

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

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

Packaging, including food-related packaging, comprises an estimated 26 percent of the waste disposed of in California, according to the Department of Resources Recycling and Recovery's (CalRecycle) 2014 waste characterization study.<sup>1</sup> For 2018, CalRecycle estimates that the statewide recycling rate was 40 percent,<sup>2</sup> and the U.S. Environmental Protection Agency estimates that less than 9 percent of plastic waste in municipal solid waste systems was recycled.<sup>3</sup> 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 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 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 contribute to environmental pollution, adversely impact wildlife, and pose health risks to communities across the state. 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.<sup>4</sup> Single-use items often enter the marine environment through inefficient or improper waste management, intentional or accidental littering, and stormwater runoff. Once in the environment, plastic degrades into tiny particles known as microplastics, which 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 potential exposure risk to toxic ingredients released from packaging into soil, compost, and water.

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

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

<sup>3</sup> Advancing Sustainable Materials Management: 2018 Tables and Figures; United States Environmental Protection Agency, December 2020. [https://www.epa.gov/sites/default/files/2021-01/documents/2018\\_tables\\_and\\_figures\\_dec\\_2020\\_fnl\\_508.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2018_tables_and_figures_dec_2020_fnl_508.pdf)

<sup>4</sup> 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>

Current solid waste and recycling programs in the state have failed to significantly mitigate these problems, which disproportionately affect disadvantaged and low-income communities. According to the Legislature, only 5 percent of postconsumer plastic waste in the United States was recycled in 2021.<sup>5</sup> Recycling remains frequently cost-prohibitive and an ineffective means for recovering plastic 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 can 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 generally imposes 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 producers as a whole satisfy the Act's new, stringent requirements on covered materials: by 2032, all covered materials sold or distributed in the state must be recyclable or eligible for being labeled compostable; plastic covered material must achieve significant improvements in recycling rates; and, by 2032, twenty-five percent source reduction of plastic covered materials. 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 the problems described above 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). Under that law, 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 that it must be lawful to label the material at issue "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.

## **SPECIFIC PURPOSE AND NECESSITY OF THE PROPOSED REGULATIONS**

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<sup>5</sup> Public Resources Code section 42040(b)(3)(A).

As set forth in greater detail below, the 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 recycling rates, identification of responsible end markets, contents of producer responsibility plans, contents of annual reports and budgets, procedures for submitting documents to CalRecycle for its approval, and reporting requirements.

The proposed regulations will also establish various elements of CalRecycle’s enforcement of the Act. 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 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 definitions for terms used in this chapter and clarify definitions set forth in section 42041 of the Public Resources Code (PRC) for terms used in the Act. This is necessary so that nonspecific or ambiguous terms in the Act are assigned a single meaning and so that words used throughout the chapter are clearly understood.

###### **Subsection (a)(1)**

The purpose of this subsection is to define “Act,” which CalRecycle uses throughout the chapter to refer to the entirety of Senate Bill Number 54 (2021-2022 Reg. Session) (Statutes of 2022, ch.75). This is necessary for readability and convenience.

###### **Subsection (a)(2)**

The purpose of this subsection is to define “alternative collection.” This is necessary because the Act uses the term but does not define it. The proposed definition is also necessary because the Act defines “curbside collection” using plain language that is broader than the conventional understanding of that term: The word “curbside” connotes collection at the site of a residence or business where solid waste was discarded, but

the Act plainly defines “curbside collection” to mean any collection program operated by or on behalf of a local jurisdiction. By making clear that the Act uses the word “alternative” in relation to that broader meaning of “curbside,” this subsection ensures that no collection conducted by or on behalf of local jurisdictions can be “alternative collection,” regardless of where such collection occurs or the manner in which it occurs. 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 programs successfully recover covered material and whether such recovery is “recycling,” as that term is defined in section 42041(aa)(1) of the PRC.

### **Subsection (a)(3)**

The purpose of this subsection is to define “anaerobic digestion.” This is necessary because the Act 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 existing 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 present a list to define “component” and related terms. This is necessary because the term is ambiguous as used in statute, and establishing a clear definition resolves ambiguity and ensures clarity.

### **Subsection (a)(4)(A)**

The purpose of this subsection is to define “component.” This is necessary because that which constitutes a “component” is a core feature of the Act, but it is not specifically defined 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 the Act and this chapter, which uses it to refer to distinct pieces or constituent parts of covered material items. A clear understanding of the term is essential, for example, for understanding how these regulations implement the Act’s provisions concerning recycling rates and source reduction.

### **Subsection (a)(4)(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 independently of other components. This is necessary to ensure that such categorization will usefully distinguish between types of materials.

### **Subsections (a)(4)(C), (a)(4)(C)(i) and (a)(4)(C)(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 or later, 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 such a way that they easily detach from other components. The qualifications for what is “detachable” pursuant to clauses (i) and (ii) ensure that components that are intentionally designed to be separable only through processes used in recycling will not be considered “detachable.”

#### **Subsection (a)(4)(D)**

The purpose of this subsection is to define “non-detachable component.” The definition states the logical corollary to “detachable component”: The regulations use those terms such that all components are either “detachable” or “non-detachable,” so specific criteria for the latter are unnecessary. Stating expressly that this is the case avoids confusion over these terms, proper understanding of which is critical for consistent and accurate recycling rate calculations.

#### **Subsection (a)(4)(E)**

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)(5)**

The purpose of this subsection is to clarify the scope of the statutory definition for “covered material.” The Act uses that term to refer both to covered material when it serves the role of packaging or food service ware and after processing of it has commenced; technically, the latter encompasses material that originated from packaging or food service ware but may no longer constitute or be recognizable as “packaging” or “food service ware. However, the term’s definition does not expressly state that it applies to all materials that originated from single-use packaging and single-use plastic food service ware. By resolving that imprecision, this subsection ensures that the regulations apply statute as the Legislature intended, including with respect to recycling rate methodology and data reporting requirements.

#### **Subsection (a)(6)**

The purpose of this subsection is to define “covered material category list” and “CMC list” as the list established pursuant to section 42061 of the PRC. This subsection is necessary to define a key term used in the regulations and maintain consistency with the Act. 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). In some instances, section 42061 of the PRC refers to “lists,” but in others 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.

#### **Subsection (a)(7)**

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)(8)**

The purpose of this subsection is to define “food service ware.” This is necessary because “plastic single-use food serve ware” is one of the two categories within the definition of “covered material” (section 42041(e)(1)(B) of the PRC), but, unlike the terms “plastic” and “single-use,” the term “food service ware” is not specifically defined in statute. This section also establishes that plastic single-use food service ware items shall not also be considered packaging. That interpretation is necessary because the two types of covered material are fundamentally different, such that the Act must be implemented differently with respect to each. For example, because they are necessarily used with the consumption of food, plastic single-use food service ware items always raise certain health and safety risks when they are refilled or reused, whereas packaging may not relate to food at all. Also, identifying the producer of plastic single-use food service ware is fundamentally different than doing so for packaging. With food service ware, owners of brands of the food service ware itself would necessarily be producers under section 42041(w)(1) or (w)(2) of the PRC if they are the state. In contrast, the producer of single-use packaging under those provisions depends on who owns the brand of the good that is packaged in that single-use packaging, not on the manufacturer or brand owner of the packaging material itself (i.e., empty packaging before it is associated with any good).

#### **Subsection (a)(8)(A)**

The purpose of this subsection is to clarify the scope of section 42041(e)(1)(B)(i) of the PRC. This is necessary because, if the terms used in that section are read too broadly, the Act would have a scope clearly inconsistent with what reasonably could be considered food service ware. For example, the dictionary definition of “tray” includes flat objects that could be used to carry any physical item, regardless of whether the item is food. It would also encompass trays used with food but not in the food “service” context, effectively ignoring a key word used in statute. Similarly, a bowl, lid, or cup could serve purposes completely unrelated to food, producing absurd results in the context of the Act (e.g., a bowl used for potpourri; a lid atop a paint container; a cup used to hold pencils). To avoid these results, which the Act could not have intended, this subsection interprets the description of food service ware in section 42041(e)(1)(B)(i) of the PRC to be limited to those typically used in the process of

service or consuming food and that are closely physically associated with food (i.e., touching food or used in conjunction with items that touch food) when used in that manner. For items used to provide consumers food or beverages, the definition limits the relevant food and beverages to those that require no further preparation or packaging because, without that limitation, items used merely to handle or prepare food might be considered “food service ware,” effectively rendering the word “service” superfluous.

This subsection also explains that goods exclusively marketed and labeled as not for use with food will not be considered “customarily put to such use.” Items marketed in such a manner could not reasonably be said to meet basic marketplace standards for items intended for use with food, so a clear rule that such items will not be considered customarily used for that purpose is appropriate.

This subsection provides common examples of food service ware items to resolve any perceived ambiguity in the definition, particularly with respect to items that do not directly touch food. The examples clarify what it means to be used “in conjunction with food service ware items.”

This subsection also clarifies that an item is not food service ware under section 42041(e)(1)(B)(i) of the PRC merely because it might contain, store, handle, protect, or prepare food. This prevents items from being considered food service ware merely because they might be typically used with food, such as food storage products, blender pitchers, and baking pans, but not for the service or consumption of food. While such items usually would not be thought of as single-use, considering them food service ware would nevertheless have a drastic and unintended consequence: If they are made of plastic, they would need to be “reusable” or “refillable” under the standards established in the Act (section 42041(af)), or else they would be considered single-use, would be subject to all of the Act’s reporting requirements, and would be prohibited under section 42050(b) unless they are recyclable or compostable. Interpreting “food service ware” to encompass such items would therefore contradict the plain meaning of “service” and expand the scope of the Act to an extreme degree.

### **Subsection (a)(8)(B)**

The purpose of this subsection is to clarify the scope of section 42041(e)(1)(B)(ii) of the PRC. This is necessary because the scope of that provision is unclear without a regulation specifically addressing the meaning of certain terms and how they relate to legal restrictions unrelated to the Act. The definition identifies the relevant “wraps, wrappers, and bags” as those marketed, designed, or intended to be used as described in section 42041(e)(1)(B)(ii). Without that clarification, it would not be clear whether that provision applies only to the individual items that ultimately get used in food service establishments, as opposed to items in the generic sense based on their intended usage. The former outcome could not have been intended because it would make it impossible for anyone but the food service establishment to know whether the item is covered material. That interpretation is untenable because the producer frequently will not be the food service establishment.

Moreover, it is also nonsensical to interpret section 42041(e)(1)(B)(ii) to mean that food service establishments must be the producer. First of all, section 42041(w), not 42041(e)(1)(B)(ii), establishes how the “producer” is identified. Second, the result of such an interpretation produces absurd results that would be impossible to implement and could not have been intended: For certain items, the only entities that could be producers under such an interpretation might be an elementary school, food truck, little league concession stand, or food kitchen. Giving such a drastic effect to statutory language describing what constitutes “covered material,” not who qualifies as a “producer,” is unreasonable.

#### **Subsection (a)(8)(B)(i)**

The purpose of this subsection is to define “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 at a physical location. 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 laws regulating retail food facilities (section 113789 of the Health and Safety Code). 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)(8)(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 themselves do not handle (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 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 consider “food service establishments.”

#### **Subsection (a)(8)(B)(iii)**

The purpose of this subsection 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 “pre-checkout 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 of Part 3 of Division 30 of the PRC (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, narrow standards for pre-checkout bags, requiring them to either be compostable or a recycled paper bag. Furthermore, Chapter 5.3 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 a bag’s presence on the list would not necessarily mean that distribution of the bag is lawful. Moreover, section 42287 of the PRC expressly provides that Chapter 5.3 “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 5.3. Given the inconsistent restrictions imposed by the Act and these regulations 5.3, 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) of the PRC.

Lastly, for purposes of harmonizing the Act and these regulations 5.3, the exemption under the latter for small retail establishments does not apply. This is necessary because that exemption would result in bags used by smaller retail businesses being subject to the Act, even though the same bags used at large businesses would not be. That result would be inequitable and would mean this subsection would fail its essential purpose with respect to small businesses.

#### **Subsection (a)(9)**

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)(10)**

The purpose of this subsection is to define “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.

**Subsection (a)(11)**

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. The sequence of facilities and operations that take possession of materials after the entity that collected it and before the end market that receives it is relevant to whether the end market is a “responsible end market.” Defining a single term to refer to that entire sequence enhances the clarity of the regulations in that context. The definition also resolves ambiguity that otherwise might arise when the same entity that collected material also processes it. That entity’s facilities and operations that conduct processing necessarily do so post-collection, so they must be deemed within the intermediate supply chain, regardless of their connection to a collection program. In other words, this definition clarifies that all processing and activities occurring after it must be deemed to occur within the intermediate supply chain.

**Subsection (a)(12)**

The purpose of this subsection is to define “item.” This is necessary so that the regulations can distinguish between the different ways in which the Act and these regulations use the term “covered material.” In certain contexts, that term refers to material in the abstract or general sense, such as measuring the amount of material discarded or recycled. In other contexts, that term logically can only refer to discrete, physical units or pieces of physical packaging or food service ware. Defining “item” provides a convenient, clear manner in which these regulations can use the term “covered material” in this latter sense. For example, references to covered material being “reusable” or “refillable” logically refer to particular, physical units of covered material, not an amount or weight of covered material. Similarly, physical pieces of packaging or food service ware, not some amount or weight of covered material, can satisfy certain requirements to be considered “recyclable” or to be exempt from the definition of “covered material” to begin with.

**Subsection (a)(13)**

The purpose of this subsection is to define “non-plastic.” 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 establishing the mutually exclusive relationship between “non-plastic” and “plastic,” as defined in subsection 18980.1(a)(15).

**Subsection (a)(14)**

The purpose of this subsection is to define “participant,” “participant producer,” “participant of the PRO,” and “producer who participates in the PRO’s approved plan.” This is necessary for readability and because these terms have a particular meaning in the context of the Act that might not be sufficiently clear without an express definition.

**Subsection (a)(15)**

The purpose of this subsection is to define “plastic” when it is used to describe components or items of covered material or other physical goods. This is necessary to distinguish between the general term and 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’s definition of “plastic” only addresses the term’s usage to describe a substance itself (in other words, usage as a noun) but also uses it as a descriptor related to that substance (for example, “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)(16)**

The purpose of this subsection is to interpret “plastic or polymers,” as that term is used in section 42356.1(d) of the PRC. The definition clarifies that the use of the term “or polymers” in section 42356.1(d) of the PRC does not refer to substances outside the Act’s definition of “plastic” (section 42041(t) of the PRC). This is a logical interpretation for two reasons. First, because the exemption concerns whether products must comply with specifications concerning the rate of composting, the only logical interpretation of “plastic or polymers” is that it refers only to compounds that typically present challenges to composting processes. Second, the definition provided avoids an absurd result: unless “polymers” only refers to plastic polymers, there could be no “fiber products” that do not “incorporate any plastic or polymers” because fiber itself is a type of polymer. An appropriate interpretation of the phrase “plastic or polymers,” therefore, is that “plastic” was intended to refer to material typically recognized by consumers as plastic, while “polymers” was intended to refer to plastic on the molecular level, such as plastic that is incorporated into otherwise non-plastic items but is not readily discernible upon inspection of the item. This subsection also provides that a fiber product is not considered to incorporate plastic or polymers when the plastic or polymers are present due to contamination not resulting from the manufacturing process. This is necessary because, as a practical matter, plastic contamination may be impossible to avoid. Considering unavoidable contamination to render otherwise fiber-only products not

eligible for the exclusion provided by section 42356.1(d) would shrink the scope of the exclusion to a drastic degree, if not practically eliminate it, a result that the Legislature could not reasonably have intended.

### **Subsection (a)(17)**

The purpose of this subsection is to interpret the definition of “producer” in section 42041(w) of the PRC by establishing (in (A) through (G), described below) definitions of certain terms used within that definition. This is necessary because those terms are central for applying section 42041(w) but raise complex interpretive challenges and are subject to many interpretations.

### **Subsection (a)(17)(A)**

The purpose of this subsection is to define “person” for purposes of the definition of “producer” in section 42041(w) of the PRC. This is necessary because the Act uses that term but does not define it. It is necessary to define the term to refer to all legal entities, not only natural persons, is the only rational interpretation because statute uses the term in contexts where it necessarily applies to fictitious entities (*e.g.*, section 42064 of the PRC) and in contexts 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. The definition provided is also consistent with the definition of “person” provided in section 40170 of the PRC.

### **Subsection (a)(17)(B)**

The purpose of this subsection is to interpret the phrases “product that uses covered material” and “product using the covered material,” which appear in section 42041(w)(1) and (2). Establishing clear meanings for these phrases is necessary because they are not clear on their face and are central to how the Act defines the producer of covered material. Because covered material is either packaging, which is material expressly described in section 42041(s) as associated with “goods,” or food service ware, which is merely a good, the phrases “product that uses covered material” and “product using the covered material” both necessarily refer to two contexts where a physical good can be described as “using” covered material. First, a good “uses” covered material when its packaging is covered material. Second, a good “uses” covered material when it is covered material itself because it is plastic single-use food service ware. This dual meaning for the phrases defined in this section is necessary for the term “product” to be understood in the various contexts in which it appears in the Act and these regulations. This subsection also clarifies that empty packaging materials are not “single-use packaging” for purposes of the Act. That meaning necessarily flows from section 42041(s), which does not define “packaging” separately from the goods that are used with it, and section 42041(w), which defines “producer” with respect to the good itself, without consideration of the brand of the packaging material not associated with any good. This explanation is necessary to avoid confusion because the Act does not expressly mention empty packaging materials.

### **Subsection (a)(17)(C)**

The purpose of this subsection is to interpret the phrase “sale or covered material” in section 42041(w)(5) of the PRC in a way that harmonizes it with section 42041(w)(1) 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 material necessarily constitutes the sale of that covered material.

#### **Subsection (a)(17)(D)**

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” for purposes of section 42041(w) of the PRC. For goods directly provided to the consumer on a seller’s or distributor’s premises, materials associated with a product only after physical presentation or at the point of sale or distribution do not fall within the definition of “packaging” under section 42041(s) of the PRC. That definition requires material to be used by a producer for certain purposes, but a producer’s use of the material for any of those purposes necessarily ends once the consumer physically receives the product, so that material added at that time or later cannot be the good’s “packaging” under the Act. Moreover, a broader interpretation of “packaging” leads to untenable results because materials, such as shopping bags, provided at the point of sale are typically associated with many different goods. If such material were considered “packaging” used by those goods, there could not be any one good identified as the one “using” the material or any one person identifiable as the material’s producer.

#### **Subsection (a)(17)(E) and (a)(17)(E)(i) through (a)(17)(E)(iii)**

The purpose of this subsection is to define “brand or trademark.” This is necessary because statute uses the phrase “brand or trademark” without defining it, but California law provides the well-established meaning of “mark” in section 14202 of the Business and Professions Code. That definition comports with the commonplace usage of “brand or trademark,” so using it as the formal definition of “brand or trademark” reasonably captures the Legislature’s intent behind that phrase.

Clause (i) explains what it means to “use” brands or trademarks with or on goods because, as detailed in section 18980.1.1, use of a trademark is relevant to identifying which brand or trademark to use in identifying the “producer” under section 42041(w)(1) or (2) of the PRC. That section relies on the relationship between brands or trademarks and commercial activities. In the context of trademark law, actions defined as “use” of a trademark establish that relationship (see section 14202(h) of the Business and Professions Code). Accordingly, this subsection incorporates that term to describe when a brand or trademark is used in a way that causes a person to be a “producer.” Doing so gives effect to how section 42041(w)(1) or (2) invokes that

relationship: The relevant brand or trademark is one “under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.” While that phrasing might not be commonly understood, it is readily understandable in the context of trademark law as referring to “use” of a brand or trademark (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 Business and Professions Code; 27 CCR section 25600.2(e)).

Clause (i) also clarifies that the concept of “use” of a brand or trademark refers only to the purpose described in section 14202(a) of the Business and Professions Code: It must distinguish goods from other goods, including with respect to their origin. This avoids confusion that might otherwise result in circumstances where there are multiple trademarks that may physically be associated with a good or its packaging, but only some of which serve the purpose relevant to trademark “use.”

Clause (i) also explains what it means for a brand or trademark to be “directly associated” with a good. The explanation is necessary because the text might otherwise be read as only encompassing brands physically placed on goods. In the context of trademark law, however, a trademark can physically be used on packaging, tags, labels, or documents associated with goods or their sale (see section 14202(h)(1) of the Business and Professions Code).

Clause (ii) serves the same purpose as clause (i), but with respect to brands associated with services (i.e., sale and distribution of goods), not goods themselves. In some circumstances, the usage of such brands is relevant to the identification of producers, as described in section 18980.1.1. The clarity provided in clause (ii) is necessary because the distinction between branding of goods and branding of services may not be understood by regulated entities.

Lastly, clause (iii) provides additional clarity by explaining the link between trademark usage and the determination of the producer of covered materials and expressly stating when brands or trademarks are irrelevant to that determination. Without expertise in trademark law, entities may otherwise not understand that trademark “use” on or with a good or service can only refer to brands or trademarks serving the identified functions with respect to that good or service, and that all other trademarks are irrelevant. This clarification is especially useful to ensure entities understand that, when multiple brands visibly appear with a good or service, only those that distinguish the good or service itself, rather than some other good or service (e.g., brands used for cross-promotion), are relevant.

### **Subsection (a)(17)(F)**

This subsection establishes the meaning of “distribution” and “distribute,” specifying that they refer generally to the act of transferring products in the supply chain or to end users of products. Such a transfer need not constitute a sale. Interpreting these terms is necessary because statute uses them repeatedly but does not define them. Given the manner in which the Act uses the term, it would be inappropriate to interpret it more narrowly to refer to particular types of sales or the delivery of products to those who sell

them. The Act's repeated use of the phrase "sold, offered for sale, or distributed" (or similar terms) indicates that the Legislature intended that phrase as a single reference to all relevant commercial actors, thereby ensuring that there will always be a person defined as the "producer" under section 42041(w) of the PRC. In other words, the phrase encompasses persons that provide products to others, regardless of whether there is an actual sale. Interpreting "distribute" otherwise would read into the Act an obvious loophole: If there is no person in the state that sold certain covered material items to a business in the state, that business could avoid being a producer simply by providing covered material items to others without receiving payment tied specifically to the items. This could result, for example, in there being no producer under section 42041(w)(3) for plastic food service ware items that a food service establishment provides to patrons free of charge.

This subsection also provides a definition of "import." This is necessary because statute uses that term in multiple contexts but does not define it, and it is subject to multiple interpretations (e.g., as referring only to goods moved into the state from foreign countries, as opposed to including goods moved from other states). Broadly interpreting it to refer to all goods entering the state, regardless of origin, is necessary because a narrower interpretation could not reasonably have been intended. If "import" only referred to goods transferred from foreign countries, section 42050 of the PRC would not prohibit covered material from being moved into the state from other states and immediately disposed of, without being sold or offered for sale. That would contravene the express purposes of the Act set forth in section 42050 and the policy priorities referenced in section 42050.

#### **Subsection (a)(17)(F)(i) and (ii)**

These subsections clarify and limit the definition provided in subsection (F) for "distribution," "distribute," and "import." As provided in (i), those terms necessarily cannot apply with respect to products that leave the state without ever being provided to consumers or disposed of. If such products could be considered distributed or imported in or into the state, the Act would regulate goods moved in interstate commerce in ways that the Legislature could not reasonably have intended. The express intent behind the Act, as explained in section 42040, and the policy priorities referenced in section 42050 make clear that the Act concerns materials that reach their end of life in the state, not materials that merely move through it. The effect of this subsection is to narrowly interpret the Act's inclusion of the terms "import" and "imported" alongside "distribute" and "distribution": Those terms ensure that the Act is understood to concern the sale, offer of sale, and distribution of goods, with no requirement that the goods originated within the state. The terms do not imply that the Act applies generally to goods that merely pass through the state or discriminates between goods based on whether they originated within the state.

Subsection (a)(17)(F)(ii) explains that transportation on behalf of another person must be considered conducted by that person. This is necessary because, otherwise, common carriers and other entities that merely move products might be considered the ones distributing or importing them, potentially rendering them producers. That

result would be nonsensical because such transporters would rarely, if ever, have meaningful control over the covered material used by the products they transport and may not even know what those products are to begin with.

### **Subsection (a)(17)(G)**

The purpose of this subsection is to define “offered for sale” for purposes of the Act. This is necessary for at least two reasons.

First, although statutory words are assumed to have their plain meaning, an overriding principle of statutory interpretation is that words used by the Legislature should be given some effect. As such, where the Act uses phrases like “sold, offered for sale, or distributed,” the phrase “offered for sale” should be interpreted, if possible, as adding meaning beyond what “sold” and “distributed” already provide. Under the plain meaning of “offered for sale,” the word “sold” would have no meaning within that phrase because a good cannot be “sold” unless it had been “offered for sale.” Therefore, the plain meaning of “offered for sale” cannot apply.

Second, even if the phrase “offered for sale” appeared in isolation, its plain meaning could not rationally apply with respect to a quantity, amount, or proportion of covered material. When a good is sold or distributed, there is physical material that can be described with respect to a quantity, amount, or proportion. Before the sale or distribution of a good, however, the term “offered for sale” does not necessarily refer to any physical material even in existence. Rather, merely offering a good for sale only means that a person is willing to agree to sell or distribute some quantity or amount of the good. The good itself may not exist in a particular quantity and may not exist at all. Moreover, even if an offer is for a specific quantity or amount, the offer could have no relevance to the Act before some quantity or amount physically exists. For purposes of the Act, therefore, it is impossible to account for covered material “offered for sale” as an amount, quantity, or proportion unless that phrase has a meaning other than its plain meaning.

Resolving the above challenges requires amounts, quantities, or proportions of covered material “offered for sale” to encompass only covered material that physically exists and necessarily will not be accounted for as covered material “sold” or “distributed” in the state. Limiting the meaning in that manner requires interpreting the phrase to refer to covered material that existed and was available for sale or distribution but was discarded in California by the producer without being sold or distributed.

### **Subsection (a)(17)(H)**

The purpose of this subsection is to define “agricultural commodity.” This is necessary because the Act uses the term but does not define it. Although that term may have a commonly understood meaning, referring to an established definition provided by federal law, which includes examples, reasonably clarifies how to apply the exclusion from the definition of “producer” in section 42041(w)(4) of the PRC. Incorporating federal law is appropriate because section 42060(b) expressly relies on federal law concerning food and agriculture to establish limits on the requirements that these

regulations may impose.

### **Subsection (a)(18)**

The purpose of this subsection is to establish the definition of the term “product,” as used in these regulations. This is necessary to ensure that provisions of these regulations using that term are understood to refer to the same concept. For example, these regulations use the word “product” in the same sense as that term appears in the phrases “product that uses covered material” and “product using the covered material,” as explained above with respect to subsection (a)(17)(B). For the same reasons provided with respect to those phrases, the definition of “product” clarifies that the term may refer to the combination of goods and their packaging (e.g., products that use covered material packaging) or to goods not associated with packaging (e.g., products that are themselves covered material because they are plastic single-use food service ware).

### **Subsection (a)(19)**

The purpose of this subsection 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.

### **Subsections (a)(20) and (a)(20)(A) through (a)(20)(C)**

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 section 18980.4 with respect to establishing what constitutes a “responsible end market.” Accordingly, the definition provided is necessary so that the regulations provide clear guidance on how a PRO or independent producer can satisfy their requirements that depend on the identification of such end markets. Subsections (a)(20)(A) through (a)(20)(C) serve that purpose by specifying the three different things (biogas, compost, and digestate for land application) that can constitute “recycled organic product.” Identifying those things is necessary because they represent the types of outputs from processes that produce organic products and are consistent with the definition of “recycling” under section 42041(aa) of the Public Resources Code.

### **Subsection (a)(21)**

The purpose of this subsection is to explain that the definition of “recycling rate” found in statute applies to the regulations, except as otherwise set forth in section 18980.3.2. This is necessary because, in that section, CalRecycle has exercised its authority under section 42041(ab) of the PRC to establish a methodology for calculating recycling.

### **Subsection (a)(22)**

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)(22)(A)**

The purpose of this subsection is to identify the regulatory provisions that explain what are considered “reportable activities” and state the registration requirement applicable to reporting entities. This is necessary for ensuring that the regulations are sufficiently clear.

**Subsection (a)(22)(B)**

The purpose of this subsection is to establish that an Independent Producer is a reporting entity. This is necessary because Independent Producers often, but not always, have the same obligations as PROs, so the obligations of Independent Producers may not be sufficiently clear if not stated separately from those of PROs.

**Subsection (a)(22)(C)**

The purpose of this subsection is to address the particular situation when a producer, despite participating in a PRO, chooses to report certain reportable activities itself.

Because this is a special scenario and the only one where a participant producer is a “reporting entity,” the producer’s reporting obligations might not be readily understood absent direct explanation.

**Subsection (a)(23)**

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 the Act.

**Subsection (a)(24)**

The purpose of this subsection is to add context for the statutory definition of “retailer” and “wholesaler,” as those terms relate to whether a person is a “producer.” This is necessary because the Act’s definition of the terms does not expressly address 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 interpretation is necessary because there otherwise would be multiple producers for covered material any time there is a producer pursuant to sections 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)(25)**

The purpose of this subsection is to add specificity to the definition of the terms “reusable,” “refillable,” “reuse,” and “refill” stated in section 42051(af) of the PRC. Doing so is necessary because that statutory definition comprises a list of criteria for

when items can be considered reusable or refillable but leaves ambiguous certain details affecting the application of those criteria.

