 42050 of the PRC expressly places responsibility for its requirements—source reduction, recyclability, and eligibility to be labeled compostable, and recycling rates—on producers, with no mention of PROs. Other PRC sections (*e.g.*, sections 42051(c), 42052, 42057(a)(1), 42060(2)(A)) expressly reinforce the participants’ ultimate responsibility. These provisions clearly establish that merely giving the PRO authority to act on behalf of its participants cannot excuse entities from their obligations when the PRO’s actions on their behalf fail to satisfy the Act’s requirements. If the Act were interpreted otherwise, it would contradict the express language of section 42050, and the express references in the Act to a PRO acting on behalf of its participants would have no effect.

Subsection (b)

The purpose of this subsection is to exercise CalRecycle’s authority under the Government Code (*e.g.*, sections 11415.10 and 11505) to establish procedures applicable to administrative proceedings, including the manner in which accusations may be served on parties, such as by mail for entities that are required to maintain an address on file with CalRecycle. Expressly incorporating section 18980.13 into this subsection is necessary to ensure that entities understand that the section of these regulations generally addressing notices contains procedural provisions relevant to this subsection.

Subsection (c)

The purpose of this subsection is to interpret the requirement under section 42081(c) that CalRecycle consider the factors listed in that section when determining the penalty amount. Interpreting that section is necessary because it does not expressly state the stage in the enforcement process where that determination is made. Interpreting it to refer to the ultimate determination by CalRecycle regarding penalties, such that the determination depends on the evidence presented to the director or their designee in a hearing, is logically necessary to enable CalRecycle to effectively exercise its enforcement authority. Applying section 42081(c) in any other way could imply that the evidence presented at a hearing must include the individual, mental processes of CalRecycle personnel related to their investigations and subsequent allegations,

through notices of violation, that the Act has been violated. Such evidence, however, cannot be the basis for official CalRecycle decisions referenced in section 42081(c) regarding penalties because such decisions are necessarily the application of the law to factual findings established through an adjudicative process. Such final decisions can only be made by officials having the authority to make them. In particular, CalRecycle's director or their designee issues a decision based on factual proof enabling them to apply the factors set forth in section 42081(c). The subjective opinions of other CalRecycle personnel are not relevant to how the director or their designee makes that application.

§ 18980.13.3. NOTICES

The purpose of this section is to establish how CalRecycle will deliver notices and other documents concerning violations of the Act. This section is necessary so that a consistent practice is established and communicated to regulated entities.

Subsection (a) and subsections (a)(1) through (a)(4)

The purpose of these subsections is to establish the means CalRecycle will use to deliver notices and related documents concerning violations of the Act to recipients that are required to maintain an address on file pursuant to section 42051(c) of the PRC. The methods identified in paragraphs (1) through (4) are customary methods of delivering documents. To provide added assurance that electronic communication will be sent to a monitored email account, paragraph (4) adopts email as a method of delivery only if the recipient consents to that method or acknowledges receipt of the notice. Utilizing these reliable, universally accepted methods of communicating is necessary for CalRecycle's effective implementation and enforcement of the Act. This subsection also interprets the requirement under section 42051(c) that producers maintain an address on file with CalRecycle as establishing the physical address to which all notices may be delivered. This is necessary because effective implementation and enforcement of the Act requires CalRecycle to be able to communicate with producers, and section 42051(c) effectively requires producers to provide contact information on which CalRecycle can rely for this purpose. Moreover, relying on the contact information required to be maintained under section 42051(c) is appropriate in light of sections 11440.20 and 11505(c) of the Government Code, which authorizes service of notices and accusations at such an address by mail in connection with administrative proceedings.

Subsection (b) and subsections (b)(1) through (b)(4)

The purpose of these subsections is to establish the means CalRecycle will use to deliver notices and related documents concerning violations of the Act to recipients that do not maintain an address on file pursuant to section 42051(c) of the PRC. The methods identified in paragraphs (1) through (4) are customary methods of delivering documents. To provide added assurance that electronic communication will be sent to a monitored email account, paragraph (4) adopts email as a method of delivery only if the recipient consents to that method or acknowledges receipt of the notice. Utilizing these

reliable, universally accepted methods of communicating is necessary for CalRecycle's effective implementation and enforcement of the Act. This subsection also provides that, when sending mail to physical addresses, CalRecycle may rely on a mailing address on file with the Secretary of state, another known business or mailing address, or the address of an attorney or other authorized representative. Utilizing these reliable, universally accepted methods of identifying one's contact information and communicating with them is necessary for CalRecycle's effective implementation and enforcement of the Act.

Subsection (c) and subsections (c)(1) through (c)(3)

The purpose of these subsections is to inform the respondent of the means by which CalRecycle may serve accusations commencing administrative penalty proceedings. Specifying in paragraph (1) that service may be via mail to the address required to be on file is necessary because section 11505(c) of the Government Code permits such service if an agency rule provides for it. Paragraphs (2) and (3) specify that, for all other entities, service may be provided pursuant to provisions of the Code of Civil Procedure or, if the recipient subsequently participates in the proceeding, by the same means as for notices. Use of these methods for serving accusations is legally correct and necessary for CalRecycle's effective implementation and enforcement of the Act.