### **Subsection (a)(25)(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 the chapter. 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 the Act provides criteria for what constitutes reusable or refillable that include items that are “reused” or “refilled,” despite section 42041(af) of the PRC purporting to define those terms in the first place. As such, this subsection is necessary to explain what “reuse” and “refill” mean in the context of the criteria provided in section 42041(af) of the PRC for items to be “reusable” or “refillable.” Under the interpretation provided, usage of items is “reuse” or “refill” only if it is essentially a repeat of the initial use of the items, serving the same purpose and function. This interpretation is necessary to foreclose an interpretation to which the literal text of section 42041(af) of the PRC is susceptible but that would contravene the purpose and intent of the Act. Namely, statute might be interpreted as permitting uses drastically different than the initial uses, such as use of a plastic beverage cup as a container for non-food items, to constitute “reuses.” This subsection also explains that section 42041(af)(1) of the PRC provides a limited exception to this interpretation; that clarification is necessary to avoid confusion concerning when usage of items by producers may constitute “reuse.” Such usage of items is “reuse” or “refill” when it is essentially a use 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 chapter is consistent with the Act.

### **Subsection (a)(25)(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 the Act 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 the chapter consistently with how they are used in the Act.

### **Subsection (a)(26)**

The purpose of this subsection is to define “significant effect on the environment.” The definition is substantially similar to the definitions of the same term provided in 14 CCR section 15382. Defining and using this phrase is necessary because, in multiple settings, implementing the Act requires CalRecycle to apply a threshold for what

constitutes adverse environmental effects. Describing that threshold ensures that regulated entities understand the standards to which they will be held and how to meet them. Moreover, by using a term defined elsewhere in California law and using a definition consistent with that law, this subsection ensures that the Department's implementation and enforcement of the Act is consistent with the application of other California laws concerning the environment.

#### **Subsection (a)(27)**

The purpose of this subsection is to clarify the definition of "single use" in section 42041(ai) of the PRC by interpreting its meaning with respect to specific circumstances and defining phrases appearing within the definition. Doing so is necessary because the statutory definition does not precisely address what constitutes a "single use" in either the packaging or food service ware context, and the terms "sufficiently durable" and "washable" are susceptible to a range of interpretations. This subsection includes the term "single-use" because that term is used when grammatically appropriate in the regulations.

#### **Subsection (a)(27)(A)**

The purpose of this subsection is to interpret "single use" in the packaging context. Doing so is necessary because statute does not explain what it means for there to be only a "single use" of packaging. This subsection, therefore, establishes that a "single use" of a packaging item encompasses the life of the original good associated with the item, regardless of whether such usage is intermittent, whereas use of the packaging item with different goods (e.g., goods used to refill the packaging) is a new use. This avoids the unreasonable interpretation under which packaging would be considered used multiple times even though it is discarded before it ever becomes associated with new goods. The interpretation established in this subsection therefore maintains the dichotomy between "single-use" and "refillable" or "reusable," as those terms are defined, in a manner consistent with the intent and purpose of statute.

#### **Subsection (a)(27)(B)**

The purpose of this subsection is to interpret what constitutes a "single use" in the food service ware context. Doing so is necessary because statute does not explain what it means for there to be only a "single use" of food service ware. This section, therefore, establishes that a "single use" of a food service ware item encompasses use of the item with food without being washed and used again. This avoids the unreasonable interpretation under which individual or intermittent acts of food consumption using a single food service ware item, such as consuming food out of the same bowl over multiple sittings, would constitute more than one use of that item. The interpretation established in this subsection therefore maintains the dichotomy between "single-use" and "refillable" or "reusable," as those terms are defined, in a manner consistent with the intent and purpose of statute.

#### **Subsection (a)(27)(C)**

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 packaging and food service ware is established. Because the Act reserves the “reusable” and “refillable” designations for packaging and plastic food service ware items that meet rigorous standards, including standards concerning the availability of alternatives to disposing of the items after using them once, any items that do not meet those standards necessarily must be considered “conventionally disposed of after a single use.”

### **Subsection (a)(28)**

The purpose of this subsection is to define “small producer” as a producer that has been approved as exempt under the small producer exemption articulated further in section 18980.5.2. This is necessary because the Act, at PRC section 42060(a)(5), requires CalRecycle to establish a process for exempting small producers from the Act. The Act lays out some criteria for CalRecycle to use in creating this process, but it is ultimately the requirements of section 18980.5.2 that decide whether a producer is a small producer and thus exempt from the requirements of the Act.

### **Subsections (b), and (b)(1) through (b)(4)**

The purpose of these subsections is to incorporate four documents into the chapter and establish how they are referred to in the chapter. These provisions are required pursuant to section 20 of title 1 of the CCR, which requires the regulation text to identify the documents incorporated by reference by title and date of publication or issuance.

The four documents (three technical standard documents and the State Administrative Manual) must be incorporated because sections 18980.3.3, 18980.3.4, 18980.4.1, and 18980.6.7 rely on them to establish substantive requirements. Reproducing the text of those documents into the regulations themselves would be impractical and cumbersome because they are lengthy and may be subject to duplication and distribution limitations under copyright law.

## **§ 18980.1.1 PRODUCER IDENTIFICATION**

### **Subsections (a), (a)(1) and (a)(2)**

These subsections clarify the meaning “in the state,” as that phrase is used in the definition of “producer” in section 42041(w)(1) and (2). Clarifying the term is necessary because “in the state” could be interpreted in various ways, depending on the context. Therefore, these subsections ensure that the phrase has a single, clear meaning.

The principal requirement to be considered “in the state” is that a person is subject to personal jurisdiction in California with respect to the Act under applicable provisions of the California Code of Civil Procedure. In the context of the Act, this interpretation is necessary to give reasonable effect to the “in the state” requirement: ensuring that the person held responsible for compliance with the Act can be haled into a California court so that the court can render enforceable judgments against that person.

Subsection (a)(1) establishes an additional criterion limiting when a person is “in the state.” Whenever a person can physically be served with process in the state, courts

necessarily have jurisdiction over the person, even if the person would not otherwise be considered a resident of the state. (See, e.g., *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 610-611 (“Among the most firmly established principles of personal jurisdiction . . . is that the courts of a State have jurisdiction over nonresidents who are physically present in the State. The view developed early that each State had the power to hale before its courts any individual . . . within its borders, . . . no matter how fleeting his visit.”). Requiring such service to be possible for a person to be “in the state” under 42041(w)(1) or (2) is consistent with the multi-tier structure of section 42041(w)(1) through (3), which ensures that, in every scenario, there be a person CalRecycle can readily identify as the producer and hold responsible. Only 42041(w)(3) does not require the producer itself, as opposed to the activities the producer conducts, to be “in the state.” Because California could, in every case, only impose liability on someone subject to the state’s jurisdiction, the phrase “in the state” must be more specific than the concept of personal jurisdiction. Accordingly, it is reasonable to interpret (w)(1) and (2) to describe persons as “in the state” only when they can physically be served legal documents in the state.

Subsection (a)(2) establishes a different criterion, as an alternative to (a)(1), for considering a person “in the state”: The person voluntarily assumes responsibility under the Act. The specific terms of this subsection ensure that the person clearly establishes such consent and communicates to CalRecycle where to send notices under the Act.

This interpretation is appropriate for at least two reasons. First, it is consistent with the long-established principle that jurisdiction over a person can be based on that person’s consent. (See, e.g., *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694 (“A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court.”)) Allowing consent to personal jurisdiction to render a person “in the state” is a logical extension of the rationale provided for subsection (a) overall: that responsibility under the Act should lie with persons subject to the jurisdiction of California courts. Second, this interpretation enables businesses to prevent sellers, who may have no control over the use of covered material, from bearing responsibility for compliance with the Act. This interpretation preserves the Legislature’s intent behind sections 42041(w)(1) through (w)(2) of the PRC, whose three-tiered definition of “producer” shows that the Legislature intended persons that merely sell, offer for sale, or distribute covered material to be deemed “producers” as a last resort.

### **Subsection (b)**

The purpose of this subsection is to establish that one brand or trademark must be identified as the one referred to in section 42041(w)(1) and (2) of the PRC. This is necessary because, in the context of the Act, there must be a single identifiable producer for any covered material, but there might be multiple brands or trademarks associated with a product and the commercial enterprise related to it. For example, a trademark might be placed prominently on a physical product to symbolize the business for which the product was manufactured, but the product might also bear a less-

prominent logo symbolizing the business that manufactured the item. Similarly, an item might physically bear only the brand of the business that manufactured the item, but its sale or distribution might be associated with a different trademark. A physical product could, in many circumstances, not physically bear any trademark at all. These possibilities cause significant interpretive challenges for identifying the producer of covered material under section 42041(w)(1) and (2). Accordingly, this subsection explains that a single trademark must be designated, if possible, to identify the producer and that the subsequent provisions provide the rules for how to do so.

### **Subsection (c)**

The purpose of subsection (c) is to establish how the producer of packaging will be determined. This is necessary because the definition of “producer” lays out the general framework for identification of producers but is complex and subject to multiple interpretations because it relies on the concepts of ownership and licensing of brands.

### **Subsection (c)(1)**

This subsection sets forth the overall rule for which brand or trademark is relevant for purposes of producer identification. The relevant brand or trademark is the one associated with goods when they are first sold or distributed, and if there are multiple such brands or trademarks, subdivision (e) establishes how to identify which one must be used to identify a producer. This framework is necessary to give effect to the tiered structure of section 42041(w) of the PRC by ensuring that the person having ultimate control over covered material is designated as its producer, if possible. This is consistent with the overall mandate that the regulations ensure that the requirements and policy goals of the Act are satisfied (section 42060(a) of the PRC).

This subsection also clarifies how section 42041(w)(1) can render a manufacturer the producer even though it licenses, rather than owns, the relevant brand or trademark. Identifying when there is a “licensee” presents an interpretive challenge because there are innumerable ways for multiple persons to be licensees of the same brand or trademark. To sensibly identify a single licensee as the producer under section 42041(w)(1) for particular covered material in a manner consistent with the Act, the licensee’s right to use the brand or trademark must be for the purpose of manufacturing the relevant good. Without that link, there would be no real-world basis connecting the licensee with the covered material items of which it is the producer.

The proposed regulation also requires the licensee’s rights to be exclusive in all or some of the state. As explained in section 42041(w)(2), which states that it applies to “this subdivision” (subdivision (w), which includes (w)(1)), a “licensee” must have an “exclusive right.” However, neither 42041(w)(1) nor 42041(w)(2) explains the geographic scope of the exclusivity that renders a licensee the “producer” under either of those provisions. Accordingly, this subsection must address that scope. Because section 42041(w)(2) describes the exclusive right of a licensee as applying “in the state,” rather than “throughout the state” or “statewide,” it is appropriate to consider a licensee eligible to be the producer if its exclusive rights apply only in a portion of the state. Moreover, unless “exclusive licensee” includes licensees that have exclusive

rights that are regional, rather than statewide, licensing schemes could effectively bypass section 42041(w)(1) so that persons having the greatest control over a brand or trademark, or all persons having any such control, could avoid being producers. For example, the presence of just two businesses in the state that are licensed to use a trademark would mean that the only persons that could be producers would be those that sell, offer for sale, or distribute products that use the brand or trademark and thus are producers under section 42041(w)(3). The result would be that the persons having the most control over usage of the brand would not be producers, effectively shifting responsibility for covered material onto a potentially large number of smaller entities. The Legislature cannot reasonably have intended to create such a loophole in statute.

### **Subsection (c)(2)**

The purpose of this subsection is to set forth the next step for identifying a producer when one cannot be identified pursuant to subsection (c)(1). In that case, the identification of a producer would still be straightforward when the brand owner is in the state because, under section 42041(w)(2), that brand owner is the producer regardless of whether it is the manufacturer. Accordingly, this subsection identifies that clear-cut scenario, and the next subsection ((c)(3)) addresses the more complex one where there is only a licensee, not a brand or trademark owner, in the state.

### **Subsection (c)(3)**

The purpose of this subsection is to interpret section 42041(w)(2) of the PRC to establish how it applies to identify a single producer when the brand owner is not in the state. Identifying when there is a relevant “licensee” presents an interpretive challenge because there are innumerable ways for multiple persons to be licensees of the same brand or trademark, and section 42041(w)(2) does not state how to single out one licensee to be the producer. Accordingly, this subsection, through (c)(3)(A) through (C), presents an interpretation of “licensee” to establish, in a manner consistent with the Act, the analysis for identifying licensees and determining whether a licensee is the producer of covered material.

### **Subsection (c)(3)(A)**

This subsection states the requirement that, to be a producer, a licensee must be in the state. This provides clarity, so that the provisions within subsection (c)(3) include all steps in the analysis. Being in the state is an express requirement under 42041(w)(2) for a licensee to be a producer.

### **Subsection (c)(3)(B)**

This subsection explains when a person’s right to use the designated brand or trademark renders them a “licensee” for purposes of section 42041(w)(2). This is necessary for the reasons stated above with respect to subsection (c)(3) as a whole. This subsection sets forth characteristics that make a person the relevant licensee.

First, the person must have an exclusive right (as that concept is interpreted in subsection (c)(1), described above) to control usage of the brand or trademark on goods or in connection with the sale, offer of sale, or distribution in the state. Those

rights, as opposed to the mere right to use the trademark in advertisements or for purposes outside of the state, logically are the ones relevant to the Act because they directly relate to the physical presence of covered material in the state.

Moreover, when the brand owner itself is not in the state, the express inclusion of the licensee in 42041(w)(1) and (2) makes clear that those rights must stand in for the owner's rights. Relying on the licensee's rights in this way comports with the overall purpose of the Act because it assigns responsibility to the person having the highest authority (i.e., the authority arising most directly from the owner's ultimate authority) over branded goods that use covered material sold, offered for sale, or distributed in the state.

Lastly, this subsection clarifies that a licensee is only the producer of covered material items that are sold, offered for sale, or distributed under the authority conferred by the relevant license. In other words, the term "the product" in section 42041(w) does not refer to products in the abstract; rather, it refers only to the specific, discrete products over which the licensee may exercise control. This interpretation is necessary because the right to control use of a brand or trademark is logically relevant only when it is exercised, and that exercise necessarily relates only to the usage of the brand or trademark associated with discrete covered material items. Explaining this interpretation in clear terms also clarifies how statute applies when different persons hold rights to control a certain brand or trademark in different regions of the state.

### **Subsection (c)(3)(C)**

The purpose of this subsection is to address how statute applies when a licensee's right to use a brand or trademark derives from the rights of another licensee in the state. In other words, this subsection addresses rights conferred by one person in the state on another under a legally enforceable agreement, which may be described as a "sublicense" or "franchise" agreement. Clarifying how statute applies to such licenses is necessary because both parties are technically "licensees," and section 42041(w)(2) does not directly address which should be the producer by virtue of that status.

This subsection interprets licensees' and franchisors' status with respect to a brand or trademark to take precedence over that of sublicensees and franchisees.

Identifying the person granting the sublicense or franchise as the producer is necessary to give effect to section 42041(w)(2) in a manner consistent with the multi-tier structure of the "producer definition." That definition treats licensees as stand-ins for owners when the latter are not in the state, so that the person having authority most akin to that of an owner is the producer, and those that sell, offer for sale, or distribute covered material are producers only as a last resort. Accordingly, this subdivision preserves the intent behind the producer definition by assigning responsibility to the person having the highest authority (i.e., the authority arising most directly from the owner's ultimate authority) over branded goods using covered material sold, offered for sale, or distributed in the state. A contrary interpretation would contradict the intent implied by section 42041(w)(1) through (3) by not identifying the person in the state having

authority most like that of an owner as the producer. Moreover, that interpretation would give an effect to license agreements that would obliterate the distinction between persons that are producers because they sell or distribute covered materials and persons that are producers because they hold a license to use a brand or trademark. For example, if retail franchisees (instead of the franchisor in the state granting them franchises) could be considered producers, the franchisor would effectively pass responsibility along to many businesses that sell or distribute covered material. In other words, statute would empower the person having ultimate authority over a brand or trademark to use licensing arrangements to bypass section 42041(w)(2), so that businesses whose rights are subservient to the franchisor's rights and who otherwise could only be producers under section 42041(w)(3) (because they sell or distribute covered material) would instead be producers under section 42041(w)(2).

#### **Subsection (c)(4)**

The purpose of this subsection is to address how statute applies when a person not acting pursuant to a license or on behalf of a licensee adds covered material to a good. This is necessary because, as explained in greater detail above, statute does not expressly address the conditions under which a person is a producer because it is a "licensee." Accordingly, this subsection avoids confusion over when to apply section 42041(w)(3), rather than 42041(w)(2), to identify the producer of covered material. The interpretation established in this subsection is necessary because the statute's references to "owners" and "licensees" of products cannot rationally be read to encompass packaging whose use the owner or licensee of the designated brand or trademark did not cause or control. In other words, that packaging is not considered an element of the "product" referred to in connection with owners and licensees.

#### **Subsection (d)**

The purpose of this subsection is the same as subsection (c), except with respect to food service ware, rather than packaging. Addressing the two types of covered material independently is necessary because their fundamental differences affect how a producer must be identified. Specifically, identifying the relevant brand for food service ware concerns the food service ware itself, whereas the brand relevant to packaging concerns the good associated with the packaging (i.e., the brand of packaging materials, considered separately from the good they ultimately are used with, is irrelevant).

#### **Subsection (d)(1)**

The purpose and necessity of this subsection are the same as those described for subsection (c)(1), except with respect to food service ware, rather than packaging. The two provisions are substantially the same, except that this section identifies the point at which a brand becomes relevant as when the food service ware is first sold or distributed. This differs from subsection (c)(1) because, in the latter, a good and its brand have no relevance under the act until they become associated with the covered material under consideration. For food service ware, the food service ware itself is the relevant good, so its brand is relevant upon its introduction into commerce.

### **Subsection (d)(2)**

The purpose and necessity of this subsection are the same as those described for subsection (c)(2), except with respect to food service ware. The two provisions are otherwise substantively identical.

### **Subsections (d)(3), (d)(3)(A), (d)(3)(B), and (d)(3)(C)**

The purpose and necessity of this subsection are the same as those described for subsections (c)(2), (c)(3)(A), (c)(3)(B), and (c)(3)(C), respectively, except with respect to food service ware. The provisions are otherwise substantively identical.

### **Subsection (e)**

This subsection addresses the scenario where more than one brand or trademark satisfies the conditions under subsection (c) or (d) for being designated for purposes of section 42041(w)(1) and (2). Doing so is necessary to address the interpretive challenges described with respect to subsection (b). As more specifically described below, the constituent parts of subsection (e) interpret statute in accordance with the overall mandate that the regulations ensure that the requirements and policy goals of the Act are satisfied (section 42060(a)).

### **Subsection (e)(1)**

This subsection specifically addresses the special scenario when food service ware, upon its manufacture, is branded using a brand or trademark associated with food or food service. In that scenario, that brand or trademark logically should take precedence over other brands: Designating that brand or trademark gives effect to the tiered structure of section 42041(w) of the PRC because it ensures that the person with authority over the manufacture of goods can be designated as the producer. The person controlling that brand or trademark necessarily has that authority. For all other scenarios, this subsection explains that the relevant brand is the one owned by or licensed to the manufacturer, as long as that person qualifies as a producer under subsection (c)(1) or (d)(1). That person either has ultimate authority over the manufacturing (in the case of the brand owner) or the authority most directly arising from such authority (in the case of the licensee-manufacturer), so designating the brand controlled by that person is necessary to give effect to section 42041(w)(1) and the tiered structure of section 42041(w) overall. This is consistent with the overall mandate that the regulations ensure that the requirements and policy goals of the Act are satisfied (section 42060(a)).

### **Subsection (e)(2)**

This subsection addresses the scenario where no brand or trademark can be identified under (e)(1). Under this subsection, the brand or logo most prominently used with the goods must be designated as the relevant one for purposes of section 42041(w)(1) and (2) of the PRC. Designating the brand or trademark most prominently distinguishing goods from other goods is the most reasonable manner of resolving the ambiguity in 42041(w)(1) and (2), which refer only to a single “brand or trademark under which the product is used,” because such brand or trademark is the one generally understood in the marketplace as a good’s brand or trademark. This outcome is consistent with the

wording of section 42041(w)(1) and (2) and the overall mandate that the regulations ensure that the requirements and policy goals of the Act are satisfied (section 42060(a)).

### **Subsection (e)(3)**

This subsection addresses the scenario where no brand or trademark can be identified under (e)(1) or (e)(2). Under this subsection, the brand or logo most prominently used with the sale or distribution of the goods must be designated as the relevant one for purposes of section 42041(w)(1) and (2) of the PRC. This may occur, for example, when the physical good itself is not directly linked to a trademark (such as by physically bearing a trademark) or when it is directly linked to multiple trademarks, but none can be identified as more prominent than others. Even in such scenarios, a brand or trademark is typically associated with the act of selling or distributing the good. Designating that brand or trademark as the relevant one reasonably ensures that, among the persons connected to the various brands or trademarks, the person exercising the most active, direct control over covered material is designated as its producer. That outcome is necessary to give effect to the tiered structure of section 42041(w) consistently with the overall mandate that the regulations ensure that the requirements of the Act and its policy goals are satisfied (section 42060(a)).

### **Subsection (e)(4)**

This subsection clarifies the preceding subsections by addressing the common scenario where multiple brands or trademarks under common ownership are associated with a good or the sale or distribution of goods. Words and logos are easily recognized as brands or trademarks and are often consistently used together on a physical good or with business activities. Moreover, what constitutes a brand or trademark is broader than just words and logos. A recognizable combination of colors or even a single color might be a brand or trademark, for example. Under these circumstances, it is logical to compare the prominence of the combination of all trademarks under common ownership to other brands or trademarks, if any, related to the good or its sale or distribution. This approach is necessary to ensure that the preceding subsections serve the purposes described above.

### **Subsection (e)(5)**

This subsection establishes an exception to the provisions in preceding subsections, allowing brand owners to agree among themselves to designate a brand or trademark as the relevant one for purposes of section 42041(w)(1) and (2). This is necessary because affording latitude to brand owners voluntarily to affect which person is the “producer” supports the purposes described above with respect to (e) and (e)(1) through (4). As those subsections acknowledge, multiple brands or trademarks may be related to a good and its sale or distribution, complicating the identification of only one brand or trademark. Therefore, provided that the voluntary decision by brand or trademark owners results in identification of a single person as the producer, honoring that decision necessarily serves the purpose of the Act at least to the same degree as would application of the rules set forth in the preceding subsections.

### **Subsection (f)**

The purpose of this subsection is to interpret section 42041(w)(3) of the PRC so that applying it identifies only 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 distributed, 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 (f)(1) through (f)(3)**

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 the 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.

## **ARTICLE 2. COVERED MATERIALS AND COVERED MATERIAL CATEGORIES**

### **§ 18980.2. CATEGORICALLY EXCLUDED MATERIALS**

#### **Subsection (a)**

The purpose of this subsection is to identify, in the subsections addressed below, the various bases under which statute renders certain materials excepted from the definition of “covered material.” This is necessary to provide clarity, both by interpreting ambiguous provisions of statute and setting forth the exceptions in the same portion of the regulations.

#### **Subsection (a)(1)**

The purpose of this subsection is to identify section 42041(e)(2) as providing one set of the categorical exclusions of packaging from the definition of “covered material.” The provisions within 42041(e)(2) include a list of the major exclusions under the Act. Although this subsection does not address each of those exclusions specifically (subsequent provisions directly address those exclusions requiring clarification or interpretation), identifying them as a group here ensures that this section does not cause interested parties to overlook major exceptions from the Act’s scope.

#### **Subsection (a)(2)**

The purpose of this subsection is to address the statutory mandates concerning conflicts with regulations and guidelines issued by the United States Food and Drug Administration and the United States Department of Agriculture. This subsection does so by ensuring that, when it is not possible for agricultural commodity packaging to comply with both the Act and federal laws and guidelines, that packaging will be considered not to be covered material, effectively exempting the packaging and the

persons that would otherwise be producers of it from all requirements of the Act. This is necessary because such impossibility necessarily constitutes the “direct conflict” that section 42060(b) of the PRC requires the regulations to avoid. For completeness and context, this subsection also identifies certain examples, with respect to particular federal laws, of the types of direct conflict that might arise.

### **Subsection (a)(2)(A)**

The purpose of this subsection is to establish a procedure that entities must follow when they determine, based on the preceding paragraph, that packaging is not covered material. The procedure requires notice to the Department and explanation of the basis for the exception to apply. In turn, the Department will publicize such determinations. This procedure is necessary because entities that might be responsible for similar packaging might otherwise not be aware of compliance pathways available to them. Moreover, without such transparency, the continued use of single-use packaging might thwart consumers’ expectations of the Act’s effects.

### **Subsection (a)(2)(B)**

The purpose of this subsection is to establish a procedure through which the Department will evaluate claims that complying with the Act presents a direct conflict for purposes of the preceding paragraphs. Providing a procedure specific for such claims is necessary because the claims present circumstances dissimilar to other compliance- and enforcement-related scenarios. Here, entities must make unilateral decisions concerning their obligations under the Act based on the need to comply with laws other than the Act. Compared to other exclusions and compliance-related decisions, these decisions are more fraught because they require decisions concerning the risk of violating federal law relating to food and drug safety. This subsection establishes a process that reasonably avoids disruption of business by allowing 60 days for the entity to provide information to the Department and a 180-day grace period before negative determinations by the Department take effect. This process enables entities to have clear, uniform expectations for how the Department’s compliance determinations will affect them and reasonable opportunity to plan accordingly.

### **Subsection (a)(2)(C)**

The purpose of this section is to make clear that the same protections for trade secrets applicable under other provisions of these regulations apply to the process outlined in (a)(2)(A) and (B). This added clarity is necessary because that process is distinct from other processes set forth in the regulations (e.g., for exemptions) and might otherwise be perceived as not incorporating the general trade secret protections set forth elsewhere in the regulations.

### **Subsections(a)(3)**

The purpose of this subsection is to identify section 42041(af) of the PRC as setting forth another categorical exclusion from the definition of “covered material.” This is necessary because, without pointing to 42041(af) specifically, the definition of “single use” (section 42041(ai)) might be interpreted as providing sufficient basis for deeming items “reusable” or “refillable.” Contrary to that interpretation, the Act requires items to

meet the express criteria in 42041(f) to be considered to fall outside that definition. In other words, clarification is necessary to make clear the relationship between the concepts of “single use” and “reusable” or “refillable.”

### **Subsections (a)(4), and (a)(5)**

The purpose of these subsections is to identify the federal statutory provisions that provide the definitions for “devices” and “drugs.” This is necessary because section 42041(e)(2)(A)(i) lists the relevant federal laws but does not make clear which one applies to which term (“medical products” (addressed in subsection (a)(6)), “devices,” or “prescription drugs”). Section 42041(E)(2)(A)(i) is particularly unclear with respect to “prescription drugs,” which, contrary to the express statutory text, does not have its own definition under the cited federal law. This subsection explains that federal law only directly defines “devices” and “drugs,” the packaging for which is excluded from the definition of “covered material.” Doing so in combination with subsection (a)(6), which explains the scope of packaging for non-prescription drugs that are considered “covered material,” resolves the ambiguity with respect to the aggregate scope of the terms “medical products,” “devices,” and “prescription drugs.”

### **Subsection (a)(6)**

The purpose of these subsections is to interpret the meaning of “medical products” for the purpose of section 42041(e)(2)(A)(i) of the PRC. Interpretation is required because that term’s plain meaning does not have clearly defined boundaries, rendering the scope of what is considered “packaging” under the Act ambiguous. Subsection (6) construes “medical products” to encompass non-prescription drugs, subject to the additional requirements in (6)(A) and (6)(B). This interpretation is necessary because it comports with the ordinary usage of that term and because 42041(e)(2)(A)(i) expressly states that the excepted packaging, including packaging used for “medical products,” is that used for goods those “specified in the Federal Food, Drug, and Cosmetic Act”.

### **Subsection (a)(6)(A)**

Subsection (A) limits the exception so that it does not encompass products that are defined as “cosmetics” or “soap” under federal law. This is necessary to give effect to the Legislature’s choice to expressly identify three different types of goods in 42041(e)(2)(A)(i): “medical products,” “devices,” and “prescription drugs.” The latter two types of goods have clear definitions under the federal law cited. In contrast, there is no definition of “medical products” under that law, so it necessarily must be construed via regulation for it to be enforced.

Principles of statutory interpretation require that statutory terms must not be interpreted in a way that renders them superfluous. *See, e.g., Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882) (“It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”); *Mkt. Co. v. Hoffman*, 101 U.S. 112, 115 (1879) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”); *see also Williams v. Taylor*, 529 U.S. 362, 404 (2000) (applying rule); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (applying rule). Accordingly, the Legislature’s deliberate choice to refer to

“medical products,” “devices,” and “prescription drugs” instead of simply “drugs” and “devices” requires that the term “medical products” be construed not to encompass all “drugs,” as defined in the cited federal law. Interpreting the term otherwise would render the term “prescription drugs” of no effect.