Subsection (d)

The purpose of this subsection is to establish the date on which notices of violation pursuant to section 42081 of the PRC are deemed to have been issued. Identifying the particular manner in which the date of issuance will be identified is necessary because statute does not specifically define how CalRecycle must do so. By establishing the date of issuance after a period of five days (for in-state notices) or ten days (for out-of-state notices) period after mailing, this subsection reasonably ensures the notice was actually received by such date. These periods are consistent with section 1013 of the Code of Civil Procedure, which provides the same periods for that service of documents by mail in civil proceedings.

§ 18980.13.4. PROCEDURE FOR A HEARING

Subsection (a)

The purpose of this subsection is to establish that all administrative hearings will be conducted by CalRecycle and heard by the Director of CalRecycle or the Director's designee pursuant to Article 10 of Chapter 4.5 of the Government Code, and also that section 11505 and 11506 of the Government Code will apply to these administrative hearings. This is necessary because the specific procedures applicable to such proceedings are established through these regulations and, because this section provides that the general informal hearing procedures under the Administrative Procedure Act apply, the more specific governing procedures must be set forth in these regulations. Adopting Government Code sections 11505 and 11506 establish uniform rules pertaining to service of accusations and responses to them. Such rules are necessary for effective enforcement of the Act.

Subsection (b)

The purpose of this subsection is to set the timeframe by which a respondent must file a notice of defense with CalRecycle.

This is necessary because CalRecycle proposes to adopt the provision in the Government Code related to Accusations and Notices of Defense, Gov. Code section 11505 and 11506. By including this subsection CalRecycle provides clarity to the regulated public as to a critical timeline to file a request for a hearing, objections to accusation, objections to forms of accusation and preserve their due process rights afforded by subsection (a).

Subsection (c)

The purpose of this subsection is to state what will happen after a hearing is conducted or if no hearing is conducted. In either case, CalRecycle may take any remedial or disciplinary action authorized by the Act.

This is necessary to ensure parties are aware of the sequence of events when CalRecycle will seek to impose a regulatory disciplinary action.

§ 18980.13.5. DISCIPLINARY ACTIONS

Subsection (a) and subsections (a)(1) through (a)(3)

The purpose of this subsection is to specifically state potential outcomes of administrative enforcement proceedings against a PRO or Independent Producer. This is necessary because the Act's main enforcement sections (*e.g.*, sections 42080 and 42081 of the PRC), refer to penalties but do not expressly reference all other actions that CalRecycle is authorized to take. Referencing the full scope of CalRecycle's authority in this section actions avoids confusion as to the scope of potential outcomes of enforcement proceedings. For example, section 42061(c) of the PRC expressly authorizes CalRecycle to revoke approval of a PRO. This section also makes clear that CalRecycle may require a PRO or Independent Producer that violates the Act or this chapter to comply with additional reporting requirements sufficient for CalRecycle to ensure that the party complies with the Act. CalRecycle necessarily has authority to do so because the Act authorizes it to adopt regulations necessary to enforce the Act and ensure that its requirements are met.

Subsection (b)

The purpose of this subsection is to establish that CalRecycle's revocation of an approved plan or revocation of its approval of the PRO triggers the obligation to implement transfer and closure plan. This is necessary because the Act describes the obligation for PRO plans to include transfer and closure plans to account for possibility of there being no approved plan or PRO in the future, it does so without expressly explaining how that requirement relates to enforcement proceedings or the timing of transfer and closure plan implementation. Because plan or PRO approval revocation are disciplinary actions established through the administrative proceedings, the order

resulting from such proceedings necessarily controls when implementation must commence.

ARTICLE 14. ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATIONS

§18980.14. APPROVAL OF ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATIONS

Subsection (a)

The purpose of this subsection is to establish that CalRecycle will provide applications for prospective PROs to submit in the event that it determines that additional PROs would be beneficial. In addition to the specific criteria identified in statute, applications will be reviewed with respect to whether they demonstrate that the applicant can effectively implement this chapter. Section 42061.5(b) of the PRC to Statute does not expressly state this overall requirement, but it is necessary to interpret statute as requiring it because the express condition for whether additional PROs may be approved is that doing so will be “beneficial in satisfying the requirements” of the Act. For a PRO to satisfy that purpose, it must be able to effectively implement this chapter.

Subsections (a)(1) and (a)(2)

The purpose of these subsections is to identify the minimum showing that a prospective PRO must make in its application. In particular, it must at least show that it meets the statutory requirements of sections 42041(x), 42061.5(a), and 42061.5(b)(1) through (b)(4) of the PRC. that a prospective PRO must satisfy. Requiring applications to address those requirements is necessary because statute expressly states that CalRecycle can only approve PROs that satisfy them.