The Department construes “medical products” to exclude “cosmetics” and “soap,” as those terms are defined under federal law. Although such products are, in some instances, also “drugs,” the cosmetic element of cosmetics typically places them outside the ordinary usage of the term “medical product.” For example, shampoo that treats dandruff, deodorant that contains an anti-perspirant ingredient, and antibacterial soap are technically “drugs” under federal law but are not ordinarily referred to as “medical” in other contexts. This subsection’s interpretation of the phrase “medical products” is therefore appropriate because it comports with the phrase’s ordinary usage and gives effect to the Legislature’s deliberate choice of words.

### **Subsection (a)(6)(B)**

The purpose of subsection (B) is to limit the exception in subsection (6) so that it does not encompass products that are a drug solely by virtue of containing a sunscreen active ingredient. This comports with the ordinary understanding of the term “medical product” not to encompass sunscreens.

### **Subsection (b)**

The purpose of this subsection is to clarify the scope of certain statutory exclusions from the definition of “covered material.” Doing so is necessary because the statutory text is unclear as to whether the exclusions apply to secondary and tertiary packaging. Specifically, section 42041(e)(2)(A) of the PRC excludes “[p]ackaging used for” enumerated products, but the other exclusions within 42041(e)(2) address “[p]ackaging used to contain” certain products (42041(e)(2)(B) and (e)(2)(D)), “containers that are used to contain and ship” certain products (42041(e)(2)(C)), “[b]everage containers” or “[p]ackaging associated with products” subject to another state law (42041(e)(2)(E) and G), “[p]ackaging used for the long-term protection or storage of a product” (42041(e)(2)(F)), and covered material that is not collected through residential collection service and meets certain criteria related to recycling rates (42041(e)(2)(G)).

For certain of the exclusions, it would be nonsensical for the exclusions to extend past primary packaging. Specifically, the term “beverage containers” has a specific meaning under the California Beverage Container Recycling and Litter Reduction Act. Therefore, the statutory text using only that term to describe what the exclusion covers logically cannot be read to encompass material, such as secondary or tertiary packaging used with a beverage container, that the term “beverage containers” does not encompass under that law. The exclusions for packaging used for “long-term protection or storage” or that meet criteria related to collection and recycling rate are similarly self-limiting: It applies to whatever packaging (whether primary, secondary, or tertiary) that the statutory text describes.

In contrast, the exclusions for packaging “used for” or “used to contain” enumerated

products are described in broader terms. They are not self-limiting under the text's plain meaning, and the Legislature chose not to impose any other express limitations on them. Therefore, this subsection interprets the exclusions stated in 42041(e)(2)(A) through (D), but not the self-limiting ones described above (42041(e)(2)(E) through (G)), not to be limited based on whether the packaging is primary, secondary, or tertiary.

To avoid absurd outcomes, however, this subsection addresses the situation where tertiary packaging (i.e., transport packaging) is used both for goods whose packaging is excluded under 42041(e)(2)(A) through (D) and goods whose packaging is not excluded. In that scenario, the statutory exclusions for certain packaging conflict with the statutory inclusion of tertiary packaging for all other products. Resolving that conflict by excluding all packaging for certain goods rather than by including all packaging for all other goods would create an obvious, easily exploited loophole. A producer would be able to cause the exclusion to apply to entire shipment boxes or crates by including a single good whose packaging 42041(e)(2)(A) through (D) excludes alongside goods whose packaging is not excluded. Because the Legislature could not have intended such absurd results, this subsection requires the exclusions not to encompass tertiary packaging used for goods not listed in 42041(e)(2)(A) through (D).

#### **Subsection (c)**

The purpose of this subsection is to clarify the meaning of the statutory exclusion from the definition of "covered material" for beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act. This is necessary because it is not readily apparent what it means for beverage containers to be subject to that law. By pointing to specific sections of the PRC within the beverage container law, this subsection provides necessary clarity concerning the scope of statute.

#### **Subsection (d)**

The purpose of this subsection is to prevent this section from being interpreted to mean that CalRecycle lacks the authority to investigate whether any packaging is covered material. Interpreting the scope of CalRecycle's enforcement authority in this manner is necessary because a contrary reading would broadly undermine that authority. If this exception were to limit that authority, it would empower businesses to avoid accountability merely by claiming that their products qualify for the exception and refusing to allow CalRecycle to investigate such a claim.

### **§ 18980.2.1. EXCLUSION OF REUSABLE AND REFILLABLE PACKAGING AND FOOD SERVICE WARE**

#### **Subsections (a)**

As explained in detail below, the purpose of this section is to interpret the statutory text in section 42041(af) of the PRC and add specificity to the requirements in that section for items to be considered reusable or refillable under that section. This is necessary because the statutory text describes the requirements, which are complex, in broad terms only. Moreover, the statutory text uses terms that are susceptible to many different meanings, so regulations interpreting those terms are necessary.

### **Subsections (a)(1)**

The purpose of this subsection is to clearly define the terms “producer” and “consumer” for the purposes of applying section 42041(af) of the PRC. This is necessary because those terms are not used in that section according to their ordinary meanings.

#### **Subsection (a)(1)(A)**

This subsection provides a definition of the term “producer” for purposes of section 42041(af) of the PRC. This is necessary because, while section 42041(w) of the PRC provides a definition of that term, that definition only applies to persons who are producers. The term “producer” logically must have a broader definition for purposes of section 42041(af) because a person is only a “producer” under that definition with respect to covered materials, and items that are reusable or refillable are not covered materials. Therefore, this subsection defines “producer” as also referring to persons that would be the producer of items but for the fact that the items are reusable or refillable. In the context of statute, this is the only logical reading of that term as used in section 42041(af).

#### **Subsection (a)(1)(B)**

This section provides a definition of the term “consumer” for purposes of applying section 42041(af) of the PRC. One common use of that term is to refer to individuals who purchase and use goods at the end of the supply chain. However, in the context of the Act, and section 42041(af) specifically, the term must also refer to businesses that use packaging or food service ware. The Act divides all reusable or refillable items into two types: those that are reused or refilled by “producers” and those that are reused or refilled by “consumers.” Because “producers” is an expressly defined term, the latter term must refer to persons who reuse or refill items but are not producers.

#### **Subsection (a)(2)**

The purpose of this subsection is to explain that, for individual items to be considered reusable or refillable, the circumstances specific to them must satisfy the requirements of section 42041(af) of the PRC. This is necessary because the requirements stated in section 42041(af)(1)(C) and (2)(C) are, by their nature, in that reuse infrastructure may be adequate in a particular region to support the convenient reuse of an item but inadequate in others. Unless the items in the former region could be considered reusable at the same time items in the latter region are not, all instances of the item throughout the state would result in a violation of the Act, even if most of the items are supported by adequate infrastructure.

#### **Subsections (a)(3), (a)(3)(A), and (a)(3)(B)**

The purpose of these subsections is to clarify two key phrases used in section 42041(af)(1) and (2): “reused or refilled by a producer” and “reused or refilled by a consumer.” This is necessary because those phrases are specific to the Act but do not have clear, plain meanings. Subsections (a)(3)(A) and (B), therefore, state the defining characteristic of each of the two types of reuse or refill. The distinction drawn between the two types is twofold. First, only reuse or refill by producers involves items exiting

and then reentering the supply chain through a system for which the producer is responsible. Second, only reuse or refill by consumers must be for the same good. That interpretation follows from the differences in the express terminology used in the statutory criteria for the two different types of reuse and refill.

#### **Subsection (a)(4)**

As set forth in detail below with respect to subsections (a)(4)(A) and (B), the purpose of this subsection is to interpret section 42041(af)(1)(C) of the PRC, which concerns the adequacy of infrastructure for items reused or refilled by producers. This is necessary because, without a more specific description of what constitutes “adequate infrastructure,” it would be impossible for producers to understand how to comply with this requirement or for CalRecycle to uniformly enforce it.

#### **Subsections (a)(4)(A), (a)(4)(A)(i), and (a)(4)(A)(ii)**

Subsection (a)(4)(A) establishes convenience requirements for items from brick-and-mortar locations (i.e., not directly delivered to consumers). The requirements are necessary because they are a commonsense application of the convenience requirement. The reuse or refill of items cannot be said to be “convenient” if consumers must travel an unreasonable distance for it to occur. Such a burden would deter adoption of reusable or refillable items, which would be inconsistent with a central purpose of the Act (to reduce waste and benefit the environment through the adoption of reusable and refillable items).

Subsection (a)(4)(A)(i) establishes that one compliance option is for the location where the item was obtained or delivered to be a takeback location. This is a commonsense application of the convenience requirement because returning the item would necessarily impose no more travel burden than would discarding and replacing the item.

Section (a)(4)(A)(ii) establishes that another compliance option is for there to be a takeback location within one mile of the location where the item was obtained or delivered, provided that the takeback location’s business hours encompass those of the place of acquisition or delivery. This option is also a reasonable, commonsense application of the convenience requirement because traveling only one additional mile is an insignificant burden for most consumers, and because it affords producers the flexibility necessary to avoid unreasonable burden on retailers, which may be ill-equipped to facilitate the return of the items.

#### **Subsection (a)(4)(B)**

Subsection (a)(4)(B) establishes convenience requirements for items ordered remotely and delivered directly to consumers (e.g., items purchased via the Internet). The requirements are necessary because they are a commonsense application of the convenience requirement. The reuse or refill of items cannot be said to be “convenient” if it depends on consumers overcoming greater inconvenience than they would encounter if, instead of returning the items, they discarded them and acquired new ones. When a consumer purchases items for direct delivery to a particular location, a reasonable assumption is that choosing to do so is the most convenient means for

acquiring the items. If consumers were required to travel to any other location, that additional burden would deter adoption of reusable or refillable items, which would be inconsistent with a central purpose of the Act (to reduce waste and benefit the environment through adoption of reusable and refillable items).

This subsection also addresses the scenario where an item was ordered at a physical location other than the delivery location. In that instance, a producer has more options for providing convenient infrastructure because it is reasonable to expect that returning the item via that physical location, via remote means, or a location described in subsection (a)(4)(A)(ii) is as convenient as was traveling to the location where the order was placed.

### **Subsection (a)(5)**

As set forth in detail below with respect to subsections (a)(5)(A) through (E), the purpose of this subsection is to interpret section 42041(a)(2)(C) of the PRC, which concerns the adequacy and convenience of infrastructure for items reused or refilled by consumers. This is necessary because, without a more specific description of what constitutes “adequate and convenient” infrastructure, it would be impossible for producers to understand how to comply with this requirement or for CalRecycle to uniformly enforce it. This subsection also explains that the criteria provided in subsequent provisions should not be interpreted to mean that only items returned to a store or other location can be considered reusable. This is necessary because, while none of those provisions expressly state such a requirement, they might otherwise have been interpreted to do so implicitly.

### **Subsection (a)(5)(A), (a)(5)(A)(i), (a)(5)(A)(ii), (a)(5)(A)(iii), and (a)(5)(A)(iv)**

Subsection (a)(5)(A) establishes the various locations that can serve as adequate and convenient locations for consumers to access reuse or refill infrastructure. This requirement is necessary because it is a commonsense application of the infrastructure- and convenience-related requirements of section 42041(a)(2)(C) of the PRC. Retail infrastructure cannot be characterized as “adequate and convenient” if it does not ensure that the goods to reuse or refill items are in stock, and reusing or refilling items cannot be characterized as “convenient” if doing so is significantly less convenient than discarding the items and obtaining new ones would be. Such circumstances would deter adoption of reusable or refillable items, which would be inconsistent with a central purpose of the Act (to reduce waste and benefit the environment through the adoption of reusable and refillable items).

Subsections (a)(5)(A)(i) through (iv) identify locations that necessarily provide adequate and convenient means for obtaining goods with which to reuse or refill the items. The goods must be available at one or more such locations for the item to be considered reusable or refillable. Providing each option is necessary because whether infrastructure is “adequate and convenient” for a consumer necessarily depends on the circumstances under which the consumer obtained the item to be reused or refilled.

For items obtained at a physical location, returning to that location to obtain the good

to reuse or refill an item is necessarily as convenient as discarding the item and obtaining a new one would be, and goods available at that location are necessarily as available as new items that could be obtained there instead (subsection (a)(5)(A)(i)).

Similarly, subsection (a)(5)(A)(ii) provides another option for satisfying section 42041 (af)(2)(C): a reuse or refill location within one mile of where the item original item is available, provided that the reuse or refill location's business hours encompass those of the location where the original item is available. This option is a reasonable, commonsense application of the infrastructure- and convenience-related requirements because traveling only one additional mile is an insignificant burden for most consumers, and because it enables producers not to rely on retailers that may be ill-equipped to support reuse or refill infrastructure.

Subsections (a)(5)(A)(iii) and (iv) address the reuse or refill of items that consumers do not obtain from physical locations. In such scenarios, the same website (subsection (a)(5)(A)(iii)) or another website to which consumers are directed (subsection (a)(5)(A)(iv)) may serve as the location for obtaining the goods for reusing or refilling the items. This is necessary because, for consumers who originally obtain an item via the Internet, obtaining the good to reuse or refill the item from any physical location may necessarily be insufficiently convenient. The burden of traveling to any physical location would strongly deter such consumers from reusing or refilling the item instead of discarding it and ordering a new one.

#### **Subsection (a)(5)(B)**

The purpose of this subsection is to describe one category of items that necessarily satisfy the requirements of section 42041 (af)(2)(C): food service ware items that, by their nature, are reused or refilled without any need for retail infrastructure. That is an obvious category of items that require no infrastructure for consumers to reuse or refill them because doing so is merely the act of consuming food. This subsection includes multiple examples of items that fall within this category. Expressly acknowledging this category and providing examples for clarity is necessary because it would not otherwise be clear that the infrastructure requirement could be met in the absence of infrastructure. In other words, it would not be clear that infrastructure is necessarily "adequate" when the convenient and safe reuse or refill of items requires no infrastructure to begin with.

#### **Subsection (b)**

The purpose of this subsection is to describe how the Act's enforcement-related provisions apply to items that are incorrectly claimed to be reusable or refillable. Clarification is necessary because it is not clear in statute whether the criteria set forth in section 42041 (af) of the PRC must exist throughout the state, as opposed to only parts of the state, for items to be reusable or refillable. It would be unreasonable for the sale or distribution of particular covered material anywhere in the state to constitute a violation even though particular instances of the covered material (i.e., certain individual items) satisfy the criteria within portions of the state. As established in this subsection, a more reasonable interpretation of the requirements of 42041 (af) is that violations only

occur in the geographic locations or regions where those requirements are not satisfied.

### **Subsection (c)**

The purpose of this subsection is to explain that section 18980.2.1 does not implicitly limit CalRecycle's investigative authority under section 42080(a) of the PRC. This is necessary because statute excludes items satisfying the requirements of section 42041(af) from the definition of "covered material," so that they are generally not subject to the Act, thereby creating ambiguity concerning CalRecycle's investigative authority with respect to such items. Even though reusable or refillable items are not "covered material," statute must be construed to grant CalRecycle authority to investigate whether items are reusable or refillable to begin with. Under any other interpretation, producers would be able to obliterate CalRecycle's enforcement authority merely by asserting that items satisfy the requirements of section 42041(af).

## **§ 18980.2.2. EXCLUSION OF CERTAIN TYPES OF PACKAGING**

The purpose of this section is to make specific the statutory provision excluding "packaging for the long-term protection or storage of a product" from the definition of "covered material" (section 42041(e)(2)(F) of the PRC). Section 42041(e)(2)(F) of the PRC explicitly entrusts CalRecycle with the authority to decide when this exclusion applies, without setting forth the exclusion's specific limitations. Because multiple interpretations of the statutory text are possible, and some interpretations would, in practical effect, severely undercut the Act and could not have been intended, a regulation is required to set clear, objective boundaries for when the exclusion applies.

### **Subsection (a)**

The purpose of this subsection is to establish the procedure through which CalRecycle will enforce this exclusion. CalRecycle determined that requiring CalRecycle's approval before anyone can rely on the exclusion is impracticable. Therefore, this subsection provides that a person may rely on the exclusion without notifying CalRecycle but must, upon request, be able to substantiate the claim that the relevant packaging is not covered material. This approach is consistent with CalRecycle's authority to determine when the exclusion applies and is necessary given the impracticability, both for regulated persons and CalRecycle, that requiring CalRecycle's advance approval would impose.

### **Subsection (a)(1)**

The purpose of this subsection is to establish the most basic requirement for the type of good whose packaging can qualify for the exclusion: generally, goods that are not consumed or exhausted through usage. This limitation is necessary because applying the exclusion to other goods would have an absurd result that would undermine the Act and could not have been intended. To be consistent with the overall purpose and intent of the Act, this exclusion must be understood not to create a loophole for packaging items that merely might be used for long periods. In particular, the exclusion cannot reasonably apply to goods that might remain packaged for long periods but might, nevertheless, be used up immediately after purchase. Any other interpretation would

create a loophole for packaging used for an enormous range of goods. For example, goods like water, salt, vinegar, honey, and many chemical products could be stored for well over five years without spoiling or otherwise becoming unusable. However, those goods could instead be completely exhausted through a single instance of use immediately after purchase, and the packaging would necessarily be discarded at such time. Because it is impossible to know when such usage would occur with respect to any consumable or exhaustible good, interpreting the exclusion to apply to such goods would broadly undermine the Act. That absurd result could not have been intended.

### **Subsection (a)(2)**

This subsection serves a similar, but more specific, purpose as does subsection (a)(1). This subsection sets a threshold for the use of the packaging for the relevant good, in practice: On balance, it must be more common for the packaging to be used for at least five years than be discarded before such time. This is necessary because, without considering the actual usage of the packaging, the packaging might be excluded from the requirements of the Act despite only being used for long-term storage by a small minority of consumers. Such an outcome would contravene the intent behind this exclusion and, more generally, the Act.

### **Subsection (a)(3)**

As further explained with respect to (A) and (B) below, this subsection establishes standards for when a good may be considered to have a lifespan of at least five years. This is necessary because “lifespan” is an abstract concept for which there are no inherent, universally recognized requirements.

#### **Subsection (a)(3)(A)**

The purpose of this subsection is to explain how the five-year lifespan requirement may be met. The overall test is that five years of usability must reasonably be expected under the totality of the circumstances. Because there may be innumerable ways to evaluate whether expectations are reasonable, the regulation sets forth relevant factual elements that may be relied upon. The regulation also provides that the lifespan requirement will be considered satisfied if the good is supported by a rigorous five-year warranty. These requirements are necessary to disqualify low-durability or low-quality goods from being claimed to have sufficient lifespans.

#### **Subsection (a)(3)(B)**

The purpose of this subsection is to establish a categorical requirement for goods that can be considered to have a five-year lifespan. This is necessary because mere durability is not sufficient to ensure that the effect of the lifespan requirement comports with the purpose and intent of the Act. For example, goods may comprise elements that have an effectively infinite shelf life but are permanently unpackaged through use, so that the usefulness of packaging itself ends quickly after purchase of the good. Example goods include metal clips, screws, and other hardware items. Although such goods arguably are not consumed or irreversibly used, their packaging no longer serves any purpose once all the constituent elements are first used. Because that complete usage may conclude shortly after purchase, interpreting this exclusion not to apply to such

goods is necessary for the same reasons provided above for subsection (a)(1) with respect to consumable or exhaustible goods.

### **Subsection (b)**

As further explained below, the purpose of this subsection is to interpret statutory terms and establish objective criteria for packaging components to qualify as having de minimis weight or volume, such that they may be disregarded for purposes of the Act. This is necessary because, while “de minimis” has a recognized plain meaning—it refers to things that are so trivial they may be disregarded—that plain meaning is inherently inexact and cannot be applied consistently in the context of the Act without reference to specific standards.

### **Subsection (b)(1)**

The purpose of this subsection is to define certain terms used in section 42041(s)(4)(A) of the PRC, which establishes the “de minimis” exception. Providing definitions is necessary because the terms are inherently inexact or ambiguous.

### **Subsection (b)(1)(A)**

The purpose of this subsection is to define “component.” This is necessary as a technical matter because, while “component” is already defined elsewhere in the regulations, that definition concerns elements of packaging, and section 42041(s)(4) states that elements having de minimis weight or volume are excepted from the definition of “packaging.” Therefore, this subsection clarifies that, in the context of section 42041(s)(4)(A), “component” refers to elements that would be “packaging components” but for the exception.

### **Subsection (b)(1)(B)**

The purpose of this subsection is to define “independent plastic component.” This is necessary because, while “plastic” and “component” have meanings established elsewhere under the regulations and incorporated into this subsection, nothing in statute or the regulations otherwise explains what makes a component “independent.”

### **Subsection (b)(1)(B)(i)**

The purpose of this subsection is to establish one requirement for a plastic component to be considered an “independent plastic component.” A single component is deemed “independent” if it is detachable; this interpretation is necessary because the definition of “detachable” in section 18980.1(a)(4)(C) comports with the ordinary meaning of “independent.” This subsection also explains that a group of components can meet this criterion if, when evaluated as a single component, it would be detachable. This is necessary because multiple components, taken as a whole, could be described as “independent” under that term’s ordinary meaning, but the definition of “detachable” in 18980.1(a)(4)(C) does not expressly encompass detachability of multiple components considered as a whole.

### **Subsection (b)(1)(B)(ii)**

The purpose of this subsection is to establish that sheet-like materials adhered to a

component of packaging cannot be considered “independent.” This is necessary because such materials necessarily have very small volumes and weights, and they are often compatible with recycling processes. In many instances, they may also be necessary for the use of recyclable materials to begin with. For example, coatings on recyclable cans may be necessary for the cans to be used with food, and adhesive tape may be necessary for the use of recyclable fiber-based boxes. Moreover, such materials are typically not easy to remove in their entirety but may nonetheless be considered “detachable” because they can be detached manually by consumers. Considering all such materials “independent plastic components” and thus necessarily not of de minimis weight or volume would undercut the purpose of the “de minimis” exception and contravene the ordinary understanding of what it means for material to be “independent” of other materials.

#### **Subsection (b)(2)**

The purpose of this subsection is to set forth the objective criteria, set forth in (A) through (F), for determining whether components are of de minimis weight or volume. This is necessary for the reasons already described above with respect to subsection (b).

#### **Subsection (b)(2)(A)**

The purpose of this subsection is to incorporate the statutory limitation on when components can be considered to have de minimis weight or volume: They cannot be independent plastic components, as defined in subsection (b)(1)(B). This is necessary to give full effect to statute.

#### **Subsection (b)(2)(B)**

The purpose of this subdivision is to limit the exception to components that do not have any effect on whether any covered material qualifies as recyclable under the Act. This is necessary because such an effect would be significant, and the plain meaning of de minimis encompasses only things with trivial effects that can reasonably be ignored. This subsection also explains that, to be of de minimis weight or volume, the insignificance of components must relate to their small size or weight. That qualification is necessary because very large or massive components might otherwise satisfy the criteria set forth throughout (b) despite their sheer size and weight rendering them obviously nontrivial in the context of recycling and management of solid waste.

#### **Subsection (b)(2)(C)**

The purpose of this subdivision is to limit the exception to components that do not negatively affect packaging’s recyclability or composting. This is necessary because such an effect would be significant, and the plain meaning of de minimis encompasses only things with trivial effects that can reasonably be ignored. For the reason stated with respect to (b)(2)(B), this subsection also requires that the insignificance of components must relate to their small size or weight.

#### **Subsection (b)(2)(D)**

The purpose of this subdivision is to limit the exception to components that enable the

usage of packaging that complies with the Act's requirements. This is necessary to prevent the exception from undermining the achievement of the stated goals of the Act by acting merely as a loophole for non-recyclable, non-compostable, single-use packaging. Such an effect would be a significant one and logically must preclude weight or volume from being "de minimis" because that term's plain meaning encompasses only things with trivial effects that can reasonably be ignored.

**Subsection (b)(2)(E)**

The purpose of this subdivision is to limit the exception to components whose disposal, processing, and handling do not cause health or safety risks or cause significant environmental effects. This is necessary because such effects necessarily are significant, and the plain meaning of de minimis encompasses only things with trivial effects that can reasonably be ignored.

**Subsection (b)(2)(F)**

The purpose of this subdivision is to limit the exception to components whose use in packaging is lawful. This is necessary because violations of any law would be significant effects, and the plain meaning of "de minimis" encompasses only things with trivial effects that can reasonably be ignored.

**Subsection (b)(3)**

The purpose of this section is to establish a process through which the Department will consider requests that components be deemed of de minimis weight or volume. The process is necessary because whether materials are "packaging" (and thus covered material) is a crucial fact for the administration of a producer responsibility plan and whether the goals of statute are achieved. This subsection also provides guidelines necessary to ensure that sufficient information is submitted to the Department for it to identify the components at issue and apply the criteria described above.

**Subsection (b)(4)**

The purpose of this subsection is to establish the Department's obligation to publish a list of its determinations that components are of de minimis weight or volume. This is necessary so that regulated entities understand the effective scope of the Act and their obligations under it. This subsection also limits the frequency of the Department's reevaluation of components determined to be of de minimis weight or volume to no more frequently than every five years. This is necessary to ensure packaging used in the marketplace is not subject to unpredictable, changing restrictions. Such restrictions could unreasonably cause market disruption and result in persons violating their obligations without a reasonable opportunity to cease previously compliant courses of action.

**§ 18980.2.3. EXEMPTIONS FOR SPECIFIC MATERIAL 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)(H) of the PRC tasks entities seeking the exemption with demonstrating satisfaction of certain criteria to CalRecycle. To evaluate whether particular items are exempted from the definition of “covered material,” CalRecycle will need specific information about the items and a procedure for obtaining it.

### **Subsection (a)**

The purpose of subsection (a) is to clarify several provisions of section 42041(e)(2)(H) of the PRC. These clarifications are necessary because it may otherwise not be clear how particular packaging or food service ware items would qualify for the exception laid out in statute from the definition of covered material.

### **Subsection (a)(1)**

The purpose of this subsection is to explain that, where statute refers to “the producer” in section 42041(e)(2)(H) of the PRC, that term cannot have the same meaning in this context as it does elsewhere in the Act. Here, because exempting items from the definition of “covered material” could render a person not a “producer” under the definition in section 42041(w) of the PRC, use of that term with respect to the exemption cannot be limited by that definition. Rather, for purposes of section 42041(e)(2)(H) of the PRC, that term includes persons that would be a producer in the absence of the exemption.

### **Subsection (a)(2)**

The purpose of this subsection is to establish that, regardless of whether an exemption is granted pursuant to section 42041(e)(2)(H) of the PRC, a person seeking the exemption is a “producer” for purposes of the registration requirements applicable to all producers. This is necessary because, when CalRecycle grants the exemption, the person that applied for the exemption has ongoing obligations. To enforce those ongoing obligations and perform administrative functions related to them, CalRecycle needs to maintain the contact information and other relevant details related to the exemption.

### **Subsection (a)(3)**

The purpose of these subsections is to clarify the meanings of section 42041(e)(2)(H)(i)(I) through (e)(2)(H)(i)(III) of the PRC by describing them in terms used in the regulations. Clarifications are necessary because the terms used in statute are not consistent with terms used elsewhere in statute and these regulations.

### **Subsection (a)(3)(A)**

The purpose of subsection (a)(3)(A) is to provide clarity regarding section 42041(e)(2)(H)(i)(I) of the PRC. That statutory provision refers to items “not collected through a residential recycling collection service.” However, statute does not otherwise use or define the term “residential recycling collection service,” so clarification is necessary. The regulation interprets that term as referring to alternative collection programs, which is a term defined in the regulations, as well as any programs that collect items at non-residential sites. This approach straightforwardly interprets statute while adding clarity by linking it to a term used in other regulatory sections. Because

this statutory provision uses a term other than “curbside collection,” it is appropriate to define “residential recycling collection service” to be narrower than that term, so the regulation limits it to refer only to collection that is “curbside collection” (as defined) occurring at residences. Accordingly, all collection other than “residential recycling collection service” encompasses more than alternative collection programs; it also encompasses collection by or on behalf of local jurisdictions not occurring at residences. This honors the conventional understanding of “residential recycling collection” while preserving the effect of section 42041(e)(2)(H)(i)(I), which, considering the context of the Act, reasonably must be interpreted to encompass all collection programs not operated by or on behalf of local jurisdictions.

### **Subsection (a)(3)(B)**

The purpose of subsection (a)(3)(B) is to provide clarity regarding section 42041(e)(2)(H)(i)(I) of the PRC. That provision states that exempted items must not “undergo separation from other materials at a commingled recycling processing facility.” The meaning of that phrase might not be readily apparent to those seeking the exemption because it does not use defined terms or provide additional context to aid in interpreting it. Thus, this subsection explains that exempted items must not be commingled with unsorted material from curbside programs. In effect, this means that exempted items can only be commingled with materials collected by programs that would be compatible with the exemption, not materials collected by conventional means and only sorted after collection. The interpretation gives effect to statute in a manner consistent with section 42041(e)(2)(H) of the PRC overall, which is directed at items that can be evaluated separately from other materials with respect to collection and recycling.

### **Subsection (a)(3)(C)**

The purpose of subsection (a)(3)(C) is to provide clarity regarding section 42041(e)(2)(H)(i)(III) of the PRC by establishing how the concept of responsible end markets applies in the context of the exemption. That statutory provision states that exempted items must be “recycled at a responsible end market.” Considering the criterion in section 42041(e)(2)(H)(i)(IV) of the PRC, however, that requirement may lead to confusion because, on its face, it might be read to mean that all the items must be recycled in their entirety. That is incorrect as a technical matter because, as set forth in section 42041(e)(2)(H)(i)(IV) of the PRC, the exemption does not require a 100 percent recycling rate. The only reasonable interpretation of statute, therefore, is that recycling must take place at responsible end markets for materials originating from the exempted items, not that all the items themselves must be recycled in their entirety. The regulatory text reflects that interpretation.

This subsection also provides that the responsible end market will be deemed satisfied as long as it is shown to be satisfied as of January 1, 2027, and as of every two years thereafter. This is necessary because, as a practical matter, sufficient information to evaluate end markets will not be immediately available, and statute could not have been intended to establish criteria that are impossible to meet. Establishing January 1,

2027, as the date by which end markets must qualify as responsible end markets is consistent with the statutory requirement that producers be participants in an approved PRO plan by that date (section 42051(b)(1) of the PRC).

#### **Subsection (a)(4)**

The purpose of this subsection is to explain how the recycling rate required by section 42041(e)(2)(H)(i)(IV) of the PRC will be calculated. This clarification is necessary because statute does not provide specific instructions on how the rate must be calculated and how the rates must correspond to specific years.

Therefore, this subsection explains that the “three consecutive years” referred to in statute are 2024, 2025, and 2026. That interpretation is the only reasonable one because, under any other reading, a period in the past could be used even where that period bears little relevance to current conditions and without regard to whether the items to be exempted are actually being recycled.

This subsection further interprets statute by establishing that the recycling rate for each year must be calculated with respect to January 1 of the following year. This is necessary because, as a practical matter, recycling rate is not an instantaneous measurement but rather must be evaluated over a discrete period. Requiring that period to end immediately after the year being evaluated is the only way for that entire year to be considered.

This subsection also requires that recycling rates be calculated as provided in section 18980.3.2(b), and only with respect to the items that satisfy the other requirements to be exempted. This is necessary to ensure that exempted materials are evaluated in the same manner as covered material generally and that the calculation is not skewed by including items that are ineligible for the exemption.

#### **Subsection (a)(5)**

This subsection provides that complete and up-to-date information regarding collection and recycling of the exempted items must be maintained and that the data used to calculate recycling rates must at least partially cover the year that the rate applies to. These provisions are necessary because, as a practical matter, it is impossible for complete data to be available on January 1 for use in calculating the recycling rate for the previous calendar year. Therefore, while a twelve-month period beginning before that calendar year may be used, safeguards must be put in place to ensure that the calculations are relevant and as current as possible. Because the most current information available for all previous years must be provided whenever the exemption is renewed, calculations of recycling rates for particular years will, over the long term, utilize data precisely corresponding to discrete calendar years.

#### **Subsection (b)**

The purpose of this subsection is to specify the process for granting exemptions pursuant to section 42041(e)(2)(H) of the PRC. The regulation requires an electronic application, which will be approved if it demonstrates that all statutory requirements for the exemption are satisfied. An electronic application process is necessary for

CalRecycle to efficiently receive and evaluate the application and subsequent renewal requests.

**Subsection (b)(1)**

The purpose of this subsection is to describe the information that applications must include to identify the items to be exempted. The general requirement is that the information uniquely identifies the exempted items. This is necessary so that the scope of the exemption is clearly delineated.

**Subsection (b)(2)**

The purpose of this subsection is to explain what information an exemption application must provide regarding how the material is collected, processed, and recycled. This subsection and its corresponding subsections (b)(2)(A) through (b)(2)(D) are necessary because CalRecycle must receive adequate information about collection and processing of the items to confirm whether the items qualify for the exemption.

**Subsection (b)(2)(A)**

The purpose of this subsection is to set forth the information that an exemption application must contain related to the collection of the material. The information described is necessary to enable CalRecycle to evaluate whether the requirement described in section 42041(e)(2)(H)(i)(I) of the PRC and section 18980.2.3(a)(3)(A) has been met.

**Subsection (b)(2)(B)**

The purpose of this subsection is to set forth the information that an exemption application must contain related to the processing of the material. The information described is necessary to enable CalRecycle to evaluate whether the requirement described in section 42041(e)(2)(H)(i)(II) of the PRC and section 18980.2.3(a)(3)(B) has been met.

**Subsections (b)(2)(C) and (b)(2)(D)**

The purpose of this subsection is to set forth the information that an exemption application must contain regarding responsible end markets. The information described is necessary to enable CalRecycle to evaluate whether the requirement described in section 42041(e)(2)(H)(i)(III) of the PRC and section 18980.2.3(a)(3)(C) of these regulations has been met. Subsection (b)(2)(C) only requires a listing of responsible end markets, and subsection (b)(2)(D) requires specific information showing that listed end markets not already identified in an approved PRO or Independent Producer annual report are responsible end markets. The latter information is necessary because, unless a PRO or Independent Producer has shown an end market to be a responsible end market, CalRecycle will have no basis to deem the responsible end market requirement to be met.

**Subsection (b)(3)**

The purpose of this subsection is to explain that the exemption application must provide the data and calculations underlying the assertion that the exempted items have

achieved the recycling rates required under section 42041(e)(2)(H)(i)(IV) of the PRC, as further described in section 18980.3.2(b) of these regulations. This is necessary so that CalRecycle can confirm or reject that assertion.

**Subsection (c)**

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 for material exemption, 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 (d)**

The purpose of this subsection is to establish that a PRO can submit an application on behalf of a participant producer if the producer is a participant of the PRO with respect to the covered material to be exempted. 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 covered material that might otherwise be covered because the PRO will be more 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, then plan participants may 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.

This subsection also stipulates that a PRO may apply on behalf of a producer only when the producer is a member of the PRO with respect to the specific material to be exempted. This added clarity is necessary to avoid implying that a PRO can generally act on behalf of the producer without regard to the producer's actual participation in the PRO.

**Subsection (e)**

This subsection specifies that CalRecycle, when approving the exemption, may supplement or modify the application's description of the material to be exempted. This is necessary because, unless the subject of an exemption is clearly identified and distinguishable from other packaging or food service ware, the exact scope of the exemption would be unknown. By providing that CalRecycle can, as appropriate, supplement or modify the description provided in the application, this subsection allows CalRecycle to process otherwise satisfactory applications rather than having to reject them and require the applicant to modify and resubmit them.

**Subsection (f)**

This subsection establishes the effective dates and duration of exemptions. Exemptions

will be effective retroactively as of the date they were submitted. This is also necessary because the exemption, if granted, means that certain packaging or food service ware items are not covered material to begin with, so it would be illogical to consider the exemption not to apply while the application is pending.

An effective period of one year before 2027 and two years after 2027 is necessary because section 42041(e)(2)(H)(IV) of the PRC expressly requires recycling rates to be shown annually before 2027 and every other year after 2027.

### **Subsection (g)**

The purpose of this subsection is to establish the information that must be provided to renew an exemption. The information required depends on the relevant timeframe and whether previously submitted information remains accurate.

For exemptions that expire during 2028, this subsection provides that renewal may be based on pre-2027 recycling rates. This is necessary because, as explained with respect to subsection (a)(4), the recycling rate for 2027 is not established until January 1, 2028. For such a renewal, however, this subsection provides that another renewal request must be submitted by January 1, 2029, establishing the recycling rate for 2027. This is necessary because, otherwise, the one-year effective period of the renewal could end as late as December 31, 2029, nearly two years after the date used for calculating the recycling rate for 2028. Such a time discrepancy would unnecessarily result in exemptions being effective based on data likely not to be the most current data available.

This subsection also provides that the duration of renewed exemptions is subject to the same rules as apply to the initial term of the exemption. This is required for consistency with statute.

### **Subsection (g)(1)**

The purpose of this subsection is to establish that, if information provided pursuant to sections 18980.2.3(b)(1) and (2) remains valid, that information can be reestablished for purposes of renewal through a certification. In such cases, it would be unnecessary to require resubmission in the form required for initial applications.

### **Subsection (g)(2)**

The purpose of this subsection is to establish that a new application must be submitted if the information previously provided pursuant to sections 18980.2.3(b)(1) and (2) is no longer accurate and valid. This subsection is necessary because when circumstances have changed, a new application will be the most efficient way to ensure that CalRecycle has the most updated information, which CalRecycle will need to appropriately determine whether exemptions should be granted.

### **Subsection (g)(3)**

The purpose of this subsection is to require that all renewal requests provide the most up-to-date available data demonstrating the recycling rates (those for 2024 through the most recently completed calendar year) used to establish eligibility for the exemption.

Requiring updated data with each renewal is necessary because, as explained with respect to subsections (a)(3) and (a)(4), a recycling rate can only be calculated after the relevant calendar year, and calculations for previous years may have been based on data that only partially encompassed those years. Over time, this process will ensure that ongoing exemptions are based on the most accurate, relevant data possible.

#### **Subsection (g)(4)**

The purpose of this subsection is to require renewal requests to demonstrate that end markets are responsible, if such end markets are not already identified in an approved PRO or Independent Producer plan. This subsection is necessary because section 42041(aa)(3) of the PRC requires material to be recycled at responsible end markets. Thus, the renewal request must show that the end markets satisfy the criteria provided in regulatory section 18980.4(a). This subsection further specifies that the verification of responsible end markets not already identified in an approved annual report must include, at minimum, the points in subsections 18980.2.3(g)(4)(A) through (E). This is necessary for CalRecycle to have sufficient information to evaluate the appropriateness of ongoing exemptions.

#### **Subsections (g)(4)(A) through (g)(4)(E)**

The purpose of these subsections is to provide the minimum information that a renewal request must contain concerning end markets that are not already identified as responsible in an approved PRO or Independent Producer plan. Consistent with the requirements provided in section 18980.4(a) for responsible end markets, these subsections set forth the minimum information necessary for renewal requests to show that end markets are responsible.

### **§ 18980.2.4. EXEMPTIONS 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 that a PRO or producers can use to request specific exemptions, with such application required to present information relevant to whether an exemption is appropriate.

#### **Subsection (a)**

This subsection has several purposes. First, subsection 18980.2.4(a) specifies that only a PRO and Independent Producers may submit applications as part of the process established pursuant to section 42060(a)(3) or section 42060(a)(4) of the PRC. This limitation is necessary because there are likely to be large numbers of producers

eligible for the same or similar exemptions, so the number of exemption requests would likely overwhelm CalRecycle without the PRO identifying exemptions to which its members are entitled and consolidating requests for the exemptions as much as possible. 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 the Act, and promotes the efficient implementation of its plan and the Act because a particular exemption may directly affect many producers.

Second, this subsection stipulates that the effect of an exemption is that the exempted covered material need not comply with section 42050 of the PRC. It further provides that the exemption does not affect whether packaging or food service ware is covered material, nor does it exempt producers from their obligations under the Act. These clarifications are necessary to resolve the ambiguity of section 42060(a)(3) of the PRC, which does not specifically address what it means for covered material to be exempt. CalRecycle's interpretation is appropriate because these statutory provisions only discuss exempting "covered material," not producers. Moreover, exempting producers from their obligations, such as registering and reporting data concerning covered material, would render determinations of recycling rates, source reduction, and the appropriateness of the exemptions themselves inherently unreliable.

#### **Subsection (b)**

The purpose of this subsection is to establish that applications must be submitted electronically and will only be considered if they contain the elements set forth in this section. These requirements ensure that CalRecycle can efficiently evaluate applications, including by foregoing substantive review of applications that CalRecycle can readily determine do not include certain elements.

#### **Subsection (b)(1)**

The purpose of this subsection is to allow a PRO to establish any procedure it determines appropriate for receiving exemption applications prepared by producers. This language is necessary to avoid these regulations from being interpreted to forbid producers from preparing applications on their own initiative for the PRO to evaluate and submit, if the PRO deems it appropriate to do so. A process under which the PRO, rather than the producers, submits such applications is appropriate for the reasons stated with respect to subsection (a).

#### **Subsection (b)(2)**

The purpose of this subsection is to require a PRO to evaluate applications submitted to it by its participating producers before submitting the applications to CalRecycle. This is necessary because, without such a restriction, the PRO could merely pass along applications to CalRecycle even if they clearly do not satisfy the requirements of this section. Such a process would entirely defeat the purpose of subsection (a).

#### **Subsection (c)**

The purpose of this subsection is to specify the elements that exemption applications

must contain. The information that CalRecycle will require in the application is specified in subsections (c)(1) through (c)(4). 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 exemptions are appropriate.

### **Subsections (c)(1) and (c)(2)**

The purpose of this subsection is to set forth the most basic information that an application must contain: the subject packaging or food service ware and the statutory basis asserted for the exemption. This information is necessary because it defines the scope and practical effect of the exemption sought. This subsection also explains that an application can assert both subsections (a)(3)(A) and (a)(3)(B) of section 42060 of the PRC as bases for the exemption. This is necessary because it enhances the efficiency of CalRecycle's review of exemption requests.

### **Subsection (c)(2)**

The purpose of this subsection is to clarify the exemption process. Specifically, the exemption application must identify the specific exemption type sought, and the application may be submitted for both exemption types. This is necessary because the exemption process covered by section 18980.2.4 applies to two separate exemptions, those allowed pursuant to section 42060(a)(3) versus (a)(4) of the PRC. Because these two exemptions have a different basis, requiring different information for evaluation, the application must identify the specific exemption being sought so that CalRecycle can collect the appropriate information.

### **Subsection (c)(3)**

The purpose of this subsection is to require that the application clearly describe the current and potential products that use, or will use, the covered material for which the exemption is sought. It also provides examples of the type of information that may be used in such a description.

This subsection is necessary so that the PRO or Independent Producer submitting the application understands the elements that the application must include.

This subsection is also necessary as a practical matter because CalRecycle cannot implement and enforce the Act in a predictable, efficient manner unless there is an express, unchanging boundary between products in the marketplace that are exempt and those that are not exempt.

### **Subsection (c)(4)**

The purpose of this subsection is to specify the information that applications must include, with separate subsections (c)(4)(A) through (c)(4)(E) addressing various scenarios. This is necessary because section 18980.2.4 covers two separate exemptions (one pursuant to section 42060(a)(3) and another pursuant to section 42060(a)(4) of the PRC), and the information necessary to evaluate the appropriateness of the exemption sought may vary based on the legal basis and related circumstances.

**Subsection (c)(4)(A)**

The purpose of this subsection is to address application requirements specific to exemptions based on section 42060(a)(3) of the PRC. Subsections (c)(4)(A)(i) through (c)(4)(A)(viii) describe each requirement. The requirements are necessary for CalRecycle to determine whether the exemption is justified and to fulfill its statutory mandate to establish a process for doing so.

**Subsection (c)(4)(A)(i)**

The purpose of this subsection is to require the application to identify the requirements of the Act that present unique challenges for compliance with respect to the covered material. This subsection is necessary because section 42060(a)(3) of the PRC allows an exemption only where there are unique challenges in complying with the Act. Such challenges must relate to specific obligations, which the application must identify so that CalRecycle can evaluate whether the exemption is appropriate.

**Subsection (c)(4)(A)(ii)**

The purpose of this subsection is to require the application to describe the unique compliance challenges on which the exemption request is based. The nature of the unique challenges is foundational to the appropriateness of the exemption and therefore must be described so that CalRecycle can determine whether to grant it. The description must include, at a minimum, the specific types of information listed. Those types of information are required to ensure that the description includes the minimum information that CalRecycle will need to assess the application as set forth in this section.

**Subsection (c)(4)(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 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 enhancing the efficiency of the process overall.

**Subsection (c)(4)(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)(4)(A)(v)**

The purpose of this subsection is to require applications to address the effects on disadvantaged communities, low-income communities, and rural areas. 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., section 42060(d) of the PRC).

**Subsection (c)(4)(A)(vi)**

The purpose of this subsection is to require applications to address the effects of the covered material on existing collection, 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 infrastructure, exempting it from the Act might directly subvert the Act by undercutting its accomplishments and hindering the compliance efforts of the PRO and Independent Producers. On the other hand, if such effects are minimal, granting an exception might serve the purposes of the Act under certain circumstances, such as where processing and recycling infrastructure are likely to evolve such that the material eventually will comply with the Act.

**Subsection (c)(4)(A)(vii)**

The purpose of this subsection is to require applications to describe why the covered material cannot be recycled, composted, 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)(4)(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.

This subsection requires that any explanation of why a phase-in plan is unfeasible or unnecessary must be with respect to the intent of the Act. This explanation is necessary because if an exemption would interfere with that intent, it necessarily would be inappropriate, and the purpose of a phase-in plan would be to prevent such interference.

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, annual goals for progress in achieving compliance, and periodic reports on progress) 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)(4)(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)(4)(B)(i) through (c)(4)(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)(4)(A)(viii). Even if unstated here, the requirement of subsection (c)(4)(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)(4)(B)(i)**

The purpose of this subsection is to require that an application be 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)(4)(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) will be overcome, such efforts to date, and the success of those efforts. 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)(4)(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)(4)(B)(ii) but identifies issues, including with respect to the specific factors listed in subsections (c)(4)(B)(iii)(I) through (c)(4)(B)(iii)(VIII), 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 them 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)(4)(B)(iii)(I)**

The purpose of this subsection is to require that an application specifically address the success of the program with respect to the amount and the percentage of the distributed covered material that the program collects. Requiring this information is necessary for CalRecycle 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)(4)(B)(iii)(II)**

The purpose of this subsection is to require that an application specifically address 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)(4)(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 also indicates 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)(4)(B)(iii)(IV)**

The purpose of this subsection is to require that an application specifically address the efforts undertaken in connection with a program with respect to consumer convenience, increasing participation in the program, and understanding how consumer behavior, rather than shortcomings of the collection program itself, is a barrier to recovery of the covered material. Consumer convenience and behavior are key factors in the efficacy and ultimate success of an alternative collection program. The required information about convenience and consumer behavior will enable CalRecycle to assess the applicant's understanding of the challenges it faces and how it plans to address them, the applicant's competence in operating the program, and the applicant's good faith effort to comply with the Act, all of which relate to whether 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)(4)(B)(iii)(V)**

The purpose of this subsection is to require that an application specifically address 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)(4)(B)(iii)(VI)**

The purpose of this subsection is to require that an application identify other entities currently or potentially involved with the program as partners or operators. 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)(4)(B)(iii)(VII)**

The purpose of this subsection is to require that an application specifically address 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 the alternative collection program's 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)(4)(B)(iii)(VIII)**

The purpose of this subsection is to require that an application specifically address the financial investment in the 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)(4)(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)(4)(B)(iii)(I) through (c)(4)(B)(iii)(VIII). 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)(4)(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 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)(4)(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 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)(4)(C)**

The purpose of this subsection is to address application requirements specific to exemptions based on “health and safety reasons” under section 42060(a)(4) of the PRC. Subsections (c)(4)(C)(i) through (c)(4)(C)(iii) describe each requirement. The requirements are necessary for CalRecycle to determine whether the exemption is justified and to fulfill its statutory mandate to establish a process for doing so.

**Subsection (c)(4)(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)(4)(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 the requested exemption.

**Subsection (c)(4)(C)(iii)**

The purpose of this subsection is to require applications to provide the information described in subsection (c)(4)(A)(iii) through (c)(4)(A)(vii), 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 subsections (c)(4)(A)(iii) through (c)(4)(A)(viii).

**Subsection (c)(4)(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. Subsections (c)(4)(D)(i) through (c)(4)(D)(v) detail the required information, which 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)(4)(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)(4)(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 the requested exemption.

**Subsection (c)(4)(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 the mitigation or avoidance of the risks. To assist applicants in understanding the relevant risks, this subsection identifies examples of relevant risks that the applicant must, at a minimum, address. Applicants are also required 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 cannot be

safely recycled, as statute expressly requires, 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)(4)(D)(iv)**

The purpose of this subsection is to require applications to provide the information described in subsections (c)(4)(A)(iii) through (c)(4)(A)(vii), 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 subsections (c)(4)(A)(iii) through (c)(4)(A)(viii).

**Subsection (c)(4)(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 (c)(4)(E)**

The purpose of this subsection is to require additional analyses for exemptions requested pursuant to section 42060(a)(3) or (a)(4) of the PRC. These analyses are necessary for the reasons described below for subsections (c)(4)(E)(i) through (iii).

**Subsection (c)(4)(E)(i)**

The purpose of this subsection is to require the applicant to explain whether the justifications for the exemption would apply to any other products or covered material. This requirement is necessary for CalRecycle to fully assess the likely effects of the exemption and determine whether the exemption is appropriate. Moreover, the extent to which other products or covered materials face similar challenges is relevant to whether those challenges are “unique,” as required for an exemption pursuant to section 42060(a)(3) of the PRC.

**Subsection (c)(4)(E)(ii)**

The purpose of this subsection is to require the applicant to explain the likely

consequences if CalRecycle were to grant an exemption for all products or covered materials identified in subsection (c)(4)(E)(i). This explanation is necessary because, while the explanation required by subsection (c)(3)(E)(i) may enable CalRecycle to identify some such consequences, the applicant will have unique knowledge relevant to those consequences. Therefore, this information is necessary for CalRecycle to fully assess the likely effects of the exemption and determine whether the exemption is appropriate.

**Subsection (c)(4)(E)(iii)**

The purpose of this subsection is to require the applicant to explain any circumstances that justify an exemption period longer than two years. This subsection is necessary because statute does not establish the duration of exemptions granted pursuant to section 42060(a)(3) or (a)(4) of the PRC. Thus, section 18980.2.4(g) provides that an exemption's duration can be greater than two years if a longer period is justified. Requiring the applicant to disclose the circumstances that justify any request for a longer period is necessary because the applicant is likely to have unique information about those circumstances.

**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 application materials and to direct parties to section 18980.14, 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 describe the scope of granted exemptions. Limiting exemptions to the products and covered material identified in the application is necessary so that the applicant, CalRecycle, and the public have a clear, objective way to identify products and materials that are exempt. Allowing CalRecycle to exercise discretion to supplement or modify how the application identifies the products and covered material is necessary for the same reason.

**Subsection (f)**

The purpose of this subsection is to explain how CalRecycle will evaluate applications, with specifics of the process set forth in subsections (f)(1) through (f)(3). This subsection is necessary to ensure that CalRecycle will evaluate applications using consistent standards and procedures. Such a rule must be set forth in regulations and enables applicants to evaluate whether an exemption is appropriate for their covered material and how to establish that appropriateness in an application.

**Subsection (f)(1)**

The purpose of this subsection is to explain that CalRecycle will reject any application that does not contain the required elements of section 18980.2.4. In other words,

CalRecycle will first evaluate whether an application is complete and reject it if it is incomplete, without evaluating the merits of the application. If any components are missing, this is necessary because such an application could not possibly satisfy the requirements of this section. Conducting any further review of the application would require inefficient allocation of CalRecycle resources.

**Subsection (f)(2)**

The purpose of this subsection is to establish the specific analysis that CalRecycle will undertake for exemption requests based on unique challenges (section 40260(a)(3) of the PRC). This is necessary because CalRecycle will be applying consistent, objective standards. Adopting such standards enables applicants to evaluate whether an exemption is appropriate for their covered material and how to establish that appropriateness in an application. The standards establish a rule that CalRecycle will apply to all applications, and such a rule must be established in a formal regulation.

**Subsection (f)(2)(A)**

The purpose of this subsection is to explain the overall requirement for establishing the appropriateness of an exemption and the standard that CalRecycle will apply when evaluating whether an application demonstrates that an exemption satisfies that requirement.

The overall requirement, set forth in subsection (f)(2)(A), is that the threshold requirement of section 42060(a)(3)(A) of the PRC is met: compliance must be impractical because of unique challenges related to the covered material to be exempted. This express requirement is mandated by statute.

The effect of applying a “clearly and convincingly” standard is that an application cannot merely establish that it is more likely than not that the overall requirement has been met. Rather, while an application’s factual assertions and related justifications need not be proven beyond a reasonable doubt, the application must establish its factual elements and justifications to a reasonably high degree of certainty. This standard ensures that exemptions do not serve as mere loopholes or render the Act itself ineffective. The Legislature could not have intended for exemptions to have such effects.

Moreover, requiring such a high standard is necessary because of the severe consequences that could flow from exempting covered material. By exempting covered material from the requirement that it be recyclable or compostable, an exemption creates the risk of undercutting the intent of the Act and preventing the state from achieving the policy goal stated in section 41780.01 of the PRC (namely, that solid waste in the state be reduced by seventy-five percent). More specifically, it could prevent certain plastic covered material from meeting the recycling rate requirements of section 42050(c) of the PRC, discourage source reduction, and remove incentives to switch to reusable or refillable packaging and food service ware. In light of the intent and goals of statute, it would be unreasonable to conclude that the Legislature intended CalRecycle to accept the risk of those serious consequences based on a determination

that the exemption is merely more likely than not to avoid them.

### **Subsection (f)(2)(B)**

The purpose of this subsection is to establish that CalRecycle will not approve an application unless the phase-in plan, if required, will facilitate satisfaction of the requirements of section 42050 of the PRC and do so without undercutting the intent of the Act and the policy goal of section 41780.01 of the PRC. This requirement is necessary to ensure that a phase-in plan serves the function expressly set forth in statute: that the phase-in plan results in compliance with the Act. Moreover, this requirement is necessary in consideration of the CalRecycle's express statutory mandate in adopting these regulations pursuant to section 42060(a) of the PRC: "to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met." Granting any exemption without also considering how the exemption and its accompanying phase-in plan would contribute to compliance with section 42050 of the PRC would run counter to that express purpose.

This subsection also establishes that the phase-in requirement must be satisfied "clearly and convincingly." Requiring such a high standard is necessary for the same reasons stated with respect to the same requirement under subsection (f)(2)(A).

### **Subsection (f)(2)(C)**

The purpose of this subsection is to establish that, where an application asserts that a phase-in plan is unnecessary, the application will be denied unless it demonstrates that a phase-in is either unfeasible or unnecessary, considering the purpose that the phase-in plan would fulfill. This is necessary because it avoids imposing a requirement on applicants that would be impossible to satisfy or would not serve the express purpose of these regulations, as provided in section 42060(a) of the PRC.

In contrast to subsections (f)(2)(A) and (f)(2)(B), this subsection does not impose a clear and convincing standard. This is appropriate because, as explained in section 18980.2.4(c)(4)(viii), the assertion that a phase-in plan is unfeasible or unnecessary must be based on the nature of the unique challenges, the effect of which must, in any event, be established according to the high standard explained with respect to subsection (f)(2)(A).

### **Subsection (f)(2)(D)**

The purpose of this subsection is to clarify that CalRecycle can develop its own phase-in plan and condition approval of an exemption request on the applicant accepting CalRecycle's phase-in plan. This subsection is necessary because CalRecycle may determine that an exemption is justified but find the proposed phase-in plan inadequate under subsection (f)(2)(B). CalRecycle may also identify modifications to the proposed phase-in plan or a replacement phase-in plan that would satisfy the requirement of subsection (f)(2)(B). In such circumstances, it would be inefficient for CalRecycle to reject the application in its entirety. Exercising discretion to do so is

squarely within CalRecycle's authority under section 42060(a)(3)(B) of the PRC, which provides that responsibility for developing phase-in plans ultimately lies with CalRecycle.

### **Subsection (f)(2)(E)**

The purpose of this subsection is to establish the consequences of the applicant failing to implement and comply with its phase-in plan. Because the express purpose of the phase-in plan is to enable covered material to comply with the Act, and considering the requirements under subsections (f)(2)(A) through (f)(2)(D), the failure of a phase-in plan logically must result in termination of the exemption.

To ensure that CalRecycle is aware of the potential failure of a phase-in plan, this subsection also requires that reports required under the phase-in plan include updates on implementation and progress towards the plan's requirements. This is necessary so that an exemption does not remain in effect after the basis on which CalRecycle granted it is no longer valid.

This subsection also provides that CalRecycle will not terminate the exemption based on unsuccessful implementation of the phase-in plan or noncompliance with its requirements under certain circumstances. This is necessary to avoid outcomes that are unfair and unnecessary. Specifically, circumstances not within the applicant's control might have caused implementation barriers or noncompliance, and, if the phase-in plan still satisfies the standards set under subsections (f)(2)(A) and (f)(2)(B), termination of the exemption would be unfair and unnecessary.

### **Subsection (f)(3)**

The purpose of this subsection is to establish the specific analysis that CalRecycle will undertake for exemption requests based on health and safety reasons (section 40260(a)(3) of the PRC). This is necessary because CalRecycle will be applying consistent, objective standards. Adopting such standards enables applicants to evaluate whether an exemption is appropriate for their covered material and how to establish that appropriateness in an application. The standards establish a rule that CalRecycle will apply to all applications, and such a rule must be established in a formal regulation.

This subsection explains that the application must "clearly and convincingly" meet the requirements of subsections (f)(3)(A) and (f)(3)(B). Requiring this high standard is necessary for the same reasons stated with respect to the same requirement under subsection (f)(2)(A).

### **Subsection (f)(3)(A)**

The purpose of this subsection is to explain that an exemption application must demonstrate that complying with the Act will increase risks to health, safety, or the environment more than granting an exemption. This requirement is mandated by section 42060(4) of the PRC, which expressly provides that the exemption be based on health and safety reasons or justified because recycling the covered material is not safe. Logically, such a basis can only exist when compliance with the requirements of the Act would exacerbate those risks relative to noncompliance.

This subsection also interprets the statutory phrase “health and safety reasons, or because it is unsafe to recycle” as encompassing significant effects on the environment. This is necessary because such effects inherently implicate health and safety concerns, and section 42041(ad) of the PRC expressly states that these regulations address environmental and environmental justice impacts.