Subsection (b)

The purpose of this subsection is to establish that the application required under subsection (a) will also be used when CalRecycle is required to appoint a new PRO because it has revoked approval of an existing one, except that application will not be required to address the requirements set forth in subsection (a)(2). This is necessary because subdivision (c) of section 42061.5 of the PRC expressly states that subdivision (b) of that section does not apply to consideration of PROs under these circumstances.

ARTICLE 15. PUBLIC RECORDS

§18980.15. DESIGNATION OF TRADE SECRETS AND OTHER NON-DISCLOSABLE INFORMATION

Subsection (a)

The purpose of this subsection is to state the default rule that records in CalRecycle’s possession are subject to mandatory disclosure in response to requests under the Public Records Act unless an exemption applies. This is necessary to orient the reader because multiple sections in this chapter refer to public disclosure and confidentiality concerns and point the reader to this section for further understanding of the legal issues involved.

Subsection (b)

The purpose of this subsection is to state the rule that applies when CalRecycle receives requests for disclosure of records that contain trade secrets. This is necessary because that rule differs from expectations based on how the Public Records Act applies elsewhere. The Public Records Act has a general exemption for records containing trade secrets, but that exemption only expressly states that agencies are not *required* to disclose records containing trade secrets, not that agencies are *prohibited* from doing so (Government Code section 7930.205). In contrast, section 40062(a) of the PRC specifically prohibits CalRecycle from disclosing trade secret information under certain circumstances. This section also cites the Civil Code section defining “trade secret,” which is necessary to ensure that affected parties consider the appropriate legal standard when considering how the provisions of this section apply and forming expectations accordingly.

Subsection (c) and subsections (c)(1) and (c)(2)

The purpose of these subsections is to explain the steps that are required for the prohibition on disclosures of trade secret information to apply. Subsection (c)(1) explains the requirement, and describes methods for satisfying it, that the specific portions claimed to contain trade secrets be expressly designated as such. This requirement is expressly required under PRC section 420062(b) of the PRC and explaining the means for satisfying it is necessary so that affected parties will understand how to do so. Subsection (c)(2) sets for the additional requirement that CalRecycle be provided contact information of the individual to be contacted regarding potential disclosure of such records. This is necessary so that CalRecycle can comply with the procedural requirements under section 420062(c) of the PRC when it receives requests for disclosure of records identified in the manner required under subsection (c)(1).

Subsection (d)

The purpose of this subsection is to make explicit the consequence of not complying with the requirements of subsection (c)(1). The consequence—that records not properly designated will be disclosed unless some other exemption applies—is expressly required under section 40062(b) of the PRC. Including the rule in this section is necessary to ensure that affected parties understand the significant consequences of not properly designating information they claim to be trade secrets. Communicating the effects of this section as clearly as possible is especially important because, as set forth in subsection (f), previous regulations (14 CCR sections 17044 through 17047) concerning confidentiality issues will not apply to records submitted to CalRecycle.

Subsection (e)

The purpose of this subsection is to point the reader to section 40062(c) of the PRC. This is necessary because section 40062(c) expressly governs the procedure that CalRecycle must follow when it receives requests for records that were designated as containing trade secrets by the party submitting them. Pointing to that procedure is

necessary to ensure that parties submitting such records have appropriate expectations of, and take steps to be prepared for, what will be required of them in such a scenario.

Subsection (f)

This section is to exempt this chapter from the preexisting regulations found in sections 17044 through 17046. Given that those sections overlap with the issues addressed in this section, this is necessary to avoid confusion over how to apply this chapter in light of section 40062 of the PRC and the Public Records Act.

TITLE 14. NATURAL RESOURCES

**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CHAPTER 11.5. ENVIRONMENTAL MARKETING AND LABELING**

ARTICLE 1. APPROVAL OF CERTIFICATION ENTITIES

§18981. THIRD-PARTY CERTIFICATION ENTITY CRITERIA AND APPROVAL PROCESS

The purpose of this section is to exercise the authority given to CalRecycle under section 42357(g)(1)(A) of the PRC to approve entities to certify products as compostable under certain technical standard specifications prescribed by statute (sections 42355 through 42358.5 of the PRC), thereby causing the certification requirement for products to be labeled “compostable” or “home compostable” to become effective. This section establishes uniform criteria and a process for such approval, as necessary for CalRecycle to exercise its authority. Furthermore, establishing such criteria and process is necessary for effective implementation and enforcement of the Act because, without them, there would be no practical way for assessing whether covered material satisfies the requirement (under section 42357(a) of the PRC) that products meet the technical standards for it to be considered eligible to be labeled compostable for purposes of section 42050(b) of the PRC.

Subsection (a) and subsections (a)(1) and (a)(2)

The purpose of these subsections is to define the term “Department” to refer to the California Department of Resources Recycling and to incorporate the technical document referred to as “ISO/IEC 17025:2017.” This section utilizes these terms to enhance clarity by not repeating lengthy, official titles multiple times. The meaning assigned to “Department” is expressly required by statute. Incorporating the ISO/IEC 17025:2017 document is expressly required by section 20 of title 1 of the California Code of Regulations.

Subsection (b)

The purpose of this subsection is to interpret section 42357(g)(1)(A) of the PRC and list the approval criteria for CalRecycle’s approval of entities for purposes of. Interpreting the statutory text by enumerating specific criteria is necessary because the statute itself does not prescribe any criteria for CalRecycle to consider, but any consideration of

whether to approve an entity necessarily must rely on some criteria. Clear, objective criteria are necessary to ensure CalRecycle's evaluations apply statute consistently and fairly. Listing the criteria per CalRecycle's interpretation is necessary so that this subsection presents a complete set of qualifications required for entities to be approved as a third-party certification entity.

Subsection (b)(1)

The purpose of this subsection is to establish a minimum criterion that a third-party certification entity must satisfy to be approved by CalRecycle. The particular criterion is that the entity must hold an accreditation under the standard known as "ISO/IEC 17025:2017," which imposes general requirements for the competence of testing laboratories, provided by an accrediting body that is a member of, or recognized by, at least one internationally recognized accreditation organization. This requirement is necessary because whether items meet the technical standard specifications made applicable by section 42357(g)(1)(A) of the PRC is a highly technical matter requiring expertise in conducting laboratory testing, but statute does not specify the criteria for CalRecycle to apply in evaluating whether an entity has such expertise. Because ISO/IEC 17025: 2017 is an internationally accepted standard for confirming such expertise, it is appropriate to require entities to be accredited to meet it. Furthermore, specifying criteria for which entities issue the accreditation is necessary because accreditation is also a technical matter requiring special expertise in evaluating the abilities of scientific testing laboratories. Because the International Accreditation Forum and the International Laboratory Accreditation Cooperation are internationally recognized accreditation bodies, it is appropriate to require that accreditations be issued by one of them or bodies recognized by them.

Subsection (b)(2) and subsections (b)(2)(A) through (b)(2)(C)

The purpose of these subsections is to establish additional minimum criteria that third-party certification entities must satisfy to be approved by CalRecycle. The overall requirement is that the entity be independent, impartial and without any conflict of interest. Subsections (b)(2)(A) through (b)(2)(C) expound on that requirement by identifying specific circumstances that would necessarily disqualify an entity from meeting this requirement: holding a financial interest in a producer of material needing certification, conducting business with producers of products subject to the certification requirement, or being under an agreement requiring other parties specifically to refer producers to it to provide the required certification. The overall criteria are necessary for implementing the third-party certification requirement because, to satisfy the statutory purpose provided in sections 42355 and 42355.5 of the PRC, certifications must be reliable and trustworthy, but statute does not provide specific standards to achieve such reliability and trustworthiness. Independence, impartiality, and lack of conflict of interest are traditionally factors used to ensure that a party performs its duties without bias or the appearance of bias. Even if all certification entities could perform their duties without prejudice despite not being independent or without conflicts of interest, these factors would still be necessary to promote public trust in the certifications issued for products and the related claims that they are compostable. The requirements therefore will additionally support the integrity of the statutory function of the certification requirement,

including ensuring that consumers have accurate information supported by competent and reliable evidence.

Subsection (c) and subsections (c)(1) through (c)(4)

The purpose of these subsections is to specify the information and documentation that entities must submit to CalRecycle for requesting that it be approved for purposes of section 42357(g)(1)(A) of the PRC. Requiring such information and documentation is necessary to implement section 42357(g)(1)(A) of the PRC, which does not specify the process applicable for consideration of such requests. Subsections (c)(1) through (c)(3) are necessary to ensure that CalRecycle has the information and documentation needed to identify the certification entity and confirm that it has the accreditation described in subsection (b)(1). Subsection (c)(4) requires an affidavit from the entity, affirming that the entity satisfies the requirements of subsection (b)(2). An affidavit is necessary because it is the only practicable, non-invasive way to test compliance with such requirements.

Subsection (d)

The purpose of this subsection is to establish a reasonable period for the effective period of CalRecycle's approval of a third-party certification entity, and to explain that the approval is no longer effective once the entity's accreditation is no longer valid. A period for expiration of CalRecycle's approval is necessary because, without such a limitation, there would be no mechanism for ensuring that the basis for CalRecycle's approval an entity remains valid. Such assurance is necessary to achieve the statutory purpose provided in sections 42355 and 42355.5 of the PRC, including that environmental marketing claims be substantiated and not misleading. The five-year period balances the need for the list of approved entities not to include entities that no longer meet the requirements of this section with the risk of unnecessarily burdening entities and CalRecycle by requiring frequent re-approvals. Providing that approvals are deemed to expire once the applicable accreditation expires or becomes invalid is also necessary because such circumstances would necessarily remove the basis for the approvals.