### **Subsection (f)(3)(B)**

The purpose of this subsection is to explain that an exemption application must demonstrate that granting the exemption will not inhibit other producers’ ability to comply with section 42050 of the PRC. This requirement is necessary in consideration of CalRecycle’s statutory mandate in adopting regulations pursuant to section 42060(a): “to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met.” Granting an exemption that would cause noncompliance with section 42050 of the PRC would run counter to that express purpose.

### **Subsection (g)**

The purpose of this subsection is to specify the duration of exemptions granted pursuant to sections 42060(a)(3) or (a)(4) of the PRC. Limiting the exemption to two years is necessary because it reasonably prevents an exemption from persisting despite the underlying circumstances supporting CalRecycle’s granting of it no longer existing.

### **Subsection (g)(1)**

The purpose of this subsection is to establish an exemption from the two-year limit on exemptions. The possibility of a duration of up to five years is necessary because, under certain circumstances, there may be no reasonable likelihood that the justification for the exemption would become inadequate within that period. This exception avoids imposing an unnecessary limitation and avoids the inefficient allocation of CalRecycle resources that would result if a renewal request were required well before an exemption might become no longer justifiable.

### **Subsection (g)(2)**

The purpose of this subsection is to explain that a phase-in plan may establish that the exemption be granted for a period longer than two years. This is necessary to avoid this section from being internally inconsistent. In particular, it might not be possible for a phase-in plan limited to two years to meet the requirements set forth in subsection (f)(2)(B). Moreover, restricting phase-in plans to be no longer than two years would undercut the purpose and necessity of the provisions of these regulations concerning phase-in plans.

This subsection also provides that the termination provisions of section 18980.2.4(f)(2)(E) apply regardless of the duration of a phase-in plan. This is necessary to avoid an interpretation of this subsection as taking precedence over those provisions. Such a reading would be unreasonable because it would effectively nullify section

18980.2.4(f)(2)(E).

**Subsection (g)(3)**

The purpose of this subsection is to explain that subsections (g)(1) and (g)(2) should not be interpreted as taking precedence over the termination provisions in section 18980.2.4(i). This is necessary to avoid unreasonably interpreting subsections (g)(1) and (g)(2) as effectively nullifying those termination provisions.

**Subsection (h)**

The purpose of this subsection is to establish timelines related to exemption renewals. Requiring requests to be submitted between 120 and 90 days before expiration is necessary to ensure that requests are not submitted unreasonably early while ensuring that CalRecycle has sufficient time to evaluate the request before the exemption expires. Clarifying that renewal extends the exemption for the two-year period beginning on the date the exemption otherwise would have expired is necessary to avoid ambiguity. Without such clarification, it would not be clear that renewal does not begin a two-year period as of the date renewal is approved.

**Subsection (h)(1)**

The purpose of this subsection is to establish requirements for renewal requests where the original justification for the exemption remains valid. CalRecycle will grant the renewal request based on a certification to that effect unless CalRecycle determines that circumstances render the basis for the exemption invalid or insufficient. This subsection is necessary to provide an efficient mechanism for CalRecycle to consider and approve or reject renewal requests.

**Subsection (h)(2)**

The purpose of this subsection is to explain that a new application must be submitted to renew an exemption if the continuing justification for the exemption depends on new information, evidence, or circumstances. This subsection is necessary in order to clarify the exemption application process. This requirement is necessary to ensure that CalRecycle only approves exemption renewals where the exemption continues to satisfy the requirements of statute and this section.

**Subsection (i)**

The purpose of this subsection is to specify the conditions under which CalRecycle will terminate an approved exemption. The conditions are listed in subsections (1) through (3). This subsection is necessary because, regardless of when an exemption would expire according to this section, circumstances might negate the justification for CalRecycle's approval of the exemption. In such circumstances, immediate termination of the exemption is justified and necessary in consideration of the express mandate for these regulations under section 42060(a) of the PRC: "to implement and enforce this chapter and to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in Section 41780.01 as it relates to covered material are met."

**Subsection (i)(1)**

The purpose of this subsection is to establish faulty information as one of the grounds CalRecycle might assert for terminating an exemption. For the regulations to accomplish their purpose of implementing the Act and providing for its enforcement, terminating an exemption is necessary whenever continuation of the exemption would be based on information known to be incomplete, false, or out-of-date.

**Subsection (i)(2)**

The purpose of this subsection is to establish that CalRecycle will terminate an exemption if the original basis for granting the exemption is no longer valid for any reason, such as because the exemption harms implementation or enforcement of the Act. This general provision is necessary in consideration of CalRecycle's statutory duty under section 42060(a) of the PRC to adopt regulations necessary to implement and enforce the Act. Allowing an exemption to continue despite it not being justified according to the requirements of this section would directly contradict that statutory mandate.

**Subsection (i)(3)**

The purpose of this subsection is to establish that CalRecycle will end an exemption if the conditions or requirements of a phase-in plan have not been satisfied. This provision is necessary because, as set forth in section 18980.2.4(f)(2)(B), approval of the exemption was necessarily based on the success of a phase-in plan included in an application. Moreover, a phase-in can only ensure that exemptions do not merely undermine the Act if it is complied with and will ultimately lead to compliance with the Act. If a phase-in plan no longer serves that purpose, providing for termination of the exemption is necessary for CalRecycle to satisfy its mandate under section 42060(a) of the PRC to adopt regulations necessary to implement and enforce the Act.

**Subsection (j)**

The purpose of this subsection is to establish procedural aspects of termination. Written notice is necessary so that the PRO or Independent Producer is informed of termination and can take action as necessary to comply with the Act.

This subsection provides that termination takes effect immediately when the exemption was based on faulty information negligently or intentionally submitted in the application. This is necessary to prevent abuse of the exemption provisions of this section.

Where the reason for termination is not that CalRecycle granted it based on faulty information, this subsection provides that the termination does not take effect until 120 days after receipt of the notice. This is necessary to avoid unfairness because the PRO or Independent Producer may have had no ability to avoid termination, and addressing compliance challenges after termination is likely to require significant time and effort.

This subsection also provides that termination will be delayed if the PRO or Independent Producer submits a new application at least 90 days before the effective date of the termination. This is necessary because, if the PRO or Independent Producer could submit an application demonstrating that the exemption is justified with sufficient

time for CalRecycle to grant or deny the application, deeming the PRO or Independent Producer to be violating the Act would be unwarranted and inconsistent with the purpose of these regulations. Considering submission of the application at least 90 days before the termination would take effect to be sufficiently early for CalRecycle to evaluate the application is appropriate because it is consistent with the timeline requirement in subsection (h) for renewal requests.

## **§ 18980.2.5. 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. The subsection clarifies that the period during which the list must be reviewed and updated pursuant to section 42061(e) or (f) of the PRC shall be based on calendar years, not the date of the most recent review or update.

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). In some instances, section 42061 of the PRC refers to “lists,” but in others 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 timeframe 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 CalRecycle will release information 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 establish the standard for making an update to the list. If CalRecycle did not provide a standard, submitters of information would be unclear as to how CalRecycle made its determination to update or not to update the list. An update is necessary when there is a problem of accuracy that relates to waste generation and the handling and end-of-life management of covered material. If the information CalRecycle has is accurate (here, complete, up-to-date, and accurate in all other senses), there is no need to update the list; if the new information or changed circumstances do not relate to waste generation or the handling and end-of-life management of covered material, it would similarly be inappropriate to update the list.

This standard helps to ensure that the list accurately accounts for all covered material types and forms and how distinct material types and forms are collected or processed separately.

### **Subsection (c)**

The purpose of this subsection is to identify the sources of information that CalRecycle will utilize to update covered material category recycling rates. Sources are identified in section 42061(b)(2) of the PRC and will be utilized alongside additional information submitted pursuant to section 42061(f)(3) of the PRC. This is necessary to provide clarity on specific sources that CalRecycle will utilize to update covered material category recycling rates. Another purpose of this subsection is to clarify that information obtained by CalRecycle through characterization studies, needs assessments, or other studies is considered “any other relevant data and information received by the department” and is thus considered data and information received by CalRecycle for purposes of subparagraph (l) of paragraph (2) of subdivision (b) of section 42061 of the PRC. Statute authorizes and requires the development of these data but does not clearly explain how this information should be considered in list updates; thus, this provision is necessary to make the linkage explicit.

### **Subsection (d)**

The purpose of this subsection is to identify the criteria that CalRecycle will utilize to update covered material category compostability determinations pursuant to section 42061(e) of the PRC: CalRecycle will use the criteria outlined in section 18980.3.3(b) of these regulations. This provision is necessary to form a bridge between the listing update process and the section that deals most directly with the substantive issues that inform the updating process with regard to eligibility to be labeled “compostable.” Section 18980.3.3 is the main section of these regulations that addresses eligibility to be labeled “compostable.” In order to ensure the reader could easily find regulatory requirements pertaining to such labeling, CalRecycle concentrated its discussion of the matter in that section and directs the reader to those criteria by means of this subsection.

### **Subsection (e)**

The purpose of this subsection is to identify the process that CalRecycle will utilize to update the covered material category recyclability determinations pursuant to section 42061(e) of the PRC. CalRecycle will follow the criteria outlined in section 18980.3 of these regulations. This provision is necessary to form a bridge between the listing update process and the section that deals most directly with the substantive issues that inform the updating process with regard to recyclability. Section 18980.3 is the main section of these regulations that addresses whether a covered material is or is not considered recyclable. In order to ensure the reader could easily find regulatory requirements pertaining to such a determination, CalRecycle concentrated its discussion of the matter in that section and directs the reader to those criteria by means of this subsection.

### **Subsections (f), (f)(1), and (f)(2)**

The purpose of this subsection is to explain when and how persons can submit information to CalRecycle for consideration in updating the CMC list. Statute envisions that the list will be updated based on information provided to CalRecycle, but does not explain specifically when and how that information must be provided; this provision offers that necessary detail. Information must be submitted by April 1 to be considered for purposes of updates made to the CMC list that year. Information submitted after April 1 in a given year will be considered for purposes of updating the CMC list only if CalRecycle determines that the information can be evaluated before January 1 of the next calendar year. The rationale for this provision is that CalRecycle would be unable to process requests requiring the examination of voluminous information submitted after April 1 in a given year if it is going to successfully publish its updates in a timely fashion. Nevertheless, there may be instances in which CalRecycle might be able to process a sufficiently limited request if submitted after April 1.

Information intended to inform CalRecycle in reviewing or updating the CMC list must be submitted electronically in a form and manner outlined 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. Providing the information in electronic format ensures that the information can be shared easily between the CalRecycle staff members assessing the update.

#### **Subsection (g)**

The purpose of this subsection is to clarify that, notwithstanding any other provisions, updates to the CMC list that impose additional obligations on local jurisdictions or recycling service providers under section 42060.5(a) of the PRC will not go into effect for those entities under that section until one year after the CMC list effectively incorporates the change. This provision is responsive to public comment. Local jurisdictions and recycling service providers cannot instantaneously modify their programs and instead need a certain amount of time to adjust. Where there is no effective date later than the publication date, one year of adjustment is appropriate. A period of longer than one year would delay the positive results expected from the change and would often exceed the period local jurisdictions reasonably require for updating their recycling programs, while a shorter period might be impracticable for a local jurisdiction or recycling service provider. CalRecycle may identify an effective date later than the publication date; in cases where it anticipates that those affected by the change may need a longer period to implement the update successfully, a period of one year from that effective date will allow ample time for compliance.

### **§ 18980.2.6. 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 most recently updated 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, implying that the PRO can act on 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.

Another purpose is to explain when a change may be recommended: As explained here, recommendations are subject to the same time constraints applicable to information submissions under subdivision (f) of section 18980.2.5. The rationale for this provision is that CalRecycle would be unable to process requests requiring the examination of voluminous information submitted after April 1 in a given year if it is going to successfully publish its updates in a timely fashion. Nevertheless, there may be instances in which CalRecycle might be able to process a sufficiently limited request if submitted after April 1.

**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 to begin and give context to the subsequent list of requirements for CMC list recommendations submitted to CalRecycle.

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

**Subsection (b)(1)**

The purpose of this subsection is to specify that the entity making the recommendation must describe the recommended change and specify 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 identify which covered material categories 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 covered material category that is being proposed for change, as well as those other covered material categories 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 an 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 assess the recommendation adequately.

**Subsection (b)(3)**

The purpose of this subsection is to specify that the PRO or producers must provide an explanation of how any recommended changes to the CMC list will impact the producer responsibility plan and how the plan must be adapted, if at all. As part of this explanation, the PRO must describe the financial implications, if any, of the recommended changes on the fee schedule for participant producers and eco-modulated formulas. This is necessary because it will ensure that producers continue to meet the requirements of section 42050 of the PRC and that CalRecycle understands the full scope of the PRO's and producers' adaptation to these changes. 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)(4)**

The purpose of this subsection is to specify that the PRO or producers must include a list of producers 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.

Another purpose is to obtain the contact information for the producers 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 seek to verify that the proponent has represented their views accurately. If CalRecycle does not have an entity's contact information, it cannot engage with it as described herein.

#### **Subsection (b)(5)**

The purpose of this subsection is to specify that the PRO or producers must include an explanation demonstrating the necessity of the recommended change in their submittal and to encourage specifically support for the recommendation with data not considered in the existing evaluations and information concerning changes in infrastructure, updated acceptance rates at responsible end markets, and new innovations in materials, products, or technologies. This is necessary for CalRecycle to understand the change's effect and for ensuring that CalRecycle is aware of new information that may help explain why a change is appropriate. Without the information submitted pursuant to this subsection, CalRecycle might lack important context that could affect its ability to determine accurately if a CMC list change is needed. Additionally, the documentation could provide 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 might be unaware of such changes.

#### **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 recommended changes to the list, statute does not provide a process for doing so. One goal of this provision 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. To that end, this provision makes clear that PRO members must notify their PRO of their recommendations, in addition to CalRecycle receiving the recommendations from the member. The PRO must be able to anticipate any effects that the changes may have on its plan, especially its eco-modulated fee schedule. Providing any PRO in which a member participates with a copy of the member's request allows the PRO to provide CalRecycle with its opinion on the recommendation if it so chooses.

#### **Subsections (d), (d)(1), and (d)(2)**

The purpose of these subsections is to specify that CalRecycle may request additional information from a PRO, participant producer, or Independent Producer as necessary.

While section 42061 of the PRC creates the opportunity for a producer to make a recommendation and submit data supporting their recommended 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 sufficient for justifying a change in some instances, but not in every situation. In some instances, more information may be needed, and CalRecycle seeks to make this clear to the regulated public. This provision provides examples, including data forecasting, methodology descriptions, financial impact analysis, and data concerning the change's implications for affected entities, because these will often be chief items of concern when additional information is needed.

## **§ 18980.2.7. SCOPE OF EXEMPTIONS**

### **Subsection (a)**

This subsection establishes that exemption applications may request exemptions apply to a class of products or covered materials, if the class is clearly defined, rather than only to products and covered materials specifically identified in the application. This is necessary because it will avoid duplication of efforts. In particular, the basis for exemptions for a very large number of products or covered materials may be identical. This provision, therefore, prevents CalRecycle from having to evaluate a large number of substantially identical applications.

### **Subsection (b)**

The purpose of this subsection is to establish that CalRecycle may require exemption requests to cover classes of products or covered materials when they necessarily apply to such classes. This is necessary to ensure that CalRecycle exercises its authority consistently and fairly across all products and covered materials and to avoid unnecessary duplication of efforts, as described with respect to subsection (a).

### **Subsection (c)**

The purpose of this subsection is to explain that exemptions encompassing a class of products or covered materials might not apply to an entire covered material category. Because covered material categories may be interpreted as defining classes of covered material, this subsection is necessary to clarify that the covered material categories and class-wide exemptions are separate concepts. Accordingly, merely referring to a covered material category may not be specific enough to define the range of products or covered materials for which a class-wide exemption is justified.

### **Subsection (d)**

The purpose of this subsection is to establish that CalRecycle may supplement or modify class definitions for classes that are receiving a class-wide exemption. This is necessary to ensure that the products or covered materials covered by an exemption are clearly distinguishable from those not covered by the exemption. This also enables CalRecycle to process applications more efficiently by avoiding rejecting applications based on easily correctable shortcomings.

### **Subsection (e)**

The purpose of this subsection is to establish that a class-wide exemption is not limited to products or covered materials already in existence when the Department approved the exemption. This is necessary because the scope of exemptions would otherwise be ambiguous with respect to new products and covered materials. Moreover, because class-wide exemptions necessarily apply based on a set of characteristics, there is no logical reason why the exemptions would not apply to future products having such characteristics.

### **Subsection (f)**

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 (g)**

The purpose of this subsection is to clarify that provisions related to expiration, renewal, and termination apply to class-wide exemptions. This is necessary for the same reasons those provisions are necessary with respect to exemptions not granted on a class-wide basis, and there is no logical reason why class-wide exemptions should be treated differently with respect to expiration, renewal, and termination.

This subsection also provides that an Independent Producer can request renewal of a class-wide exemption by submitting its own application. This is necessary to avoid the provisions concerning expiration, renewal, and termination from being interpreted as precluding Independent Producers from doing so.

## **ARTICLE 3. EVALUATIONS FOR COVERED MATERIAL CATEGORIES**

### **§ 18980.3. RECYCLABILITY**

#### **Subsection (a)**

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.

#### **Subsections (b), (b)(1), and (b)(2)**

The purpose of these subsections is to lay out how the various provisions of section 42355.51(d) of the PRC may apply to the various bases that may establish recyclability for particular materials. Doing so is necessary because statute does not expressly state how criteria from section 42355.51(d) of the PRC apply when determining whether

particular materials are recyclable. That lack of specificity is especially likely to cause confusion because, for the exemptions from section 42355.51(d)(2) and (d)(3) of the PRC that are provided in sections 42355.51(d)(4) through (d)(6), covered material can be “recyclable” under the Act despite not being within a covered material category on the list maintained by CalRecycle pursuant to section 42061 of the PRC. Subsections (b)(1) and (b)(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.

### **Subsections (c), (c)(1), and (c)(2)**

These subsections interpret how subsections (d)(3)(A) and (d)(3)(B) of section 42355.51 of the PRC apply to recyclability under the Act. The criteria in those subsections incorporate the “APR Design Guide” and must be satisfied for a particular item to be considered recyclable. Interpreting those criteria is necessary because they are not specific enough to make clear how items satisfy them for purposes of the Act.

This subsection interprets both subsections (d)(3)(A) and (d)(3)(B) of section 42355.51 of the PRC because, even though the criterion in subsection (d)(3)(B) does not expressly refer to the APR Design Guide, subsection (d)(3)(B) applies the same concept and uses the same language from the guide (“components, inks, adhesives, or labels” relate to “recyclability” to describe design elements) as does subsection (d)(3)(A), but for “plastic packaging.” Considering that context, the clear intent behind the statutory language is that subsection (d)(3)(B), not just (d)(3)(A), relies on the APR Design Guide.

Subsections (c)(1) and (c)(2) explain how language from the APR Design Guide applies to whether design elements “prevent the recyclability” of items under sections 42355.51(d)(3)(A) and (d)(3)(B) of the PRC, which govern recyclability under the Act.

That concept is interpreted to mean that the design elements prevent recyclability under the guide, if they result in items being categorized as “non-recyclable” or “requires test results.” The latter condition, however, is interpreted as not preventing recyclability if there are test results satisfying the requirements provided in the APR Design Guide.

This interpretation is necessary because they are the only logical application of the express, plain language used in the APR Design Guide.

Subsection (c)(2) adds additional specificity concerning items in the “requires test results” category. Additional specificity is necessary to clearly establish what producers must do for such items to be considered recyclable. Requiring results to be disclosed to the PRO or CalRecycle is necessary because, without that requirement, limitations established by the reference to the design guide could not be reliably and effectively implemented and enforced. This subsection also provides that the lab providing the test results must meet certain qualifications, which are necessary for the same reasons provided with respect to proposed section 18981(b)(1).

### **Subsection (d)**

This subsection has several purposes. First, this subsection interprets the provision in section 42061(c) of the PRC, which incorporates 14 CCR section 17989.2. CalRecycle interprets the incorporation of 14 CCR section 17989.2 to relate only to “packaging used with food,” which is defined in a manner consistent with the definition of “food service packaging items” provided in 14 CCR section 17989. That interpretation is necessary because 14 CCR section 17989.2 only concerns food-related packaging; any other interpretation would conflict with that section by greatly exceeding its limited scope.

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 burdensome 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 intent for that provision to apply in the food context only.

This section also interprets section 42061(c) as only incorporating subsections (a)(1) and (a)(3) of 14 CCR section 17989.2. The Act can only incorporate (a)(1) and (a)(3) of 14 CCR section 17989.2 because the other provisions of that section are procedural, not substantive, in nature and have no logical application in the context of the Act’s incorporation of substantive requirements of that section.

Third, it is necessary for the subsection to require producers or the PRO, upon demand by CalRecycle, to produce the test results proving compliance with 14 CCR section 17989.2(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.

#### **Subsections (e), and (e)(1) through (e)(4)**

The purpose of these subsections is to clarify section 42355.51(d)(5) of the PRC for purposes of the Act. That section establishes recyclability requirements for products and packaging not gathered through a curbside collection program. Clarification is necessary because section 42355.51(d)(5) uses various terms that could be subject to multiple interpretations.

First, section 42355.51(d)(5) of the PRC establishes minimum recovery percentages for “product or packaging in the program” but does not make clear what it means for covered material to be “product or packaging in the program.” Subsection (e)(1), therefore, interprets “product or packaging in the program” to refer to all covered material items that are eligible for recovery by the program. Including all eligible items, rather than just items that the program recovers, is consistent with statutory language and avoids unreasonable interpretations under which covered material would be recyclable where the program has low collection and high disposal rates.

Second, section 42355.51(d)(5) of the PRC requires that certain percentages of

“product or packaging in the program” be recovered, but it does not state how that percentage must be calculated. Subsection (e)(2) addresses that problem by specifying that the percentage referred to in section 42355.51(d)(5) is the percentage, by weight, of items sold or distributed that the program (i.e., collected weight divided by sold or distributed weight) collected in the most recent one-year period described in subsection (e)(3). Requiring the use of weight, rather than volume or number, is necessary because a percentage based on volume or number might not accurately reflect the amount of material recycled, such as where subparts of packaging constitute separate “items” but vary greatly in weight and are not all recovered by the program.

Requiring the recovery percentage to be calculated over a year is necessary because it is impossible to measure recovery percentage as an instantaneous rate; rather, it must be calculated over some period. Using a one-year period is consistent with how recycling rate is calculated elsewhere under these regulations and reasonably minimizes the potential for market fluctuations, such as seasonal fluctuations, to render the calculated recovery percentage not representative of the overall efficacy of the program.

Third, because items that are sold or distributed necessarily are recovered after some period, using a single period for the sales or distribution and recovery used in the calculation might drastically overstate or understate the actual performance of the program. In other words, the calculation would rely on sales or distribution of items that might have no relation to the recovery of items used in the calculation. Therefore, subsection (e)(3) provides that, for purposes of calculating the recovery percentage, the period over which sales and distribution are measured must precede the period over which recovery is measured. Staggering the two periods according to the average time between the sale or distribution of items and the recovery of the items results in a calculation using relevant figures and ensures accurate calculations.

Fourth, subsection (e)(4) accounts for programs that have not existed for at least one year by providing that the partial year of existence must be used to calculate the recovery percentage of such programs. This subsection also explains that the partial year must be considered to have begun as of the first sale or distribution of the items. These provisions are necessary to ensure that the calculated recovery percentage reflects the performance of the program as accurately as possible.

### **Subsection (f)**

The purpose of this subsection is to establish how producers will need to demonstrate that covered materials are recyclable based on section 42355.51(d)(4) or (d)(5) of the PRC. This subsection is necessary because neither section 42355.51(d)(4) or (d)(5) nor the Act specifically addresses producers’ obligations in this regard; clarity as to those obligations are necessary to establish how CalRecycle will enforce the recyclability requirement of section 42050(b) of the PRC with respect to certain bases for covered materials to be deemed recyclable.

### **Subsection (f)(1)**

The purpose of this subsection is to establish the obligations of a PRO with respect to the requirements under section 42355.51(d)(4) and (d)(5) of the PRC, including producer claims that items satisfy those requirements. Imposing requirements on the PRO is necessary because, without such requirement, CalRecycle could not readily assess the PRO's performance of its mandate to achieve the requirements of the Act, including those stated in section 42050(b) of the PRC (see, for example, section 42051.1(c)(1) and (m) of the PRC). Moreover, the PRO having central responsibility over its producers' compliance with section 42355.51(d)(4) and (d)(5) is necessary as a practical matter for CalRecycle to efficiently enforce the Act's requirements.

#### **Subsection (f)(1)(A)**

The purpose of this subsection is to require a PRO plan to establish a procedure by which the PRO will evaluate whether particular covered material is recyclable under section 42355.51(d)(4) and (d)(5) of the PRC. This is necessary because the plan will govern whether the PRO satisfies its obligations under the Act, so these regulations must set forth the requirements that apply to whether the PRO's plans for doing so are adequate. Moreover, allowing the PRO to establish the specific processes it will employ is consistent with the purpose and function of the PRO and its plan, 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.

#### **Subsection (f)(1)(B)**

The purpose of this subsection is to set forth an obligation of the PRO with respect to covered material that it considers recyclable under section 42355.51(d)(4) and (d)(5) of the PRC. Such covered material must be identified in the PRO's annual report. This requirement is necessary because, without knowing the covered material and producers at issue, CalRecycle could not efficiently enforce the Act's recyclability provisions.

#### **Subsection (f)(1)(C)**

The purpose of this subsection is to set forth the PRO's ongoing obligation with respect to producers' compliance based on section 42355.51(d)(4) and (d)(5). Requiring the PRO to commission audits and investigations of the covered materials whose compliance with the Act is based on sections 42355.51(d)(4) and (d)(5) of the PRC is necessary to establish whether the PRO is fulfilling its role of ensuring that covered material achieve the requirements of the Act (see, e.g., sections 42051(b) and 42051.1(c)(1) and (m) of the PRC). Requiring that audits and investigations be conducted by an independent third party is necessary for the same reasons, as well as to ensure that audits and investigations produce unbiased, accurate results. Requiring all such results to be included in annual reports and for CalRecycle to have full access to any results of an investigation or audit is necessary so that CalRecycle can effectively implement and enforce the Act, including by overseeing the PRO's implementation of its plan and compliance with the Act.

This subsection includes the minimum parameters for audits. A minimum of two intermediate supply chain entities and two end markets must be included in the audits (unless there is only one of each in the recycling process) in order to ensure the audit

accurately captures the recycling path of covered materials. Audit parameters are necessary to define the PRO's obligation with specificity and for purposes of CalRecycle's evaluation of the adequacy of the PRO's plan.

**Subsection (f)(2)**

The purpose of this subsection is to establish the obligations of Independent Producers with respect to the requirements under section 42355.51(d)(4) and (d)(5) of the PRC. Requiring an Independent Producer to demonstrate compliance in their plans and annual reports is necessary so that CalRecycle can assess their compliance and effectively implement and enforce the Act when compliance is based on section 42355.51(d)(4) or (d)(5).

**Subsection (f)(2)(A)**

The purpose of this subsection is to establish Independent Producers' obligation with respect to their plans whenever they base compliance with the Act on section 42355.51(d)(4) or (d)(5). Requiring the plans to identify the relevant covered material and include supporting data is necessary for CalRecycle to effectively implement and enforce the Act's recyclability provisions

**Subsection (f)(2)(B)**

The purpose of this subsection is to establish Independent Producers' obligation with respect to their annual reports whenever they base compliance with the Act on section 42355.51(d)(4) or (d)(5). Requiring annual reports to identify the relevant covered material and include supporting data is necessary for the same reason that including such information in Independent Producer plans is necessary, as described with respect to subsection (f)(2)(A).

**§ 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 clarify that the rest of section 18980.3.1 applies to covered material categories that CalRecycle identifies as trending towards recyclability as described in section 42061(a)(3)(B) of the PRC. This subsection is necessary to explain the scope of section 18980.3.1. This subsection also clarifies that section 42061(a)(3)(B) of the PRC applies only with respect to covered material categories because it expressly concerns "material types and forms" (i.e., covered material categories), not specific items or materials.

### **Subsections (b) and (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 based 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, that the relevant period is the one ending upon the next material characterization study update, and that satisfaction of 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 and consistently make preliminary identifications, which are necessarily data-driven and require a likelihood that the exemption will not be needed in the future. That requirement is set forth in section 42061(a)(3)(B) of the PRC, which states that materials must be “trending toward meeting the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51.”

In subsection (b)(3), setting the next update to the material characterization study as the end of the period relevant to the “trending” finding is necessary to ensure that the exemption remains valid and because, by its terms, statute sets that time as the next time CalRecycle can identify covered material categories that are “trending.” At that point, the information upon which an exemption must be based will be updated, so any exemption then in effect logically must be reexamined. Any other interpretation of section 42061(a)(3)(B) would contradict 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 the implementation of section 42061(a)(3)(B) of the PRC because that section requires CalRecycle to make a complex determination for which it would otherwise lack sufficient

information and evidence.

### **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 recyclable by the time of the next mandatory update of the material characterization study under section 42355.51(d)(1)(B)(ii) of the PRC. Requiring this is necessary because, as described above, the exemption at issue necessarily will be reevaluated based on those updates, which are required 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. This subsection also interprets the statutory phrase “statewide recycling programs.” This is necessary because that phrase, on its face, is subject to divergent readings: It can either refer to individual recycling programs, each of which is statewide, or to recycling programs across the entire state, considered as a whole. CalRecycle adopts the latter interpretation because there is no logical reason why recycling programs would only be relevant to the observed trend when they operate across the entire state, a condition that would be difficult to define to begin with.