Subsection (e)

The purpose of this subsection is to establish when approved entities may request renewal of their approvals. The one-year period for requesting renewal is necessary because, without there being such a period, entities would not know how early they may request renewal, and requests submitted early in the five-year approval period would unnecessarily risk burdening CalRecycle with frequent requests. The one-year period ensures that entities will have sufficient time to submit renewal requests without risking lapse in their status, while still reasonably ensuring that the list of approved entities only includes those that continue to meet the requirements of this section.

Subsection (f)

The purpose of this subdivision is to establish the method by which CalRecycle will inform the public which entities have been approved for purposes of section 42357(g)(1)(A) of the PRC. Providing that CalRecycle will maintain a list of approved entities on its website is necessary so that the public can readily determine that section

42357(g)(1)(A) has become effective and identify entities that have been approved. Another purpose is to limit the legal effect of an entity's mere presence on the list published by CalRecycle. It is necessary to establish that mere presence on the list is not a guarantee that the approval remains valid because, as stated in subsection (d), approvals may become invalid before their expiration date (when an approved entity no longer holds the required accreditation), and it is not possible for CalRecycle to know immediately when that occurs. As a result, the list itself cannot be relied on as sufficient to govern compliance with section 42357(g)(1)(A) of the PRC.

Subsection (g)

The purpose of this subsection is to specify when approval of entities may be retroactive, so that certifications issued before the entity was formally approved may still be used for compliance with section 42357(g)(1)(A) of the PRC. Providing for such retroactivity is necessary because the statute is ambiguous in this regard, and whether the date of issuance of the certification predates the entity's approval is not relevant to whether the certification satisfies the requirements of section 42357(g)(1)(A) of the PRC. Rather, if the entity satisfied the requirements of subsection (b) when it issued the certification at issue, there is no practical or logical reason why a new certification would be required for CalRecycle's approval to be considered valid.

STANDARDIZED REGULATORY IMPACT ASSESSMENT

The attached report, "Proposed Regulations for the Plastic Pollution Prevention and Packaging Producer Responsibility Act: Standardized Regulatory Impact Assessment" is incorporated in its entirety in this section, which constitutes the Standardized Regulatory Impact Assessment required by Government Code section 11346.3(c)(1) (SRIA).

The Act applies waste hierarchy strategies to reduce the environmental and health impacts of packaging pollution by focusing on waste reduction and moving to a circular economy. The Act facilitates shifting the burden of managing packaging waste from local government to the producers of the packaging. Through the Act, producers of covered materials are required to source reduce plastic covered material by 25 percent, meet a 65 percent recycling rate goal, and ensure that all covered material offered for sale, distributed in, or imported into the state on or after January 1, 2032, is recyclable or compostable. Producers, as defined, are also required to establish PRO for the purpose of developing and implementing an EPR program for packaging and single-use food service ware. Producers are prohibited from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in the producer responsibility plan of a PRO or alternatively complies as an Independent Producer. The Act imposes requirements on the PRO and their participant producers, and Independent Producers, including registration, reporting, recordkeeping, and auditing requirements; remittance of surcharges; and budget and annual report preparation. Local jurisdictions and recycling service providers are required by the Act to include all covered material deemed by CalRecycle as recyclable and compostable in their collection and recycling programs, except as specified. To meet the goals outlined

in the Act, CalRecycle must adopt regulations to ensure source reduction, recycling rate, and recycling and compostable requirements for covered material are met.

The proposed regulations are expected to impact 5,741 producers with annual gross sales \$1 million or greater, 546,269 non-regulated businesses (retailers, wholesalers, restaurants); and all California residents (approximately 40 million people and 13 million households). The implementation cost is estimated to be \$646,866 annually for all regulated producers. The average annual cost for non-regulated businesses is estimated to be \$8,311. Producers eligible for an exemption incur a nominal annual cost of approximately \$309 for record keeping and exemption application costs. CalRecycle estimates that 7,874 producers will be eligible for this exemption. Using average household data (Department of Finance projections for the total number of households) and the total cost of implementation, CalRecycle estimates the direct cost per household after full implementation may be as high as \$329 per year. Details on these cost calculations are included in the Direct Impacts Model.

The economic impact of the proposed regulations is expected to exceed \$50 million through implementation period from FY 2023-24 through FY 2031-32. Investment in covered material changes and increased infrastructure to properly manage the influx of material are expected to be considerable, with the total cost of meeting the major program goals and infrastructure estimated at around \$36.3 billion over the ten-year implementation period. These costs increase over the implementation period as the source reduction and recycling rate requirements increase through January 1, 2032. Consequently, costs for meeting major program goals and infrastructure are highest in FY 2029-30 and FY 2030-31 to meet the 25 percent source reduction and 65 percent recycling rate requirements for plastic covered material by the end of the implementation period.

CalRecycle used Regional Economic Models, Inc. (REMI) Policy Insight Plus Version 2.5.0 to estimate the indirect and induced impacts of the proposed regulations on the California economy. The direct costs (PRO Operations, Environmental Mitigation Surcharge, Circular Economy Fund, Meeting Major Program Goals, and Infrastructure) identified in the SRIA were inputted into REMI model as changes in production costs necessary to meet the statutory source reduction and recycling rate requirements. For additional details regarding CalRecycle's direct cost analysis, refer to the SRIA.

Creation or Elimination of Jobs Within the State

REMI can provide insights into potential impacts by analyzing changes in jobs. CalRecycle estimates that 102,564 jobs may be created in the manufacturing of recyclable plastics, paper, glass, metal products, as well as construction, wholesaler, retailer, and food service and drinking industries. There is no indication that there will be a net elimination of jobs within California. For additional details regarding CalRecycle's analysis regarding the creation or elimination of jobs within the state, refer to the SRIA.

Creation of New Businesses or Elimination of Existing Businesses Within the State

Increased output within a specific industry may suggest the possibility of new business creation, especially if existing businesses cannot meet all future demands. It is anticipated that at least 31 businesses will be created statewide. To handle recyclable materials by 2032 as a result of the proposed regulations, at least one PRO, a non-profit organization, and 16 large, 6 medium, and 8 small Material Recovery Facilities (MRFs) will be created to handle recyclable materials by 2032 as a result of the proposed regulations.

While the Act does not contain provisions which directly eliminate businesses, REMI indicates reductions in output growth, when compared to the baseline, which may indicate the potential elimination of businesses. Many entities impacted by the Proposed Regulations are large national corporations, and they are not expected to face business closures, while some smaller businesses may face closure if unable to pass compliance-related production costs on to their customers, or if there is a substantial shift in demand. For additional detail regarding CalRecycle's macroeconomic impact analysis, refer to the SRIA.

Competitive Advantages or Disadvantages for Businesses Doing Business Within the State

CalRecycle does not foresee substantial direct effects on the overall competitive standing of operators currently conducting business in the state. This is because the proposed regulations uniformly impose requirements on all entities operating in California, regardless of whether their parent companies are based within or outside the state. All businesses, regardless of their ownership status (in-state or out-of-state), would be subject to the same set of requirements. Consequently, the proposed regulations are not anticipated to generate competitive advantages or disadvantages for California-based operators.

Increase or Decrease of Investment in the State

The relative changes in private investment growth attributable to the proposed regulations indicate an initial rise in private investment of approximately \$172 million in 2024, followed by a positive trajectory, peaking at an increase of 1.2 billion in 2030. These shifts in investment do not surpass 0.2 percent of the baseline investment figures throughout the entire regulatory timeline. There is no indication that there will be a net decrease in investment in the state as a result of the proposed regulations. For additional detail regarding increased or decreased investments in the state and the change in gross domestic investment, refer to the SRIA.

Create Incentives for Innovation in Products, Materials, or Processes

The proposed regulations establish material packaging standards, creating an incentive for manufacturers to explore innovative and cost-effective approaches to meet these standards, thereby mitigating compliance expenses. Manufacturers who invest in and gain expertise in technologies that lower compliance cost stand to gain advantages as

the market expands. Covered material producers will have increased incentive to develop new products and materials that are compliant with the proposed regulations and function as well as the packaging and food service ware currently in the market. By innovating, these covered material producers will ensure that companies will continue to buy their packaging and food service ware for their own products, which are required to be packaged with compliant covered material. CalRecycle expects that there will be increased incentive to develop new processes for recycling covered material as well. It may be more cost-effective to develop a recycling process for a material that is not recyclable currently rather than developing an entirely new material that performs the same function.

Anticipated Benefits to the Health, Safety, and Welfare of California Residents, Worker Safety, the State’s Environment, Quality of Life, and Others

CalRecycle has also quantified the benefits (in the form of avoided costs) of the proposed regulations by identifying and calculating the benefits associated with several impact categories, totaling an estimated \$40.3 billion in avoided costs. Impact categories quantified in the SRIA include Per- and Polyfluorinated Substances, litter clean up, double handling material, carbon dioxide emitted (CO₂ equivalents), ozone depletion, ground level smog formation, eutrophication, respiratory diseases, and cancer.

The source reduction of approximately 1.38 million tons of plastic material is expected to decrease Greenhouse Gas Emission (GHG) emissions of approximately 4 million metric tons of CO₂ equivalents. To meet the recycling rate requirement, approximately 2.9 million tons of plastic covered material must be diverted from disposal each year. Meeting the recycling rate requirement will require increased infrastructure and is likely to lead to an increase in the recycling rate of other materials, including paper and glass.

CalRecycle anticipates that the proposed regulations will bring various benefits to California. These include a reduction in plastic pollution, improved human health, environmental well-being, and economic advantages. The regulations will lead to reduced greenhouse gas emissions through lower plastic production, less oil consumption for plastic packaging manufacturing, and decreased waste disposal. Additionally, the shift to a circular economy will place the responsibility for managing covered materials on producers, resulting in a more consistent recycling system, increased access to reuseable and refillable packaging, and a decrease in litter pollution, enhancing the social and environmental conditions for California residents. Reduced material generation and increased recycling reduces the potential for both existing and new covered materials to pose harm to society and the environment in the future. For additional detail regarding environmental, social, health, safety, and welfare benefits, refer to the SRIA.