### **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.

### **Subsections (c)(4), and (c)(4)(A) through (c)(4)(C)**

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. For example, labeling of currently non-recyclable materials as “recyclable” might tend to encourage improper sorting of materials by consumers and be less likely to directly affect whether alternative bases (those other than the one provided in section 42355.51(d)(2) of the PRC) might apply. 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 therefore 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 is complex and directly relates 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 section 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 recyclability, such that the material 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)**

The purpose of subsection (e) is to set forth the specific conditions that must be established for CalRecycle to finalize the identification of a covered material category as “trending” towards recyclability pursuant to section 42061(a)(3)(B) of the PRC. These conditions are laid out in subsections (e)(1) and (e)(2). The conditions are necessary to clarify statute so the public understands how CalRecycle will decide whether to finalize a “trending” determination.

#### **Subsections (e)(1), (e)(1)(A), and (e)(1)(B)**

The purpose of subsections (e)(1), (e)(1)(A), and (e)(1)(B) is to set forth the specific conditions that must clearly be established for CalRecycle to finalize the identification of a covered material category as “trending.” The conditions are based on the express terms used in statute. By setting forth statutory requirements in clearer terms, these subsections 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.

For CalRecycle to designate material categories as “trending” towards recyclability under section 42355.51(d)(2) of the PRC, section 42061(a)(3)(B) requires that improvements in recycling and collection programs be responsible for a measurable increase in statewide collection and sorting that CalRecycle identifies in a preliminary identification of the covered material category. Accordingly, subsection (e)(1)(A) incorporates this requirement as a necessary condition for the designation.

For CalRecycle to designate material categories as “trending,” section 42061(a)(3)(B) also requires that the absence of a “recyclable designation” be disruptive of continued increase in collection, sorting, and end market development. Accordingly, subsection (e)(1)(B) incorporates this requirement as a necessary condition for CalRecycle to designate a category as “trending” towards recyclability.

For both subsections (e)(1)(A) and (e)(1)(B), 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.

#### **Subsection (e)(2)**

The purpose of this subsection is to set forth an additional criterion that must be met for CalRecycle to finalize its identification of a covered material under this section. Specifically, if the public comments received pursuant to section 18980.3.1(c) clearly invalidate CalRecycle’s preliminary decision to consider the exemption, then CalRecycle will not approve the “trending” exemption. This subsection is necessary to provide additional clarity regarding CalRecycle’s evaluation process and the role of comments and submissions in that process.

#### **Subsection (f)**

The purpose of this subsection is to further implement section 42061(a)(3)(B) of the PRC by establishing when and how CalRecycle will reevaluate the exemption at issue.

First, this subsection stipulates that CalRecycle will reconsider the exemption upon each mandatory update to the study or publication of additional information pursuant to section 42355.51(d)(1)(B)(ii) or (iii) of the PRC. This process for reevaluation 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.

Second, this subsection explains 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. When CalRecycle determines that it cannot re-evaluate the exemption without further information, there is no logical basis for following any other process. In contrast, when CalRecycle can reevaluate the exemption without further information from external parties, foregoing that process avoids imposing unnecessary burden on producers, the PRO, and CalRecycle.

## **§ 18980.3.2. METHODOLOGY FOR RECYCLING RATE DETERMINATION**

### **Subsection (a)**

The purpose of this subsection is to explain that when calculating recycling rates, recycling includes any process that meets the definition of recycling in section 42041(aa) of the PRC, including composting. This clarification is necessary because the definition of the term “recycling” under the Act is not the same one used in other settings (e.g., the definition stated in section 40108 of the PRC applies in other contexts). For example, the definition in the Act expressly includes the production of compost. This subsection addresses that potential confusion.

### **Subsection (b)**

The purpose of this subsection, via subsections (b)(1) through (b)(4), is to specify the methodology and data used to calculate recycling rates. This is necessary because section 42041(ab) of the PRC provides only a simple description of recycling rate and allows CalRecycle to develop its own methodology for calculating it. Greater detail is therefore required to explain how CalRecycle will apply the concept of recycling rate. Moreover, section 42060(a)(8) of the PRC explicitly requires CalRecycle to establish its methodology in the regulations.

### **Subsection (b)(1)**

This subsection has several purposes regarding recycling rates.

First, this subsection explains the overall calculation for recycling rates: the weight of material recycled divided by the sum of the weight of material recycled plus the weight of material disposed (recycled weight / [recycled + disposed weight]). That calculation is consistent with the one in section 42041(ab) of the PRC but uses terms that explain it with greater precision, including by cross-referencing the explanations of key terms in subsequent provisions and explaining that the weight of materials will be used in the calculation. The calculation specifies that the calculation uses the weight of materials; in contrast, statute uses the general term “amount.” Using 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. This clarity is necessary to explain how CalRecycle will apply the concept of recycling rate and to satisfy the requirement under section 42060(a)(8) that the regulations include the methodology that CalRecycle will use.

Second, the subsection explains that the recycling rate as of any date shall be calculated over the most recent 12 months for which sufficient data exists. This is

necessary because, in contrast to measurements of speed, recycling rate cannot be calculated as an instantaneous rate. The calculation must rely on amounts recycled and disposed of during specific periods. Because statute does not address this detail, CalRecycle must adopt a reasonable methodology that does so. One major difficulty in calculating a recycling rate is that it is not possible to measure the amount of material recycled or disposed of immediately upon conclusion of the period used to calculate it; the data encompassing that period does not exist at that instant. Moreover, the delay before the data exists will not necessarily be uniform in every instance. A flexible approach relying on the data for the most recent 12 months for which data are available is necessary to reasonably account for these difficulties. The approach ensures a uniform duration of the period used to calculate recycling rates and allows for calculations to be adjusted to achieve greater precision as more recent data becomes available.

### **Subsection (b)(2)**

The purpose of this subsection is to explain how the weight of material “recycled” shall be determined. This is necessary for two reasons. First, although statute provides definitions of “recycle,” “recycling,” and “recycling rate,” it does not specify when or how specific material should be considered “recycled.” Second, the inherent differences between end markets for certain types of materials logically require what constitutes “recycled” to depend on the type of end market involved. Accordingly, subsections (b)(2)(A), (b)(2)(B), and (b)(2)(C) address the different types of end markets.

### **Subsection (b)(2)(A)**

The purpose of this subsection is to explain how to determine the amount of material “recycled” when the material has an end market identified in sections 18980.4(b)(1) through (b)(5) of the PRC (recycling of glass, metal, paper or fiber, plastic, or wood). This explanation is necessary because the nature of those end markets logically requires an approach different than the one used for end markets described in section 18980.4(b)(6) (conversion into recycled organic product). Because the end markets described in sections 18980.4(b)(1) through (b)(5) do not use biological transformation, the most reasonable approach is to consider material “recycled” by such end markets when the material leaves the end market to be used as feedstock. That approach is consistent with the definition of “recycling” in section 42041(aa) of the PRC and ensures that recycling rate calculations accurately reflect the actual production of new feedstock, rather than only considering the collection of materials ultimately used in that production. Lastly, requiring adjustments to the recycled weight so that it excludes the weight of feedstock derived from non-covered material further ensures accurate calculation of recycling rates of covered material. 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.

### **Subsection (b)(2)(B)**

The purpose of this subsection is to explain how to determine the amount of material “recycled” when the material has an end market identified in section 18980.4(b)(6) of

the PRC. This explanation is necessary because the nature of those end markets logically requires an approach different than the one used for other end markets. The end markets in (b)(6) use biological transformation that necessarily converts a portion of solid-state matter into gaseous-state output. As a result, calculating recycling rates considering material leaving end markets would not accurately reflect recycling as defined in section 42041(aa) because the weight of that material will be less than the accepted weight of covered material. In contrast, measuring the weight of material recycled at the point the end market accepts it, excluding material removed for further processing or disposal, accurately reflects actual recycling conducted at the end market. Lastly, requiring adjustments to the recycled weight so that it excludes the weight of feedstock derived from non-covered further material ensures accurate calculation of recycling rates of covered material. 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.

### **Subsection (b)(2)(C)**

The purpose of this subsection is to require a PRO or an Independent Producer to identify whether section 18980.3.2(b)(2)(A) or (b)(2)(B) would be most appropriate for determining the weight of covered material recycled by end markets identified using a study described in section 18980.4.3(b). This is necessary because, when a PRO or Independent Producer identifies such an end market pursuant to section 18980.4.3(b), it might otherwise not be clear whether section 18980.3.2(b)(2)(A) or (b)(2)(B) is appropriate for calculating a recycling rate. Also, because the PRO or the Independent Producer, not CalRecycle, conducts such studies, the PRO or the Independent Producer will be better situated to determine which provision should apply.

### **Subsection (b)(3)**

The purpose of this subsection is to explain how the weight of material “disposed” shall be determined. This is necessary because statute does not provide a definition of “disposed” or give guidance on measuring the amount of material disposed of. Instead, section 42041(aa)(2) only establishes that “recycling” and “disposal” are mutually exclusive. Accordingly, this subsection, in combination with section 18980.3.5, provides clarity regarding how to assess the amount of material disposed of.

### **Subsection (b)(3)(A)**

The purpose of this subsection is to clarify that material sent to end markets other than responsible end markets is considered “disposed of” for purposes of recycling rate calculations. This is necessary to align the calculation of recycling rate with the statutory definitions of “recycle” and “recycling,” which expressly provides that those terms only encompass material sent to responsible end markets (section 42041(aa)(3) of the PRC) and are mutually exclusive with “disposal” (section 42041(aa)(2)).

### **Subsection (b)(3)(B)**

The purpose of this subsection is to state the basic rule that the recycling rate calculation’s denominator encompasses covered material and material derived from it that is “disposed,” a term further explained in section 18980.3.5. This is necessary for

completeness and clarity, especially considering that subsection (b)(3)(A) includes in the calculation materials that, in other contexts, might not be considered disposed of.

#### **Subsections (b)(4), and (b)(4)(A) through (b)(4)(D)**

The purpose of subsection (b)(4), via subsections (b)(4)(A) through (D), is to specify the kinds of data that CalRecycle will consider when calculating recycling rates. These subsections are necessary to provide transparency and to fulfill the requirement under section 42060(a)(8) of the PRC that CalRecycle establishes the methodology and process it will use to calculate rates. Subsections (b)(4)(A) through (D) identify the data that CalRecycle considers relevant and reliable for purposes of the calculation, and section 42051(b)(2) of the PRC expressly authorizes CalRecycle to use such data.

#### **Subsection (c)**

The purpose of this subsection is to explain that recycling rates shall be calculated using weights, not volume or number of items. Establishing this in its own subsection is necessary to provide sufficient clarity to the section. 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 the context of covered materials. Recycling rates are calculated for each covered material category, as opposed to a specific product or material. 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 material components that are not detachable. Calculating a single recycling rate for each non-detachable component is necessary because such components are typically discarded as a single item, so they need to be considered together to ensure that the calculations are accurate.

#### **Subsection (d)(2)**

The purpose of this subsection is to address the calculation of recycling rates for covered material components that are detachable. Calculating a recycling rate for each detachable component’s covered material category is necessary because detachable components are typically discarded and processed as separate items, so they need to be considered separately to ensure accuracy of the calculations.

#### **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 (e)**

The purpose of this subsection is to address the calculation of recycling rates when relevant data have not been reported to CalRecycle. In such cases, the recycling rate will be deemed “unreported.” Without data, a calculation cannot be made. “Unreported” rates will be assumed not to meet the required rate under section 42050(c) of the PRC. This is the necessary application of that requirement because satisfying it is the responsibility of producers, who have the corresponding responsibility to report data relevant to their compliance with the Act and maintain documentation of that compliance. For example, section 42051.1(m)(4) expressly requires the PRO to maintain records demonstrating that each producer has complied with the Act and make such records available to CalRecycle, and section 42051(f)(2) allows producers to comply with section 42050(c) with respect to particular types of covered materials if they submit evidence of such compliance.

#### **Subsection (f)**

The purpose of this subsection is to address the special compliance obstacle that arises when a new covered material category is created and there is insufficient information to calculate a rate for it. Because recycling rate calculations are based on a one-year period, assigning the “pending” status to such categories until one year of data is available is necessary. Assuming the categories to satisfy the applicable requirement under section 42050(c) of the PRC is necessary because determining compliance, or compliance itself, would be impracticable until sufficient data exists. This assumption is also necessary because any other approach would risk erroneously considering producers not in compliance with the Act and would disincentivize creation of new materials. This subsection also clarifies that the “pending” status has no effect on whether any covered material is considered recyclable or compostable. This is necessary because the lack of data concerning recycling rates might otherwise be misconstrued as being relevant to recyclability or compostability, but those concepts do not depend on the data and calculations used for purposes of meeting recycling rate requirements.

#### **Subsection (g)**

The purpose of this subsection is to establish the options available to a PRO or an Independent Producer for calculating and reporting recycling rates: either the one described in section 18980.3.2(b) or an alternative one proposed by a PRO or Independent Producer in a plan. Allowing that flexibility is necessary because a PRO and Independent Producers are likely to be best able to address circumstances—such as practical limitations on data sources and completeness of data—under which an alternative methodology for establishing recycling rates would be more appropriate in terms of consistency and reliability. This subsection requires that a PRO or Independent

Producer clearly describe the methodology to CalRecycle, which will approve the methodology if it is the most accurate way to calculate the relevant recycling rates. Such safeguards are necessary to ensure consistency among recycling rate calculations and that the alternative methodology is only used when appropriate.

### **Subsections (h), (h)(1), and (h)(2)**

The purpose of subsection (h) is to interpret two elements of section 42057(i) of the PRC: the phrase “all expanded polystyrene” and the calculation of “recycling rates.”

Interpreting the phrase “all expanded polystyrene” is necessary because, under that phrase’s plain meaning, it would encompass materials otherwise unrelated to the Act, such as those used in building insulation, flotation devices, and road construction. In the context of the Act, however, that meaning would render the Act impossible to implement and enforce. Because those materials are not covered materials, there is no “producer” for any of them. Also, producers are extremely unlikely to conduct any activities relevant to such materials or have any reasonable way to obtain data about them. Accordingly, subsection (h)(1) provides the reasonable interpretation that “all” refers to covered material only, not expended polystyrene used in other applications.

Subsection (h)(2) addresses recycling rates for expanded polystyrene, clarifying that subdivisions (b) and (g) apply to calculations of those rates. This is necessary because section 42057(i) lies within a PRC section that otherwise concerns only source reduction, leaving it unclear whether its reference to “recycling rate” requires the same calculation as the one used for recycling rates in other contexts. Because there is no indication in 42057(i) or elsewhere that the “recycling rate” concept in 42057(i) is unique, this subsection instructs that the calculation methodology for recycling rates pursuant to 42057(i) is the same as the one set forth in the provisions of section 18980.3.3 relevant to the calculation of recycling rates for covered material generally.

### **§ 18980.3.3. ELIGIBILITY TO BE LABELED COMPOSTABLE**

This section clarifies and establishes standards for covered material to be considered eligible 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 the concept concerns only the requirements under sections 42355 through 42358.5 of the PRC that address the potential for being so labeled, not whether particular labeling—in other words, labels in actual usage on covered material items—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, with the requirements relevant to labeling providing the standards for that determination. Moreover, in the context of the functions that the Act assigns to CalRecycle, CalRecycle cannot logically consider the highly specific and technical product-by-product criteria that ultimately determine whether covered material items comply with section 42050(b) of the PRC.

### **Subsections (b), (b)(1), and (b)(2)**

The purpose of subsection (b) is to apply, via subsections (b)(1) and (b)(2), the interpretation described in subsection (a). Covered material categories will be considered “eligible for being labeled ‘compostable’” for purposes of section 42050(b) and therefore will be included in the list described in section 42061(d) of the PRC if they could possibly contain covered material items that could lawfully be 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 of this subsection is to identify section 42357(g)(1)(B) of the PRC as setting a categorical requirement to be applied to a covered material category as a whole. That requirement is that material must be an allowable input under the United States Department of Agriculture National Organic Program to be considered compostable for labeling purposes. In the context of the Act, this can be applied on a categorical basis by identifying covered material categories that contain any such materials. This is the only logical way to interpret section 42357(b)(1)(B) for purposes of the “eligible for being labeled ‘compostable’” requirement in section 42050(b).

### **Subsection (b)(2)**

The purpose of this section is to establish that, to be considered compostable and therefore included on the list described in section 42061(d) of the PRC, a covered material category must include at least some covered material that meets certain the requirements set forth in subsections (c)(3) through (5), which are requirements in section 42357 that apply on an item-by-item basis. This logically must be a requirement because a covered material category cannot reasonably be said to be “compostable” if it does not encompass any covered materials that have the potential to satisfy those requirements.

### **Subsection (c)**

The purpose of this subsection is to identify and interpret the statutory criteria concerning whether individual covered material items are “eligible for being labeled ‘compostable.’” Such criteria cannot be applied on a category-by-category basis because they concern the characteristics of individual items, not a type of material generally. Nevertheless, interpretation of them is necessary because they 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 the 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 the eligibility of discrete covered materials to the requirements set forth in subsection (b), concerning the categorical criteria of section 42357(g)(1)(B) of the PRC. This is necessary so that 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 items' eligibility for being 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) is necessary to avoid potential confusion over when the certification requirement applies.

**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. This is necessary to make clear that that exemption, which the Act does not expressly identify, is available and, as described in the subsections discussed below, may affect the analysis of whether covered material is eligible for being labeled "compostable."

**Subsection (c)(4)(A)**

The purpose of this subsection is to specify that, to rely on the exemption allowed under section 42356.1(d) of the PRC, documentation demonstrating that the covered material items at issue meet the exemption requirements must be available upon request, and the documentation must be maintained until three years after the items are no longer sold, offered for sale, or distributed. This requirement is necessary given the express requirement in section 42356.1(d) that exempted items must be "demonstrated to not incorporate any plastics or polymers." Requiring that records be maintained while items are in distribution and for three years afterward is reasonably necessary to enable CalRecycle to investigate potential violations of the Act. Moreover, a three-year requirement is consistent with the recordkeeping requirement in section 42051.1(m)(4); that provision applies to the PRO directly but provides a useful indication of the Legislature's assessment of the minimum period for which records demonstrating compliance should be retained.

**Subsection (c)(4)(A)(i)**

The purpose of this section is to establish what it means in section 42356.1(d) of the PRC for products to "incorporate any plastics or polymers." This is necessary because that phrase on its face does not have a single, plain meaning. Without context, for

example, it could be understood as referring to the mere presence of plastics or polymers, regardless of how that presence came about. On the other hand, it could be understood to account for the intentional acts (i.e., the “incorporation” itself) that caused the presence of plastics or polymers. CalRecycle adopts the latter interpretation because section 42356.1(d) uses the term “incorporate” with the preposition “through,” linking that term to a list of processes through which a product might “incorporate” plastics or polymers. While that list is not exhaustive, the use of a prepositional phrase establishes that the Legislature used the term “incorporate” to refer to an action leading to the presence of plastics or polymers, not to the mere presence of plastics or polymers. Moreover, if the Legislature intended to refer to the mere presence of certain substances, more general verbs, such as “comprise,” “contain,” or “include,” would have more precisely reflected that broader scope. CalRecycle’s interpretation honors the Legislature’s choice to use a verb with a narrower connotation.

#### **Subsection (c)(4)(A)(ii)**

The purpose of this subsection is to specify that the required documentation must identify all substances present in the items and must be augmented with a description of substances upon request by CalRecycle. This requirement is necessary because demonstrating the absence of plastic material from an item necessarily requires disclosure of all the material present in it. A description must be provided upon request because the manner in which the documentation identifies a substance might not enable CalRecycle, as a technical matter, to evaluate whether particular substances constitute plastic.

#### **Subsection (c)(4)(B)**

The purpose of this subsection is to establish how CalRecycle’s authority to enforce the Act relates to the requirements stated in the preceding paragraphs. This is necessary to ensure that entities understand when they are subject to that authority. Under section 42080(a) of the PRC, CalRecycle has the authority to ensure that “a PRO, producer, wholesaler, or retailer” complies with the Act. If that authority did not include the authority to require documentation that single-use food service ware items are not plastic, CalRecycle would be unable to challenge any entity’s claim that it is not a producer on the basis that the items contain no plastic and are thus not covered material. That result would prevent enforcement of the Act with respect to a wide array of products and cannot reasonably have been intended.

#### **Subsection (c)(5)**

The purpose of this subsection is to establish what it means for an item of covered material to be “designed to be associated with the recovery of desirable organic waste.” This is necessary because section 42357(g)(1)(E) of the PRC uses that phrase without explanation. This subsection resolves the phrase’s ambiguity by providing a straightforward explanation of how the phrase applies in real-world scenarios. One scenario is when an item itself is the “desirable organic waste” referred to in section 42357(g)(1)(E). In that scenario, the item logically must be “associated with the recovery of desirable organic waste” because, otherwise, it would

not itself be considered “compostable” for purposes of section 42357. Another scenario is when the manner in which the item is sold or distributed causes it to be discarded with desirable organic waste. For example, when single-use packaging sold with food is labeled “compostable,” consumers are highly likely to understand that the producer intended the items to be discarded along with food waste. Likewise, consumers using food service ware items labeled “compostable” are likely to understand that the items are designed to be discarded with food waste.

#### **Subsection (c)(6)**

The purpose of this subsection is to avoid confusion as to the legal effects of complying with this section and the Act. Because this section and the Act only concern “eligibility to be labeled compostable” and only do 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. This section only addresses those laws to fulfill CalRecycle’s role in implementing and enforcing the Act, which uses those laws to set standards for compostability. In other words, while the Act relies on standards that apply to the lawfulness of labeling practices, the Act does not impose any liability for labeling practices. Rather, it imposes liability for the sale or distribution of covered material that is neither recyclable nor eligible for being labeled compostable, regardless of how they are labeled. Given that this subsection interprets elements of section 42357, which itself concerns labeling, explaining that distinction is necessary because the public could misconstrue the Act and this section as directly governing the labeling of products as “compostable.”

#### **Subsection (d)**

The purpose of this subsection is to further avoid confusion as to the scope of this section and the Act. Because this section interprets elements of section 42357, which itself concerns labeling, the public might misconstrue the Act and this section as encompassing all the requirements governing whether a particular label or labeling practice is lawful. That is not the case, however; for example, this section does not address the requirement in section 42357(g)(1)(D), which sets forth limitations related to the effectiveness of labels. For this reason and for the reasons stated with respect to subsection (c)(6), the clarification provided in this subsection is necessary.

#### **Subsection (e)**

The purpose of this subsection is to clarify that satisfying the requirements for being labeled “home compostable” under sections 42355 through 42357.5 of the PRC is irrelevant to whether an item is “eligible for being labeled ‘compostable’” under section 42050(b). Considering the literal overlap between the terms “compostable” and “home compostable,” this clarification is necessary to avoid confusion over the scope of the Act. Section 42050(b) must be interpreted not to include “home compostable” because it expressly uses only the term “compostable” (in quotation marks), which is distinct from the term “home compostable” under sections 42355 through 42357.5.

#### **§ 18980.3.4. INDEPENDENT THIRD-PARTY VALIDATION FOR POSTCONSUMER RECYCLED CONTENT**

The purpose of this section and subsequent ones is to interpret the postconsumer content validation provisions of sections 42053(e)(1) and 42057(a)(2)(B)(i) of the PRC and establish the process for implementing them. This is necessary because section 42053(e)(1) of the PRC expressly states that the alternative compliance formula using postconsumer recycled content must be approved by CalRecycle.

##### **Subsection (a)**

The purpose of this subsection is to clarify when an “alternative compliance formula” under section 42057(a)(2)(B)(i) of the PRC may be used. This is necessary because statute does not explain any procedural details related to such a formula. This subsection provides that a formula must be proposed and approved as part of the producer responsibility plan approval process. This ensures that PROs and producers use accurate, consistent methodologies for measuring their source reduction.

##### **Subsections (b), and (b)(1) through (b)(3)**

The purpose of these subsections is to establish criteria CalRecycle will use when considering alternative compliance formulas for purposes of section 42057(a)(2)(B)(i) of the PRC. This is necessary so that PROs understand what to include in plan proposals for obtaining CalRecycle’s approval. The criteria in subsections (b)(1) through (b)(3) ensure that alternative compliance formulas implement the concept of source reduction properly. In particular, the formula must compare levels of postconsumer recycled content use to 2023 levels, rely on sufficient data specific to relevant producers, and result in crediting use of postconsumer recycled content as source reduction no greater than the source reduction that would have been achieved from eliminating use of plastic altogether. These safeguards ensure that the alternative compliance formula does not affect source reduction obligations in a manner inconsistent with a central purpose of the Act (to reduce the generation of waste and expand statewide recycling).

##### **Subsection (b)(4)**

The purpose of this subsection is to interpret the provision in section 42057(a)(2)(B)(i) requiring that a third party validate the postconsumer recycled content usage to which the alternative compliance formula is applied. This subsection explains that a producer responsibility plan that includes a proposed formula must demonstrate how a third party can validate that usage. That criterion is necessary for the same reasons stated above with respect to the criteria set forth in subsections (b)(1) through (b)(3).

This subsection also interprets the validation requirement to require that there be only one third party providing validations of postconsumer recycled content usage. That interpretation is necessary because the statutory text is ambiguous as to whether there may be multiple approved third parties at any given time. Requiring that there be only one approved third party is necessary because different third parties may use different, inconsistent methodologies for validating postconsumer recycled content usage.

Lastly, this subsection interprets the validation requirement as establishing that the

Association of Plastic Recyclers necessarily may be used as the third party for providing validations, but a different third party may be used if approved by CalRecycle. This is a straightforward interpretation of the plain text in section 42057(a)(2)(B)(i). Subsections (b)(4)(A) through (C) explain the criteria that CalRecycle will apply when considering whether to approve any other third party. This is necessary because statute does not provide any detail concerning that consideration, but express criteria are required so that PROs and producers will understand how to establish the appropriateness of the proposed third party and to ensure CalRecycle evaluates proposals fairly and consistently.

#### **Subsections (b)(4)(A), (b)(4)(B), (b)(4)(B)(i) and (ii), and (b)(4)(C)**

The purpose of these subsections is to establish the criteria CalRecycle will use when considering whether to approve a third party for validating postconsumer recycled content usage. The criteria establish minimum requirements that ensure the validations result in consistent, accurate assessments of recycled content usage. Taken together, these requirements ensure that CalRecycle's approval has a reliable, consistent basis for evaluating the appropriateness of a third party and its validation program.

One requirement is that a third party must be shown to apply standards at least as stringent as those that the Association of Plastic Recyclers would use. This ensures that approval of the third party does not contradict the implicit acknowledgment in statute that the validation program administered by the Association of Plastic Recyclers uses appropriate standards.

Another requirement is that the third party is independent and impartial. Independence and impartiality are commonsense requirements for any validation or certification because they ensure that validations are trustworthy. Subsections (b)(4)(B)(i) and (ii) expound on this requirement by identifying specific circumstances that would necessarily disqualify an entity from meeting this requirement. The disqualifying circumstances are those where the third party has financial interests or ongoing business relationships that decisions concerning validations may affect. Such interests and relationships cannot exist without presenting the risk of bias or the appearance of bias, either of which would undermine the trustworthiness of validations.

The final requirement is that the third-party validation entity must hold a 17065 ISO/IEC accreditation. This is necessary to ensure that the third-party validation is competent and relies on valid methodologies. 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 because they are internationally recognized organizations for providing such accreditation.

#### **Subsection (b)(5)**

The purpose of this section is to establish another criterion that CalRecycle will use when considering an alternative compliance formula: The formula must not result in

granting credit for the usage of postconsumer recycled content that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances. This is necessary for the same reasons stated with respect to the criteria provided in subsections (b)(4)(1) through (3) and because statute expressly forbids granting of credit for such content.

### **Subsection (c)**

The purpose of this subsection is to explain that previous approval of an alternative compliance formula and third-party validation entity, if any, remains in effect when included in an updated or amended plan. This is necessary to provide clarity on the procedural implementation of section 42057(a)(2)(B)(i). However, subsections (c)(1) and (2) also establish circumstances that would nullify such approval. This is necessary to safeguard the approval process against abuse and ensure that the alternative source reduction credit and third-party validation entity serve their statutory purpose.

### **Subsection (c)(1)**

The purpose of this subsection is to set forth clear guidance for when CalRecycle may identify evidence, information, or circumstances that justify requiring a new proposal to be included in an updated plan submitted pursuant to section 42051.2(d)(2) of the PRC. CalRecycle may only do so if it does so at least a year before that update is required. This is necessary to protect the PRO against impracticable compliance challenges, while reasonably preserving CalRecycle's ability to ensure that previously approved alternative compliance formulas and third-party validation entities serve their statutory purpose.

### **Subsection (c)(2)**

The purpose of this subsection is to clarify that all approvals are subject to rescission if the proposal wrongfully obscured flaws, such as false information or evidence. This is necessary to protect the approval process and the alternative source reduction credit against abuse and ensure that the credit and the third-party validation entity serve their statutory purpose.