Public Outreach and Input

Public Workshops and Meetings

CalRecycle performed public outreach and sought public input related to proposed regulatory concepts and alternatives through a series of publicly noticed informational sessions and informal rulemaking workshops on topics related to SB 54. Each workshop was designed to solicit robust feedback on draft regulatory concepts, alternatives, and other CalRecycle deliverables required by SB 54. These sessions and workshops were held in-person at CalRecycle in the Byron Sher Auditorium, Coastal Hearing Room, or Sierra Hearing Room at the CalEPA headquarters building in Sacramento, California. The public sessions and workshops were simultaneously webcast, which allowed interested parties and members of the public to either attend in person or participate virtually to provide input and feedback on topics. A notice announcing each workshop was sent out via listserv prior to the scheduled date and posted on the CalRecycle website. Workshop notices distributed via the CalRecycle listserv included discussion documents explaining the proposed regulatory concepts in detail and providing clear instructions on how to submit comments before, during, and after the workshops. Presentation slides were made available following each session and workshop, and CalRecycle allowed for submission of written comments specific to the workshop topic for two weeks following each workshop. This feedback from the public provided CalRecycle with data and recommendations to inform the draft regulatory text.

Table 1 within the SRIA lists the individual topics of CalRecycle's public sessions and workshops, and interested parties who attended and participated in workshops are listed in Appendix A of the SRIA.

Interested Parties Meetings

In addition to the sessions and workshops, CalRecycle has engaged with multiple affected stakeholder groups via e-mail, teleconference, and in-person meetings. Interested stakeholder groups who CalRecycle has engaged with outside of the public sessions and workshops are listed in Appendix A of the SRIA.

Educational Presentations

CalRecycle executives have given virtual and in-person presentations on SB 54 at a variety of venues, including the UN Intergovernmental Negotiating Committee on Plastic Pollution and the Southern California Solid Waste Association of North America Conference. Executives also shared information about SB 54 during speeches to interested groups. Complete lists of these presentations and speeches are given in Appendix A of the SRIA.

Public Outreach

CalRecycle maintains a web page on SB 54 that is featured on CalRecycle's home page, giving it high visibility. The page provides a high-level overview of what the law requires and up-to-date information on SB 54, including related events, a legislative timeline, infographics, and a fact sheet. The web page also provides links to:

- A page on the producer responsibility organization (PRO) Advisory Board

- A PRO application
- A needs assessment study that CalRecycle is required to perform; and
- Presentation slides and discussion documents for all past and upcoming public meetings and workshops.

CalRecycle sends out information on SB 54 via multiple listservs totaling 4,100 recipients. Additionally, CalRecycle monitors and responds to a Packaging email inbox to which the public can send input regarding the Proposed Regulations for SB 54.

CalRecycle's Office of Public Affairs has developed an informative video to educate interested parties and the public about the new law which it has aired at public meetings and on social media. CalRecycle's Office of Public Affairs has provided media advisories to both industry associations and news media to further draw attention to the SB 54 public workshops held in the spring and summer of 2023. All advisories are also posted to CalRecycle's website. CalRecycle also posts on its multiple social media channels. Some of the posts and videos resulting from this coverage were also shared by CalRecycle at its public meetings. Lists of media stories and examples of social media postings are given in Appendix A of the SRIA.

For additional information regarding CalRecycle's public outreach and input, refer to the public outreach and input section of the SRIA.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT OR DOCUMENTS RELIED UPON

CalRecycle utilized the following sources in the development of the proposed regulations:

Attachment 1: Preferred Fiber and Materials Market Report 2021, 2021, 7/1/2023, https://textileexchange.org/app/uploads/2021/08/Textile-Exchange_PREFERRED-Fiber-and-Materials-Market-Report_2021.pdf

Attachment 2: Guidance for Reusable Packaging, 2022, 8/14/2023, <https://sustainablepackaging.org/wp-content/uploads/2022/04/Guidance-for-Reusable-Packaging.pdf>

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ANTICIPATED BENEFITS

By implementing the Act's requirements, the proposed regulations will ensure that various benefits contemplated under the Act are realized. For example, the proposed regulations will ensure that producers of plastic single-use packaging and plastic food service ware achieve the Act's recycling rate goals: 30 percent by January 1, 2028, 40 percent by January 1, 2030, and 65 percent by January 1, 2032. CalRecycle's enforcement of the Act, as set forth in the proposed regulations, will also ensure that producers comply with the Act's requirement that all single-use packaging and plastic food service ware in the state are compostable or recyclable by 2032 and that plastic packaging and food service ware is source-reduced by 25 percent. The proposed regulations will also ensure that recycling programs collect the materials in the categories identified by CalRecycle as recyclable or compostable.

By implementing the certification requirement of AB 1201, the proposed regulations will reduce deception of consumers regarding whether products are compostable. Consumers will be able to make more informed purchasing choices and better understand what materials are appropriate to discard with materials collected for composting. In turn, this will enhance the technical and economic viability of composting programs statewide.

These benefits will, in turn, significantly lessen the negative impacts of single-use packaging and plastic food service ware on the environment, human health, the economy, and the health, safety, and welfare of California residents. They also lessen the burden on local jurisdictions responsible for the end-of-life of such materials.

Specific anticipated benefits of the proposed regulations' implementation and enforcement of the Act include:

- Reduction of plastic pollution and litter;
- Reduction of greenhouse gas emissions;
- Decreased material disposal burdens;
- Decreased raw material extraction and virgin material usage;

- Greater use of reusable and refillable items and expansion of reuse and refill systems;
- Reduced presence of toxins and other chemicals that would render products non-compostable or interfere with recycling;
- Increased access to recycling and composting;
- Investments in communities disproportionately impacted by the effects of plastic pollution;
- Supporting a stable circular economy;
- Supporting consistent recycling systems state-wide;
- Increased revenue for businesses from the sale of recycled material product;
- Decreased public health concerns such as cancer, asthma, and birth defects
- Encouragement of packaging innovation;
- Reduce exposure to chemicals and microplastics from use of reusable materials;
- Ensuring that refillable or reusable materials can be used and washed safely and hygienically;
- Promoting openness and transparency in business and government through creation and implementation of PRO plans and plans created by individual businesses; and
- Reduced deception of consumers and increase transparency in business by imposing certification requirements for labeling products as “compostable.”

For additional analysis regarding the benefits of the proposed regulations, refer to the SRIA.

REASONABLE ALTERNATIVES TO THE REGULATION AND CALRECYCLE’S REASON FOR REJECTING THOSE ALTERNATIVES

CalRecycle has evaluated two alternative scenarios, a lower cost scenario which results in fewer benefits than the proposed regulations, and a higher cost scenario which results in similar benefits to the proposed regulations. Set forth below are the reasonable alternatives which were considered and the reasons the alternatives were rejected. For a more detailed discussion of the alternatives, refer to the SRIA.

ALTERNATIVE 1

Alternative: Less stringent classification of plastic covered materials. Covered materials that are made of paper and plastic would be allowed to contain up to 20 percent plastic while still being classified as a paper covered material, thus not subjecting them to the source reduction and recycling rate requirements. Alternative 1 would result in direct costs of \$25.3 billion, approximately \$11 billion lower than the proposed regulations. Alternative 1 would result in 1.8 million tons fewer material being categorized as plastic covered material and GHG emissions reductions of 1.4 million metric tons CO₂ equivalent less than the proposed regulations.

Some businesses that are not producers will be impacted by the Act through an increase in the cost of goods and materials. Alternative 1 would lessen the average

annual cost for businesses which are not producers from \$8,311 to \$5,792. Regardless, implementation costs associated with the Act are expected to be absorbed by large producers of covered material, with a projected pass-through of costs to other businesses not classified as large or small producers of covered material.

Reason for Rejecting: Alternative 1 was rejected because it would not reduce the amount of covered material with small amounts of plastic, which contribute to the environmental and human health impacts that the Act was intended to address.

ALTERNATIVE 2

Alternative: Higher frequency of required producer reporting. Producers would be required to report their activities to the PRO quarterly as opposed to the annual reporting requirement per proposed regulations. Alternative 2 would result in direct costs of \$36.6 billion, approximately \$235 million more than the proposed regulations. Alternative 2 would not result in increased benefits over the proposed regulations as the only change to direct cost is in producer reporting rather than infrastructure or meeting the program requirements.

Reason for Rejecting: Alternative 2 was rejected because it is more costly and would not result in an increase in benefits compared to the proposed regulations.

ALTERNATIVES STATEMENT

No reasonable alternative to the regulatory proposal has been identified that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT, OR SPECIFIC ACTIONS OR PROCEDURES

The proposed regulations do not mandate the use of specific technologies or equipment, nor specific actions or procedures.

CALRECYCLE HAS NOT MADE AN INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS.

DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATIONS

Pursuant to Government Code section 11346.2(b)(6) and as required by section 42060(b)(1) and (2) of the PRC, CalRecycle has undertaken efforts to ensure that the proposed regulations do not unnecessarily duplicate or conflict with federal regulations addressing the same issues. In particular, proposed section 18980.2 clarifies statutory provisions relating to medical products to ensure that they are interpreted to be consistent with the Federal Food, Drug, and Cosmetic Act, thereby ensuring that the proposed regulations do not conflict with corresponding federal regulations. The

proposed regulations are not otherwise duplicative of federal laws because they are unique to the state of California and there are no Federal Regulations that are otherwise comparable to the Act. In any event, to the extent that the proposed regulations are different than any federal regulation addressing the same issues, the differing regulations are expressly authorized by the Act and AB 1201 (sections 42060 and 42357(g) of the PRC).