### **Subsections (d), (d)(1), and (d)(2)**

The purpose of subdivision (d), via subsections (d)(1) and (2), is to interpret section 42053(e)(1), including how approvals issued for purposes of section 42057(a)(2)(B)(i) relate to it. Subsection (d)(1) explains that approval of an entity for purposes of section 42057(a)(2)(B)(i) constitutes approval for purposes of section 42053(e)(1). That approval is necessarily sufficient for the same reasons stated above with respect to section 42057(a)(2)(B)(i). In particular, that approval process ensures that postconsumer recycled content is assessed consistently and reliably for different producers. Subsection (d)(2), however, draws an appropriate distinction between the two contexts for third-party validations. In the context of section 42053(e)(1), the PRO relies on the validations only for the purpose of adjusting fees that individual producers must pay. Because that is a determination internal to the PRO that has no effect on the safeguards provided in this section in the alternative source reduction context, it is appropriate to permit the PRO to exercise greater discretion in choosing a third-party validation entity. Accordingly, the PRO can choose any third-party validation entity that

satisfies the requirements of subsection (b)(4)(B) and (C). Those requirements are necessary to ensure that the third-party entity is competent and unbiased.

### **§ 18980.3.5. DISPOSAL OF COVERED MATERIAL**

The purpose of this section overall is to interpret the terms “disposal” and “disposed of” for purposes of the Act and these regulations. This is necessary because the terms are used but not defined in the Act, and clarifying the range of activities that the terms encompass ensures that regulated entities understand their obligations. Moreover, while section 40192(a) of the PRC provides definitions of these terms that otherwise would be applicable, section 40100 states that those definitions do not apply when “the context otherwise requires.” Accordingly, this section provides clarity regarding the concept of disposal in the particular context of the Act. The first paragraph of the section, for example, establishes that disposal (and when material is considered “disposed of”) and recycling (and when material is considered “recycled”) are mutually exclusive. That clarity is necessary because the Act (specifically, section 42041(aa)(1) through (3)) logically must be read in that manner, but the Act does not clearly state that dichotomy.

#### **Subsection (a)**

The purpose of this subsection is to establish that deposition at a landfill constitutes disposal. This interpretation is necessary because it comports with the plain meaning of “disposal” and the various definitions provided in section 40192, and nothing in the context of the Act suggests a contrary meaning.

#### **Subsection (b)**

The purpose of this subsection is to establish that use as alternative daily cover or intermediate cover constitutes disposal. This interpretation is necessary because such usage, as defined in the cited regulatory sections, constitutes “deposition of solid wastes onto land,” which is necessarily disposal pursuant to section 40192(a) of the PRC, and nothing in the context of the Act suggests a contrary meaning.

#### **Subsection (c)**

The purpose of this subsection is to establish that use for energy generation or fuel production, except for anaerobic digestion of source separated organic materials, constitutes disposal. This interpretation necessarily follows from section 42041(aa)(2)(C) and (D) of the PRC, which excludes such activities from the definition of “recycling,” effectively rendering them “disposal” for purposes of the Act.

#### **Subsection (d)**

The purpose of this subsection is to incorporate the general definition of “disposal” from section 40192(a) of the PRC and to provide examples of what falls within that definition. Interpreting the term in this manner is necessary for clarity and because nothing in the context of the Act suggests that either the plain meaning of the term or the meaning set forth in section 40192(a) should not apply.

## **ARTICLE 4. RESPONSIBLE END MARKETS**

### **§ 18980.4. RESPONSIBLE END MARKET CRITERIA**

#### **Subsection (a)**

The purpose of this subsection is to establish clear, consistent, and uniform criteria for responsible end markets under the Act. This subsection introduces a list of criteria, set forth in subsections (a)(1) through (a)(4), that an entity must meet in its ordinary course of business to be considered a “responsible end market” for the purpose of complying with the requirements of the Act. To be considered recycled under section 42041(aa)(3) of the PRC, covered materials must be sent to responsible end markets. Therefore, the definition and scope of responsible end markets are critical to the implementation and enforcement of the Act. While section 42041(ad) of the PRC defines “responsible end market,” that statutory definition is insufficiently clear and broadly alludes to materials markets that recycle and recover materials “in a way that benefits the environment and minimizes risks to public health and worker health and safety.” That statutory provision explicitly permits CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety. This provision is therefore necessary to give effect to the statutory definition of “responsible end markets” by making it more certain and specific, and by offering clear guidance to the PRO, Independent Producers, and any other interested parties whose ability to comply with the Act will necessarily be affected by their ability to identify and develop responsible end markets. By listing all applicable criteria relevant to responsible end markets in this subsection, an interested party will be able to go through the criteria and determine if an entity is a responsible end market pursuant to section 42041(ad) of the PRC.

#### **Subsection (a)(1)**

The purpose of this subsection is to establish the first set of criteria for evaluating whether an entity is a responsible end market. This subsection provides that, to be a responsible end market, the entity and any intermediate supply chain entity that handles materials ultimately received by the entity must operate in compliance with all permitting, licensing, and other clearances that may be required to conduct collection, processing, or recycling activities under all applicable laws. This subsection is necessary because it offers clear guidance to all entities and interested parties that, to be a responsible end market under the Act, the entity must comply with all applicable laws and must further ensure that the intermediate supply chain entities from which it ultimately receives materials must comply with all applicable laws. Such applicable laws include, among others, those concerning public health, safety, and land use, and this requirement is necessary to ensure that a responsible end market’s operations benefit the environment and minimize risks to public health and worker health and safety, consistent with the statutory definition in section 42041(ad) of the PRC.

#### **Subsection (a)(2)**

The purpose of this subsection is to introduce the second set of criteria for evaluating whether an entity is a responsible end market. This subsection provides that, to be a

responsible end market, the entity must be transparent, meaning it must maintain and provide records and otherwise participate in the activities described in subsections (a)(2)(A) through (a)(2)(G). This provision is necessary because, under the Act, a PRO or Independent Producer is responsible for establishing that certain covered materials are recycled by being sent to responsible end markets. As set forth in section 18980.4.2(d) of the regulations, a PRO or Independent Producer must annually verify that each end market it uses satisfies the requirements to be a responsible end market. However, in the absence of this transparency requirement, a PRO or Independent Producer would not always have access to the information, data, or documentation that may be necessary to achieve or verify its compliance with the requirements of the Act with respect to responsible end markets. Moreover, a PRO or Independent Producer will often not be the one sending covered materials directly to a responsible end market; rather, those covered materials will often be transported among various intermediate supply chain entities before ultimately being delivered to a responsible end market.

Therefore, this transparency requirement is necessary to ensure a PRO or Independent Producer can access the necessary relevant records to ensure its covered materials are sent to a responsible end market and to annually verify that the end markets it uses satisfy the requirements to be a responsible end market. Additionally, in the event the Department requests that a PRO or Independent Producer produce records to demonstrate compliance pursuant to section 18980.4.1(c) of the regulations, this subsection is necessary to ensure that the PRO or Independent Producer can retrieve such requested records from any applicable responsible end market as necessary.

### **Subsection (a)(2)(A)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must maintain records establishing the full chain of custody for covered material encompassing all intermediate supply chain entities and the end market for at least the past three years. This subsection is necessary to ensure that the records of each responsible end market and any intermediate supply chain entity that handles covered materials accepted by the end market can be inspected and verified for compliance with the requirements of the Act. To serve that purpose, accessible records must encompass all entities that handle covered materials, and the records must enable the PRO or Independent Producer to conduct comprehensive audits and verifications pursuant to section 18980.4.2.

Furthermore, the requirement that such records must be maintained for at least the past three years is necessary to ensure substantiation of compliance over a reasonable period consistent with the PRO's and Independent Producers' record maintenance obligations under the Act, as set forth in section 42051.1(m)(4) of the PRC.

Another purpose of this provision is to enable a PRO or Independent Producer to propose an alternative manner for establishing the transparency of intermediate supply chain entities in a plan or plan amendment, subject to CalRecycle approval. This language was included in response to written comments submitted by interested

parties and is necessary to provide a PRO or Independent Producer with sufficient flexibility to satisfy the requirements of the Act in the event that it is not feasible to maintain records establishing the full chain of custody with respect to intermediate supply chain entities for particular covered materials. CalRecycle will only approve the proposal if it determines the proposed alternative approach will provide the same or greater degree of transparency, which is necessary to ensure that CalRecycle and a PRO or Independent Producer can still access all relevant records and information that it may need to determine whether an end market is a responsible end market under the Act.

#### **Subsection (a)(2)(B)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must document all complaints, penalties, violations, and other forms of enforcement actions taken against such entity. This subsection is necessary to ensure that any violations or misconduct by a responsible end market that may be relevant to its status as a responsible end market—for instance, violations of laws intended to protect worker health and safety—can be identified and reviewed by CalRecycle or by a PRO or Independent Producer (pursuant to section 18980.4.2 of the regulations). This subsection is therefore necessary to ensure that CalRecycle and a PRO or Independent Producer can access relevant information that may be necessary to determine whether an end market is a responsible end market under the Act.

#### **Subsection (a)(2)(C)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must maintain records of all permits, licenses, and other clearances pertaining to collection, processing, or recycling activities required by local, sub-national, national, and international laws. This subsection is necessary to ensure CalRecycle and a PRO or Independent Producer (pursuant to section 18980.4.2 of the regulations) can access sufficient records to review and verify a responsible end market's compliance with the requirement established in section 18980.4(a)(1) of the regulations. This subsection is therefore necessary to ensure that CalRecycle and a PRO or Independent Producer can access relevant information that may be necessary to determine whether an end market is a responsible end market under the Act.

#### **Subsection (a)(2)(D)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must consent to be audited by a PRO or Independent Producer pursuant to section 18980.4.2 of the regulations. This subsection is necessary because the end market compliance audits and verifications process established in section 18980.4.2 of the regulations is the primary method by which the status of a responsible end market may be reviewed and verified by a PRO or Independent Producer and

CalRecycle. However, that auditing process is not explicitly established in the relevant statutory provisions. Therefore, to give effect to the auditing process, responsible end markets must consent to participate in that process. This subsection is therefore necessary to ensure that CalRecycle and a PRO or Independent Producer can access relevant information that may be necessary to determine whether an end market is a responsible end market under the Act.

#### **Subsection (a)(2)(E)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must provide any records it is required to retain pursuant to subsections (a)(2)(A) through (a)(2)(C) to a requesting PRO or Independent Producer. This subsection is necessary to establish a process by which a PRO or Independent Producer can access such records from a responsible end market outside of the annual audit and verification process. Pursuant to section 18980.4.1(c) of the regulations, a PRO or Independent Producer must maintain and produce any of the transparency records identified in subsection (a)(2) to CalRecycle upon its request. This subsection is necessary to ensure a PRO or Independent Producer can fulfill its record maintenance obligations under section 18980.4.1(c). This subsection is also necessary to ensure that, if CalRecycle requests specific transparency records that are not already in the possession of and being maintained by the PRO or Independent Producer, the PRO or Independent Producer can request and receive such records directly from the responsible end market without having to conduct an entire audit of the responsible end market. This subsection is therefore necessary to ensure that CalRecycle and a PRO or Independent Producer can access relevant information that may be necessary to determine whether an end market is a responsible end market under the Act.

#### **Subsection (a)(2)(F)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must disclose the types of covered materials and covered material categories it will accept upon a request by CalRecycle, a PRO, or any Independent Producer. Because a PRO or Independent Producer is obligated under the Act to support the development of new responsible end markets for covered materials that do not have a responsible end market, the PRO or Independent Producer must be able to ascertain the covered materials and covered material categories that are accepted by each existing responsible end market. Moreover, to effectively review proposed producer responsibility plans, annual reports, and budgets, including the proposed allocation of funds to support the development and sustenance of responsible end markets for each covered material category, CalRecycle must be able to survey the existing landscape of responsible end markets and the covered materials and covered material categories they accept. Finally, this subsection is necessary to allow CalRecycle to determine whether a given covered material category is treated as an incompatible material at a given responsible end market, and thus whether the

requirement set forth in section 18980.4(a)(3) of the regulations applies. Because such information is within the control of the end market, this subsection is necessary to ensure that any end market that intends to be treated as a responsible end market under the Act is obligated to share such information with a PRO, Independent Producer, or CalRecycle upon request.

### **Subsection (a)(2)(G)**

The purpose of this subsection is to establish an element of the transparency requirement for responsible end markets. This subsection specifies that, to be transparent, an entity must, upon request, provide a PRO or Independent Producer documentation establishing that it handles the materials in the manner described in subsection (a)(3). Subsection (a)(3) provides that, to be a responsible end market, the entity must minimize the discharge of emissions, effluents, and materials produced by the entity, and shall handle incompatible materials in the prescribed manner. Because such documentation is within the control and possession of the end market conducting the relevant activities, this subsection is necessary to ensure CalRecycle and a PRO or Independent Producer (pursuant to section 18980.4.2 of the regulations) can access sufficient records to review and verify a responsible end market's compliance with the requirement established in section 18980.4(a)(3) of the regulations. This subsection is therefore necessary to ensure that CalRecycle and a PRO or Independent Producer can access relevant information that may be necessary to determine whether an end market is a responsible end market under the Act.

### **Subsection (a)(3)**

The purpose of this subsection is to introduce the third set of criteria for evaluating whether an entity is a responsible end market. This subsection provides that, to be a responsible end market, the entity must minimize the discharge of emissions, effluents, and materials produced by the entity and must handle incompatible materials in the manner specified in subsections (a)(3)(A) and (a)(3)(B). This subsection is necessary to interpret and offer additional clarity as to what it means to conduct the recycling and recovery of materials or the disposal of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety, consistent with section 42041(ad) of the PRC. That statutory provision authorizes CalRecycle to identify responsible end markets and establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety. This subsection is responsive to that authority granted to CalRecycle by clarifying that, for an end market to be considered to conduct its recycling activities in a way that benefits the environment and minimizes risks, at a minimum, that end market must be able to demonstrate that it minimizes the discharge of emissions, effluents, and materials it produces. Moreover, with respect to the disposal of contaminants, this subsection offers additional guidance in subsections (a)(3)(A) and (a)(3)(B). This subsection is therefore necessary to clarify the meaning of section 42041(ad) and to offer specific and uniform guidance to regulated parties seeking to comply with the Act.

### **Subsection (a)(3)(A)**

The purpose of this subsection is to establish a responsible end market's obligations with respect to incompatible materials that are capable of being further processed and recycled. This subsection provides that, to be a responsible end market, an entity must send incompatible materials that can be further processed and recycled to entities that are authorized to further process and recycle the material. Section 42041(ad) of the PRC requires responsible end markets to recycle and recover materials and dispose of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety. When an entity receives covered material that can be further processed and recycled, but the entity itself does not recycle it, this subsection requires the entity to send such materials for further processing and recycling to maximize environmental benefits and minimize health and safety risks. This subsection is necessary to effectuate the intent of section 42041(ad) of the PRC and to prevent responsible end markets from being able to dispose of materials that are capable of being further processed and recycled. Moreover, this subsection is necessary to provide clarity and consistency regarding how a responsible end market must manage incompatible materials.

#### **Subsection (a)(3)(B)**

The purpose of this subsection is to establish a responsible end market's obligations with respect to incompatible materials that are not capable of being further processed and recycled. This subsection provides that, to be a responsible end market, an entity must dispose of incompatible materials that cannot be further processed and recycled in a way that minimizes significant effects on the environment and risks to public health and safety. Section 42041(ad) of the PRC requires responsible end markets to recycle and recover materials and dispose of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety. This subsection is necessary to effectuate the intent of section 42041(ad) of the PRC and to prevent responsible end markets from being able to dispose of materials in a way that imposes excessive significant effects on the environment and risks to public health and safety. Moreover, this subsection is necessary to provide clarity and consistency regarding how a responsible end market must manage incompatible materials.

#### **Subsection (a)(4)**

The purpose of this subsection is to introduce the fourth set of criteria for evaluating whether an entity is a responsible end market. This subsection provides that, to be a responsible end market, an entity must achieve the applicable outcomes established in subsections (a)(4)(A) and (a)(4)(B). These outcomes, which include average recycling yields for recyclable covered material (subsection (a)(4)(A)) and complete biological decomposition of compostable covered material (subsection (a)(4)(B)), are necessary to ensure that responsible end markets conduct the recycling and recovery of materials and the disposal of contaminants in a way that benefits the environment and minimizes risks to public health and worker health and safety, consistent with section 42041(ad) of the PRC. This subsection is necessary to ensure responsible end markets minimize the loss of covered materials and maximize the reintroduction of recovered materials into the supply chain, and to ensure materials are managed in a way that is consistent with

the waste hierarchy established in section 40051 of the PRC, as required by the Act.

**Subsection (a)(4)(A)**

The purpose of this subsection is to establish a responsible end market's obligation with respect to its recycling yield. This subsection provides that, to be a responsible end market for specified material types, an entity must achieve an average recycling yield each calendar year that meets or exceeds the threshold recycling yield. This subsection further specifies that a PRO's or Independent Producer's producer responsibility plan will identify a threshold recycling yield for each specified material type and will include a justification of such threshold recycling yield, including how the yield is informed by any relevant data in the most recent needs assessment. This subsection is necessary to establish the mechanism by which CalRecycle and a PRO or Independent Producer can conduct a quantitative assessment to determine whether an end market is minimizing loss and maximizing the recovery and reintroduction of materials into the supply chain such that it is a responsible end market, as set forth in section 42041(ad) of the PRC. This subsection is necessary to establish a clear and uniform standard for the minimum recycling yield that an end market must achieve to be deemed a responsible end market under the Act.

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

The purpose of this subsection is to specify the methodology for determining a responsible end market's average recycling yield. This subsection provides that the average recycling yield is calculated by dividing the total weight of material recycled by the total weight of material that was accepted by the end market and that was not sent for further processing to another end market. The exclusion of material that is sent for further processing to another end market is necessary to ensure that such material is not counted in two different average recycling yields for two separate end markets. This subsection is necessary to establish a clear and uniform methodology by which all responsible end markets will calculate their average recycling yields. Additionally, this methodology for calculating yield is consistent with yield calculations and recycling efficiency rate calculations for other EPR programs.

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

The purpose of this subsection is to specify the method for determining the weight of material recycled when calculating the average recycling yield under subsection (a)(4)(A)(i). This subsection provides that the weight of material recycled must be determined according to the process established in section 18980.3.2(b)(2) of the regulations. That subsection provides that the weight recycled is calculated at the point the material is sold or transferred by a responsible end market as feedstock that meets the necessary quality standards. However, this subsection further provides that, for the purpose of the average recycling yield calculation, "material" includes both covered material and non-covered material. Therefore, the numerator in the average recycling yield calculation is calculated at the point the recycled material—comprised of both covered material and non-covered material—is sold or transferred by the responsible end market as feedstock that meets the necessary quality standards. This subsection is

necessary to clarify the meaning of “the total weight of material that has been recycled,” as used in subsection (a)(1)(A)(i), and to offer clear and uniform guidance for the methodology to be used when calculating the average recycling yield of a responsible end market. The process set forth in section 18980.3.2(b)(2) of the regulations is necessary because it represents the most reasonable, relevant, and accurate point at which to calculate the weight of material recycled, and the inclusion of both covered material and non-covered material in the meaning of “material” in the average recycling yield is necessary because the average recycling yield is intended to reflect the amount of loss that is incurred in the recycling process, including the loss of non-covered material contamination and incompatible materials that cannot be further processed and recycled. By including non-covered material in the meaning of “materials,” the average recycling yield calculation reflects the detrimental effects that the presence of excessive non-covered material contaminants may have on covered materials (including, for instance, by limiting their recyclability) and ensures that responsible end markets utilize measures designed to minimize risks to the environment. If only covered material were included in the average recycling yield calculation, the average recycling yield would offer limited insight into the efficiency of a responsible end market’s recycling and recovery operations. As such, the methodology must include non-covered material in its calculation.

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

The purpose of this subsection is to specify how responsible end markets will be required to calculate average recycling yields. This subsection provides that an end market must calculate a separate yield rate for each of its recycling processes that accept covered material. Consistent with the Act and regulations, an end market may be considered a responsible end market for some, but not necessarily all, of the covered materials it accepts. To determine whether an end market shall be considered a responsible end market for the covered materials it accepts, the end market’s separate physical process that accepts and recycles the covered material must satisfy the requirements of subsection (a). Therefore, the end market must calculate an average recycling yield for each separate physical process under which it recycles any of the covered materials it accepts. For instance, if an end market operates two separate physical recycling processes for different covered materials it accepts, the end market must calculate a separate average recycling yield for each of the two recycling processes to demonstrate it is a responsible end market for the covered materials managed by such processes. This remains the case regardless of whether such processes accept non-covered materials in addition to covered materials. This is necessary to ensure that all covered materials accepted by a responsible end market are represented by an average recycling yield that accurately reflects the efficiency and environmental impact of the recycling process that governs such materials. This subsection is necessary to ensure an end market will be considered a responsible end market only for the covered materials for which it can demonstrate an average recycling yield that satisfies the criteria established in subsection (a)(4)(A) and to ensure that an end market is not considered a responsible end market for any covered materials that are accepted under recycling processes that fail to meet these criteria.

### **Subsection (a)(4)(B)**

The purpose of this subsection is to establish responsible end market requirements with respect to the generation of recycled organic products from covered materials comprising plastic. It provides that, to be a responsible end market for such covered materials, an end market must meet two primary requirements: The plastic covered material must fully biologically decompose, and the recycled organic product must meet standards necessary for sale in the marketplace.

The first requirement (full biological decomposition) is necessary because plastic substances, by themselves, cannot be “recycled organic product” (as defined in section 18980.1(a)(20)). Therefore, an end market cannot logically be said to produce recycled organic product in the first place if that product contains undecomposed plastic. Moreover, substances that otherwise would be recycled organic products but contain particles of undecomposed plastic would necessarily introduce plastic particles into the environment. Pursuant to the requirement of section 42041(aa)(5) of the PRC (requiring regulations to “encourage recycling that minimizes . . . environmental impacts . . . and public health impacts”) and the Legislature’s acknowledgment that plastic in the environment presents health and environmental impacts that must be mitigated (e.g., sections 42040(b) and 42064 of the PRC), facilities can only be responsible end markets (i.e., ones that conduct “recycling”) if their output product does not release such particles into the environment. Relatedly, considering an end market that produces plastic-containing compost to be a “responsible end market” would contravene the definition of that term in section 42041(ad), which requires that responsible end markets recycle and recover materials “in a way that benefits the environment and minimizes risks to public health.” It also authorizes regulations, such as this one, that “establish criteria regarding benefits to the environment.”

This subsection includes an explanation of what “full biological decomposition” means. This is necessary because that phrase is technical in nature and might not otherwise be universally and consistently understood. The explanation establishes that the phrase refers to the processes and scientific principles commonly understood to underlie the conversion of materials into compost.

However, this subsection limits the biological decomposition requirement to materials intentionally included in the generation of recycled organic products. This is necessary because unintentionally included materials necessarily were not intended to biologically decompose in the first place. Because those cannot be processed by the facility, they fall within the definition of “incompatible materials” and logically must be treated as such (a requirement addressed in subsection (a)(3)). This requirement is necessary to ensure that end markets can only be considered “responsible end markets” if, as required by the definition of that term in section 42041(ad) of the PRC, its “disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health” and satisfies the established criteria “regarding benefits to the environment.”

The second requirement (meeting the standards necessary for sale in the marketplace)

ensures that composting is understood to be subject to the requirements for any process to be considered “recycling,” as section 42041(aa)(10) of the PRC defines that term. In particular, recycling must generate material “that meet[s] the quality standards necessary to be used in the marketplace.” The added clarity from expressly incorporating that part of the “recycling” definition is necessary because laypersons often understand “composting” to be distinct from “recycling,” but the Act expressly considers “compost” to be the result of “recycling,” as defined in 42041(aa)(10). Accordingly, for an end market producing compost to be considered a responsible end market (i.e., one that conducts “recycling”), its compost necessarily must be of such quality that it can be sold in the marketplace.

#### **Subsection (a)(4)(C)**

The purpose of this subsection is to establish requirements for responsible end markets for fiber or paper covered material having no plastic components. The substantive requirement is that the inputs must biologically decompose, with the composting process and resulting recycled organic product satisfying standards already applicable under other California regulations. This is necessary to ensure that all composting responsible end markets are subject to uniform requirements and produce compost that meets the quality standards necessary to be used in the marketplace. Moreover, this subsection is necessary because the “fully biological decompose” requirement applicable to plastic materials (for the reasons discussed above) is stricter than necessary for fiber and paper. In contrast to plastic fragments generally, fiber and paper fragments are not contaminants in the composting process and, even if they fail to fully decompose during processing, they are organic materials that continue to biodegrade after processing without presenting uncertain environmental and health risks.

#### **Subsection (b)**

The purpose of this subsection is to further clarify the term “end market,” with illustrative examples for different material types in the following subsections. This is necessary because end markets serve an essential function under the Act and because the Act does not specify the end market for different material types. This subsection provides clear and uniform guidance to ensure consistent application of the end market concept.

Defining an end market as an entity that produces recycled organic product or recycled content feedstock, regardless of whether it sells, transfers, or uses that output itself, is necessary to reflect the definition of “recycling” in section 42041(aa)(1) of the PRC: That production is the point in the recycling process at which the former covered material has the qualities necessary to be “returned . . . to, or maintain[ed] within, the economic mainstream . . . in the form of recovered material for new, reused, or reconstituted products, that meet the quality standards necessary to be used in the marketplace.”

Additionally, it is necessary to specify that an entity may be an end market for some materials and an intermediate supply chain entity for others because there can only be one end market for any given material. If an entity accepts material but later transfers it

to other entities for further processing, the entity necessarily cannot be deemed an end market for that material because it did not complete the process of recycling it.

#### **Subsection (b)(1)**

The purpose of this subsection is to specify the end market for material made of glass. The end market is the entity that first produces glass feedstock that meets the quality standards to be used in lieu of virgin material to create new or reconstituted products. Another purpose of this subsection is to provide an illustrative example of an end market for material made of glass. This subsection is necessary to offer clear and uniform guidance to producers of glass covered material that is consistent with the meaning of end markets established in subsection (b).

#### **Subsection (b)(2)**

The purpose of this subsection is to specify the end market for material made of metal. The end market is the entity that first produces metal feedstock that meets the quality standards to be used in lieu of virgin material to create new or reconstituted products. Another purpose of this subsection is to provide illustrative examples of end markets for material made of metal. This subsection is necessary to offer clear and uniform guidance to producers of metal covered material that is consistent with the meaning of end markets established in subsection (b).

#### **Subsection (b)(3)**

The purpose of this subsection is to specify the end market for material made of paper or fiber. The end market is the entity that first produces paper feedstock that meets the quality standards to be used in lieu of virgin material to create new or reconstituted products. Another purpose of this subsection is to provide an illustrative example of end markets for material made of paper or fiber. This subsection is necessary to offer clear and uniform guidance to producers of paper or fiber covered material that is consistent with the meaning of end markets established in subsection (b).

#### **Subsection (b)(4)**

The purpose of this subsection is to specify the end market for material made of plastic. The end market is the entity that first produces plastic feedstock that meets the quality standards to be used in lieu of virgin material to create new or reconstituted products.

Another purpose of this subsection is to provide an illustrative example of end markets for material made of plastic. This subsection is necessary to offer clear and uniform guidance to producers of plastic covered material that is consistent with the meaning of end markets established in subsection (b).

#### **Subsection (b)(5)**

The purpose of this subsection is to specify the end market for material made of wood. The end market is the entity that first produces wood feedstock that meets the quality standards to be used in lieu of virgin material to create new or reconstituted products. Another purpose of this subsection is to provide an illustrative example of end markets for material made of wood. This subsection is necessary to offer clear and uniform guidance to producers of wood covered material that is consistent with the meaning of

end markets established in subsection (b).

**Subsection (b)(6)**

The purpose of this subsection is to specify the end market for material that is converted into a recycled organic product. The end market is the entity that converts the material into a recycled organic product. Another purpose of this subsection is to provide an illustrative example of end markets for such material. This subsection is necessary to offer clear and uniform guidance for producers of covered material that is converted into a recycled organic product that is consistent with the meaning of end markets established in subsection (b).

**Subsection (b)(7)**

The purpose of this subsection is to specify the end market for covered material that is eligible for multiple types of end markets. This subsection provides that any of the eligible end markets will be deemed a valid end market for such material. This is necessary because covered materials may consist of multiple material types with varying end markets, or otherwise be eligible for multiple end markets, and the Act provides no guidance on identifying the appropriate end market in such instances. For example, a covered material made of paper could either be recycled into paper feedstock by an entity described in subsection (b)(3) or converted into a recycled organic product by an entity described in subsection (b)(6). This subsection is necessary to offer clear and uniform guidance for producers of such covered material in a way that preserves significant flexibility for the producers in determining how to comply with the Act and that is consistent with the meaning of end markets established in subsection (b).

**Subsection (b)(8)**

The purpose of this subsection is to specify the end market for covered material items made of material types that are not represented in subsections (b)(1) through (b)(6). The end market in such an instance must be established by a study conducted by a PRO or Independent Producer as set forth in section 18980.4.3(b)(1) of the regulations. This is necessary to offer clear and uniform guidance to producers of covered material for which there is not already an identifiable end market and to ensure there is an established process and criteria for identifying end markets for any covered materials that must be sent to a responsible end market in compliance with the Act but that are not otherwise addressed in subsections (b)(1) through (b)(6). Having the PRO or an Independent Producer conduct such a study is also consistent with the Act because, in the EPR model, producers are responsible for developing and implementing the program or programs under the Act. Accordingly, if there is a material type not contemplated by these regulations that a PRO or Independent Producer thinks should be an end market, a PRO or Independent Producer should have the ability to conduct research to determine whether that end market should be established.

**§ 18980.4.1. END MARKET IDENTIFICATION**

**Subsection (a)**

The purpose of this subsection is to establish the obligation of a PRO or Independent

Producer to include in its plan the method by which it will identify responsible end markets. The following subsections establish the minimum requirements that must be included. This subsection is necessary because, while section 42051.1(c) of the PRC requires a PRO or Independent Producer to describe in its plan how it will meet the requirements of the Act, including by providing for the necessary infrastructure and responsible end markets to ensure the covered material will achieve the requirements of section 42050, the Act does not explicitly require the plan to describe how it will identify responsible end markets. Ensuring that covered material is sent to a responsible end market is critical to the achievement of the objectives of the Act, and this requirement is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review the PRO's or Independent Producer's proposed method for identifying responsible end markets and to verify it is consistent with the Act and the regulations. Moreover, because the PRO or Independent Producer will determine how to best manage the covered materials included in its plan, the PRO or Independent Producer is in the best position to identify any responsible end markets that will meet the needs of its covered materials. This subsection is therefore necessary to establish clear and consistent standards for the producer responsibility plan with respect to the identification of responsible end markets and to ensure the PRO or Independent Producer understands its obligation.

#### **Subsection (a)(1)**

The purpose of this subsection is to specify the first requirement of a producer responsibility plan with respect to the identification of responsible end markets. This subsection requires a PRO or Independent Producer to describe how end markets will be identified in its plan. This is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed method for identifying end markets and to verify that only appropriate entities will be identified as end markets, consistent with the Act and section 18980.4(b) of the regulations.

#### **Subsection (a)(2)**

The purpose of this subsection is to specify the second requirement of a producer responsibility plan with respect to the identification of responsible end markets. This subsection requires a PRO or Independent Producer to describe the process by which it will evaluate whether each end market meets the standards of a responsible end market, as specified in section 18980.4(a) of the regulations. This is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed process for evaluating whether the end markets identified pursuant to subsection (a)(1) meet the criteria to be responsible end markets pursuant to section 18980.4(a), and to verify that only appropriate end markets will be considered responsible end markets under the PRO's or Independent Producer's plan.

#### **Subsection (a)(3)**

The purpose of this subsection is to specify the third requirement of a producer

responsibility plan with respect to the identification of responsible end markets. This subsection requires a PRO or Independent Producer to describe how it will obtain the necessary cooperation from end markets and intermediate supply chain entities to enable it to identify and confirm that an end market is responsible as described in section 18980.4(a) of the regulations. Because the criteria for responsible end markets, as described in section 18980.4(a), depend in part on information that is within the control of end markets and intermediate supply chain entities, the cooperation of such entities with a PRO or Independent Producer will be necessary to ensure the PRO or Independent Producer can identify and verify responsible end markets in compliance with the Act. Therefore, this subsection is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed method for obtaining the necessary cooperation and to verify that responsible end markets satisfy the criteria set forth in section 18980.4(a).

#### **Subsection (b)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to maintain records of all contracts or agreements established with end markets and intermediate supply chain entities during the contract term and for at least three years thereafter. CalRecycle anticipates that a PRO or Independent Producer may enter into contracts and agreements with end markets and intermediate supply chain entities to comply with the Act. The requirement to maintain records of any such contracts or agreements is necessary to ensure CalRecycle has the opportunity to require a PRO or Independent Producer to produce these records pursuant to section 18980.4.1(c) of the regulations and to inspect these records, if necessary, to verify whether an end market is a responsible end market, consistent with the requirements of the Act. Additionally, this provision is necessary to ensure a PRO maintains sufficient records to comply with any of its Closure and Transfer Plan requirements if necessary, including those set forth in sections 18980.8.2(b)(9) and 18980.8.2(b)(10)(C) of the regulations. The requirement to maintain such records during the contract term and for at least three years thereafter is necessary to offer a PRO or Independent Producer clear guidance as to the extent of its record maintenance obligations with respect to end markets and to implement and interpret the PRO's or Independent Producer's record maintenance obligations under the Act, as set forth in section 42051.1(m)(4) of the PRC.

#### **Subsection (c)**

One purpose of this subsection is to establish the obligation of a PRO or Independent Producer to maintain all applicable records that it receives from end markets and intermediate supply chain entities for at least three years and to provide the records to CalRecycle upon written request. The requirement to maintain such records, including the transparency records described in the cited sections of the regulations, is necessary to ensure CalRecycle has the opportunity to require a PRO or Independent Producer to produce these records and to inspect these records, if necessary, to verify whether an end market is a responsible end market, consistent with the requirements of the Act.

The requirement to maintain such records for at least three years is necessary to offer a PRO or Independent Producer clear guidance as to the extent of its record maintenance obligations with respect to end markets and to implement and interpret the PRO's or Independent Producer's record maintenance obligations under the Act, as set forth in section 42051.1(m)(4) of the PRC.

Another purpose of this subsection is to notify a PRO or Independent Producer that records provided to CalRecycle under this subsection are public documents subject to mandatory disclosure under the California Public Records Act unless an exemption from mandatory disclosure applies. This subsection further notifies a PRO or Independent Producer that it is responsible for identifying the appropriate portions of such records as trade secrets to CalRecycle, and that such portions will be withheld from public disclosure, subject to section 18980.14 of the regulations. This subsection is necessary to establish clear and uniform standards and processes by which such records will be treated under the California Public Records Act and to offer clear guidance to a PRO or Independent Producer that produces records containing trade secrets to CalRecycle under this subsection.

#### **Subsection (d)**

The purpose of this subsection and its constituent parts is to implement the requirement of section 42041(aa)(5) that the regulations include "criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." The effect of subsection (d) is to identify the range of technologies at issue for the criteria: those that are not mechanical technologies that were in use as of the effective date of the Act. That limitation is necessary for two reasons. First, the Act's legislative history, which specifically identifies technologies "such as gasification, pyrolysis, and solvent-based technologies," establishes that one focus of 42041(aa)(5) is chemical-based recycling. Second, as further set forth below, establishing a baseline for applying 42041(aa)(5) is appropriate because statute does not otherwise give instruction as to what amount of hazardous waste generation is "significant." Using mechanical recycling as practiced when the Act took effect as that baseline is appropriate because those technologies were well established by that point as having acceptable ranges of environmental impacts, whereas the likely ranges of hazardous waste generation from emerging chemical-based technologies and mechanical ones not yet practiced in the state are unsettled.

#### **Subsection (d)(1)**

The purpose of this subsection is to establish that whether an amount of hazardous waste is "significant" depends on the health and environmental risks that the amount of hazardous waste presents. This is necessary because statute does not present any objective basis for evaluating significance. Because classification of waste as "hazardous" to begin with relates to its effects on health and the environment, the risk of those effects from the amount of hazardous waste generated by a technology is the most logical basis for that evaluation.

This subsection also establishes that the federal regulatory definition of “hazardous waste” applies. This is necessary because, while section 42041(aa)(5) of the PRC requires CalRecycle’s regulations to address hazardous waste in the context of recycling, the Act does not define hazardous waste. The subsection incorporates the federal definition of that term because the Act necessarily concerns the usage of technology that may occur outside the state, so reference to federal law, which applies regardless of the state, ensures uniform application of the requirements related to hazardous waste and minimizes the likelihood of inconsistency with other states’ laws.

#### **Subsection (d)(1)(A)**

The purpose of this section is to establish that mechanical recycling technologies necessarily must be deemed not to produce significant amounts of hazardous waste. This logically follows from mechanical recycling not being subject to the criteria for evaluating the significance of the amounts of hazardous waste produced by other technologies.

#### **Subsection (d)(1)(B)**

The purpose of this subsection is to explain that handling and disposal of hazardous waste in compliance with applicable permits mitigates the health and environmental risks presented by that amount to below a substantial risk. This is necessary because permitting laws ensure that the handling of hazardous waste, if conducted in compliance with required permits, avoids those risks. As explained above with respect to subsection (d)(1) as a whole, the significance of an amount of hazardous waste necessarily depends on the presence of those risks.

This subsection also provides that the use of a technology will not be considered to cause substantial health and environmental risks based solely on minor instances of permit violations. This is necessary to avoid unreasonable application of the criteria set forth in subsection (d) overall. Minor violations may not, for example, relate directly to the risks presented by hazardous waste, and, more generally, violations that do not cause actual or reasonably likely harm do not logically implicate the concerns underlying the prohibition of technologies based on the generation of hazardous waste.

#### **Subsection (d)(2)**

The purpose of this subsection is to establish that the use of a technology under consideration cannot be considered “recycling” unless the facility’s operations are consistent with the provisions of ISO 59014:2024, which is a document that establishes principles, requirements, and guidance for the sustainable, traceable conduct of materials recovery. This requirement provides additional assurance that the use of the technology under consideration reasonably avoids risks inherent in the usage of any technology and recovers materials in a way that enables determination of the amount of materials recovered.

Besides serving the mandate under section 42041(aa)(5) that production of “significant amounts of hazardous waste” be avoided, this requirement also gives effect to the

statutory definition of “responsible end markets” under section 42041(ad). That definition requires responsible end markets to operate in a manner “that benefits the environment and minimizes risks to public health and worker health and safety.” Section 42041(ad) further authorizes the Department to “establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety.” This subsection is necessary to give full effect to these statutory provisions.

### **Subsection (d)(3)**

The purpose of this subdivision is to clarify how subdivision (d) and its constituent parts relate to all other provisions of the regulations concerning when processing of materials may be considered “recycling.” Without this clarity, subdivision (d) may be interpreted as setting forth a sufficient basis for technologies under consideration to be considered “recycling.” To the contrary, these provisions only add limitations on what can be considered recycling. One effect of this subsection, for example, is to clarify that facilities can only be considered to conduct “recycling” if they satisfy all applicable criteria in section 18980.4 for being “responsible end markets.”

### **Subsections (d)(4) and (d)(4)(A) through (d)(4)(E)**

The purpose of these subsections is to prohibit the PRO and Independent Producers from considering an facility’s use of the relevant technology “recycling” unless it obtains from the facility extensive information relevant to whether such use satisfies the requirements described above. Evaluation of compliance with those requirements necessarily requires the information described in (d)(4)(A) through (E). Further, the justification required by subsection (d)(5) necessarily requires obtaining data from the facility.

### **Subsections (d)(5) and (d)(6)**

The purpose of these subsections is to establish the procedural obligations of the PRO and Independent Producers that consider the technology at issue to be “recycling.” First, a producer responsibility plan must include justification for how the usage of the technology will satisfy the ultimate requirement of not producing significant amounts of hazardous waste (subsection (d)(5)). This requirement is necessary so that the Department can carry out its obligation to implement and enforce the Act and ensure that all its requirements are met. For similar reasons, subsection (d)(6) requires that facilities that use the technology annually report the information required under subsection (d)(4) to the relevant PRO or Independent Producer. This ensures that the PRO or Independent Producer does not rely on outdated information for continuing to consider the relevant activities to constitute “recycling.” It also ensures that the Department will have access to up-to-date information for assessing compliance on an ongoing basis rather than only through its consideration of the plans, which may occur as infrequently as every five years.

## **§ 18980.4.2. END MARKET COMPLIANCE AUDITS AND VERIFICATION**

### **Subsection (a)**

One purpose of this subsection is to establish and clarify the obligation of a PRO or Independent Producer to arrange for the annual compliance audit of each responsible end market it uses. This subsection provides that such audits must be conducted and completed to ensure that the end market meets the requirements of a responsible end market pursuant to section 18980.4(a) of the regulations. This is necessary because section 42041(aa)(3) of the PRC specifies that, for covered material to be considered recycled, it must be sent to a responsible end market. However, the Act does not explicitly establish any mechanism by which a PRO or Independent Producer can continually verify, throughout the implementation of its plan, that the end markets it uses meet the criteria for responsible end markets under the Act. Annual compliance audits provide an essential mechanism to evaluate the processes, procedures, and records of an end market to verify that it is continuing to operate responsibly. Therefore, this subsection is necessary to specify the auditing mechanism by which a PRO or Independent must continually verify the adequacy of its responsible end markets throughout the duration of its plan implementation and to offer clear guidance to interested parties as to the requirements that will govern such compliance audits.

Another purpose of this subsection is to specify that the annual compliance audits must be conducted by an independent third party. This is necessary to maximize credibility, ensure the integrity of the audits, and avoid any potential conflicts of interest that could arise if the audits were conducted by a company affiliated with the relevant PRO, Independent Producer, or end market. Because the outcome of a compliance audit may render an end market no longer responsible, and thus could negatively impact the ongoing implementation of a PRO or Independent Producer plan that relies on such end market, independent third parties are necessary to ensure that each audit is conducted in a way that is fair and without bias.

Finally, another purpose of this subsection is to specify the timeline for the compliance audits. This subsection requires the compliance audits to be conducted and completed each year. This is necessary because annual audits allow a PRO or Independent Producer and CalRecycle to receive updated and relevant audit findings on a regular basis without imposing a timeline that is unnecessarily burdensome or expensive for a PRO or Independent Producer and end markets. Additionally, this annual requirement is necessary to ensure that responsible end markets consistently satisfy the requirements of section 18980.4(a) and to ensure that CalRecycle and the PRO or Independent Producer will identify any failure to do so promptly and without delay. Finally, this annual requirement is necessary for consistency with the annual audit process that is imposed on a PRO or Independent Producer pursuant to section 42054(b) of the PRC.

#### **Subsection (b)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to include the findings of its compliance audits in its annual reports to CalRecycle and to provide CalRecycle with full compliance audit reports upon request. This subsection is necessary to offer clear guidance to a PRO or Independent Producer

as to its reporting and production obligations with respect to annual compliance audits and to establish a clear and uniform process by which CalRecycle will have the opportunity to review the findings of an annual audit and to access the full audit reports upon request. This subsection is necessary to enable CalRecycle to verify that a PRO or Independent Producer ensures that annual compliance audits of responsible end markets are conducted and completed in compliance with subsection (a). Moreover, this subsection is necessary to clarify the information a PRO or Independent must report to CalRecycle pursuant to section 42051.3(a)(3)(D)(ii) of the PRC. Additionally, this subsection is necessary for transparency and to enable CalRecycle to verify that the findings provided in an annual report are consistent with the full audit report and ensure each responsible end market meets the requirements to maintain its designation.

Finally, this subsection is necessary because it creates a uniform requirement to provide such reports, and CalRecycle may need to review full compliance audit reports during an audit of a PRO or Independent Producer to determine compliance with the Act.

### **Subsection (c)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to annually verify that each end market it uses satisfies the requirements to be a responsible end market pursuant to section 18980.4(a) and document each verification in its annual report. Consistent with section 42041(aa)(3) of the PRC, a PRO or Independent Producer is responsible for ensuring that its covered materials are sent to responsible end markets. This subsection is therefore necessary to ensure a PRO or Independent Producer regularly and thoroughly considers the findings of an annual compliance audit and verifies to CalRecycle in writing that such findings warrant an end market's continued designation as a responsible end market. This subsection is necessary to offer clear guidance to a PRO or Independent Producer as to the required format and process of this required verification. That this verification is included in the annual report is necessary for consistency with other reporting requirements, to interpret and offer clear guidance regarding a PRO's or Independent Producer's reporting obligations under section 42051.3(a)(3)(D)(ii) of the PRC, and to ensure there is an established process for submitting such verification that is understood by the relevant entities. Moreover, this subsection is necessary to notify CalRecycle and the public of a PRO's or Independent Producer's position as to the status of any end markets it uses in its plan.

Another purpose of this subsection is to establish the minimum requirements for a verification. This is necessary to ensure a PRO or Independent Producer is aware of the required contents of its annual verification, and those minimum requirements are described in the following subsections.

### **Subsection (c)(1)**

The purpose of this subsection is to establish the first minimum requirement for a PRO's or Independent Producer's verification under subsection (c). This subsection specifies that a PRO or Independent Producer must include in its verification

information demonstrating that the responsible end market met or exceeded its average recycling yield threshold, including a detailed explanation of its methodology. This provision is necessary to establish a clear and consistent process for a PRO or Independent Producer to demonstrate that each of the end markets it uses meets the average recycling yield requirement of section 18980.4(a)(4). While section 18980.4(a)(4) requires each responsible end market to achieve the average recycling yield and subsection (c) requires a PRO or Independent Producer to verify that each of its end markets satisfy the requirements to be a responsible end market, this subsection is necessary to provide CalRecycle with the opportunity to review for itself each entity's average recycling yield—as well as the measurements and calculations that went into such yield—for compliance with the requirements of the Act. This subsection is therefore necessary to ensure that CalRecycle is given the opportunity and has sufficient information to evaluate the relevant data and to verify and oversee that each PRO or Independent Producer is complying with the average yield requirement of section 18980.4(a)(4) through its use of end markets.

### **Subsection (c)(2)**

The purpose of this subsection is to establish the second minimum requirement for a PRO's or Independent Producer's verification under subsection (c). This subsection specifies that a PRO or Independent Producer must include in its verification all information and evidence related to any failure of an end market to meet the requirements of section 18980.4(a). A failure of an end market to meet the requirements of section 18980.4(a) will result in the loss of its status as a responsible end market, resulting in covered materials sent to that end market no longer being considered recycled. This provision is therefore necessary to ensure CalRecycle is given sufficient information and evidence to evaluate and understand the type and extent of any failure by an end market to satisfy the requirements of section 18980.4(a). The specific type and extent of such failure may inform and impact any next steps to be taken by CalRecycle, including, for instance, the commencement of further investigations under section 42080(a) of the PRC or issuance of a notice of violation pursuant to section 42081(a) of the PRC.

### **Subsection (c)(3)**

The purpose of this subsection is to establish the third minimum requirement for a PRO's or Independent Producer's verification under subsection (c). This subsection specifies that a PRO or Independent Producer must include in its verification descriptions of any corrective actions that were taken by or against an end market. Section 18980.4(a)(2)(B) of the regulations provides that end markets are required to document any complaints, penalties, violations, and other forms of enforcement action taken against them. This provision is necessary to ensure that CalRecycle is made aware of any corrective actions that were taken by or against an end market, including those made in response to any of the complaints, penalties, violations, and other forms of enforcement action referenced in that section. Such descriptions will enable CalRecycle to evaluate and verify whether all necessary corrective actions have been taken to resolve an end market's failure to meet the requirements of section

18980.4(a). Moreover, the presence or absence of any corrective actions may inform and impact any next steps to be taken by CalRecycle, including, for instance, the commencement of further investigations under section 42080(a) of the PRC or issuance of a notice of violation pursuant to section 42081(a) of the PRC.

#### **Subsection (c)(4)**

The purpose of this subsection is to establish the fourth minimum requirement for a PRO's or Independent Producer's verification under subsection (c). This subsection specifies that a PRO or Independent Producer must include in its verification descriptions of any instances where it prohibited sending materials to an end market due to the entity's failure to satisfy the requirements to be a responsible end market pursuant to section 18980.4(a). This provision is necessary because a PRO or Independent Producer is required to ensure its covered materials are sent to a responsible end market to be considered recycled under section 42041(aa) of the PRC. If an end market fails to meet the standards of a responsible end market, the materials sent to the end market are not considered recycled. Such descriptions will enable CalRecycle to evaluate what measures a PRO or Independent Producer has taken when it has discovered that an end market it uses fails to satisfy the requirements of section 18980.4(a) and to verify whether those measures are appropriate and sufficient to ensure the PRO or Independent Producer maintains compliance with the Act. Moreover, the presence or absence of any such measures may inform and impact any next steps to be taken by CalRecycle, including, for instance, the commencement of further investigations under section 42080(a) of the PRC or issuance of a notice of violation pursuant to section 42081(a) of the PRC.

#### **Subsection (c)(5)**

The purpose of this subsection is to establish the fifth minimum requirement for a PRO's or Independent Producer's verification under subsection (c). This subsection specifies that a PRO or Independent Producer must include in its verification records of complaints made against the end market. This is necessary to ensure that CalRecycle is made aware of any complaints that were made against an end market and is given the opportunity to evaluate and verify, in accordance with subsections (c)(3) and (c)(4), whether the PRO or Independent Producer and end market has taken all appropriate actions in response to such complaints to ensure that the end market continues to satisfy the requirements of section 18980.4(a) and the PRO or Independent Producer remains in compliance with the Act. Moreover, the inclusion of a relevant complaint—and any corresponding action taken or not taken in response to such complaint—may inform and impact any next steps to be taken by CalRecycle, including, for instance, the commencement of further investigations under section 42080(a) of the PRC or issuance of a notice of violation pursuant to section 42081(a) of the PRC.

#### **Subsection (d)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to provide verification records to CalRecycle. This subsection specifies that a PRO or Independent Producer must provide CalRecycle with any records necessary

to verify responsible end markets. While section 18980.4.1(c) of the regulations requires a PRO or Independent Producer to maintain specified records and to produce those records to CalRecycle upon request, this subsection goes further by requiring the PRO or Independent Producer to provide CalRecycle with any records necessary to verify end markets, whether or not those records are specified in the sections referenced in 18980.4.1(c) and whether or not those records are ordinarily maintained by the PRO or Independent Producer. This subsection is necessary to offer clear and uniform guidance to a PRO or Independent Producer as to its production responsibilities and to ensure that CalRecycle can review and evaluate any records that are necessary to verify a responsible end market. Because the verification of responsible end markets will be instrumental to a PRO's or Independent Producer's compliance with the requirements of the Act and the achievement of its objectives, this subsection is necessary to ensure CalRecycle is given adequate oversight mechanisms.

Another purpose of this subsection is to specify the format of such records. This subsection provides that such records must be provided to CalRecycle without redactions. This is necessary for transparency and to ensure that CalRecycle has access to the entire record, including any information that may be relevant to the verification of a responsible end market.

Finally, another purpose of this subsection is to provide that a PRO or Independent Producer may specify what records it claims are exempt from public disclosure. This is necessary to establish clear and uniform standards and processes by which such records will be treated under the California Public Records Act and to offer clear guidance to a PRO or Independent Producer that produces exempt records under this section.

### **Subsection (e)**

The purpose of this subsection is to establish the effect of a determination by CalRecycle that an end market no longer meets the standards specified in section 18980.4. This subsection provides that, if CalRecycle makes such a determination, the end market is no longer a responsible end market, and any covered material sent to the end market will not be considered recycled. While this result is implicit in, and required by, the language of section 42041(aa)(3) of the PRC and section 18980.4 of the regulations, this subsection is necessary to offer clear and explicit notice to a PRO or Independent Producer as to the consequence of a failure by any of its end markets to satisfy the requirements of section 18980.4. Pursuant to section 18980.4, an identified end market must meet the criteria established therein to be considered a responsible end market; pursuant to section 42041(aa)(3) of the PRC, covered material must be sent to a responsible end market to be considered recycled. Therefore, this subsection is necessary to explicitly state that an end market that fails to satisfy the criteria of section 18980.4 at any point cannot be considered a responsible end market that recycles the applicable covered materials consistently with section 42041(aa)(3).

### **§ 18980.4.3. END MARKET DEVELOPMENT**

#### **Subsection (a)**

The purpose of this subsection is to make explicit the obligation of a PRO or Independent Producer to develop and sustain responsible end markets and to establish the minimum producer responsibility plan requirements with respect to such obligation. This subsection requires a PRO or Independent Producer to support the establishment, expansion, and continued existence of responsible end markets and to establish in its plan how it will meet the various specified facets of this requirement.

This is necessary to implement the requirements of the Act, including, for instance, section 42051.1(c)(1) and (2) of the PRC, obligating a PRO or Independent Producer to describe in its plan how it will provide for the necessary responsible end markets to ensure the covered material will achieve the requirements of the Act and to support and achieve the development of responsible end markets. This subsection is necessary to offer clear guidance to a PRO or Independent Producer in preparing its plan and to establish clear and uniform standards by which producer responsibility plans will be evaluated and approved by CalRecycle. Moreover, the development and subsistence of responsible end markets is instrumental to the implementation of a PRO or Independent Producer's plan and to the achievement of the Act's objectives, and this subsection is necessary to ensure a PRO or Independent Producer proposes a thoughtful, detailed, and viable plan containing all information necessary to develop and sustain the necessary responsible end markets in compliance with the Act.

#### **Subsection (a)(1)**

The purpose of this subsection is to establish the first minimum requirement of a producer responsibility plan with respect to the development of responsible end markets. This subsection specifies that a PRO or Independent Producer must establish in its plan how it will provide the financial support necessary to develop and maintain responsible end markets. The plan must also identify how the PRO or Independent Producer will identify where financial support is needed and determine whether to provide it. This is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed method for financially supporting the development of responsible end markets, including how it will determine when financial support is necessary and appropriate, and to verify that end markets will be developed in a manner that is consistent with the requirements and objectives of the Act.

#### **Subsection (a)(2)**

The purpose of this subsection is to establish the second minimum requirement of a producer responsibility plan with respect to the development of responsible end markets. This subsection specifies that a PRO or Independent Producer must establish in its plan how it will facilitate material recycling and assist end markets in satisfying the standards specified in section 18980.4 by providing financial support to local jurisdictions, recycling service providers, intermediate supply chain entities, and other entities that provide services used for the diversion of materials. The plan must also

establish how it will identify and evaluate opportunities to provide such support and decide whether to provide it. This is necessary to interpret and implement the statutory requirement, set forth in section 42051.1(c)(2) of the PRC, that a PRO or Independent Producer describe in its plan how it will support and achieve, and how its budget will fund, the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered materials to meet the requirements of the Act. To support and achieve the necessary collection, processing, recycling, and composting of covered materials under the Act, a PRO or Independent Producer must be prepared to provide financial support to local jurisdictions, recycling service providers, intermediate supply chain entities, and other entities that provide services used for the diversion of materials. Indeed, such financial support is required under the Act, including in section 42051.1(g) of the PRC. This subsection is therefore necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed method for facilitating material recycling at responsible end markets by providing financial support to local jurisdictions, recycling service providers, and others as necessary to ensure covered materials are recycled at responsible end markets in compliance with the Act.

### **Subsection (a)(3)**

The purpose of this subsection is to establish the third minimum requirement of a producer responsibility plan with respect to the development of responsible end markets. This subsection specifies that a PRO or Independent Producer must establish in its plan how it will develop new responsible end markets and explore alternatives for covered materials that do not have a responsible end market. This is necessary to ensure that a PRO or Independent Producer has a process in place to ensure that all applicable covered materials have or will have responsible end markets or otherwise will not be in violation of the requirements of the Act by developing adequate alternatives.

This is necessary to ensure that CalRecycle has the opportunity, before approving a producer responsibility plan, to review and evaluate the PRO's or Independent Producer's proposed process for developing responsible end markets or adequate alternatives and to verify that such process will be conducted in a manner that is consistent with the requirements and objectives of the Act. This subsection also provides an example of investment in reuse and refill infrastructure as an alternative for covered materials that do not have a responsible end market. This is necessary to offer clear guidance to a PRO or Independent Producer who may be a producer of covered materials that do not have a responsible end market and who will thus have to utilize some alternative in complying with the Act. Finally, this subsection requires a plan to describe, at a minimum, known opportunities for developing new responsible end markets or alternatives to covered materials. This is necessary to ensure that CalRecycle will be apprised, before approving a producer responsibility plan, of any such known opportunities and will have the opportunity to evaluate and verify whether the PRO or Independent Producer has acted in a way that is consistent with its

proposed process and in furtherance of the requirements of the Act with respect to such known opportunities.

### **Subsection (b)**

The purpose of this subsection is to establish the process and requirements a PRO or Independent Producer must follow when it identifies a covered material that does not have an end market, as described in section 18980.4(b). In such an instance, this subsection provides that the requirements set forth in the following subsections (b)(1) through (b)(3) apply. This subsection is necessary because, to identify a responsible end market for a given covered material, a PRO or Independent Producer must first identify the entity that is appropriately recognized as the end market for that material. While sections 18980.4(b)(1) through (6) give examples of the end markets for various material types, section 18980.4(b)(8) provides that any covered material item that is made of a material type that is not represented in those sections is subject to the process for identifying an end market that is set forth in this subsection. This subsection is therefore necessary to establish a clear and uniform process that a PRO or Independent Producer must follow to ensure that its covered materials have an end market, consistent with section 18980.4(b).

### **Subsection (b)(1)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to conduct a study if it identifies a covered material that does not have an end market. Unless the PRO or Independent Producer opts to phase out the covered material, as set forth in subsection (b)(3), it must conduct a study that incorporates the factors set forth in subsections (b)(1)(A) through (b)(1)(D). This is necessary to ensure a PRO or Independent Producer evaluates the relevant factors and carefully considers viable strategies and technologies for developing a responsible end market for the covered material. This is also necessary to establish a clear and uniform process, with consistent standards, that will apply to any PRO or Independent Producer that must conduct such a study to initiate the development of a new end market.

### **Subsection (b)(1)(A)**

The purpose of this subsection is to specify the first requirement of the study conducted pursuant to subsection (b)(1). This subsection requires a PRO or Independent Producer to evaluate technology that could be used to recycle the covered material and to ensure that the technology can constitute recycling under section 42041(aa) of the PRC. This provision is necessary because, as described in section 18980.4(b), an end market is an entity that produces and sells or transfers recycled organic product or recycled content feedstock. Therefore, to be an end market, an entity must utilize technology that is used to recycle the covered material. Moreover, the technology must be able to constitute recycling under section 42041(aa) because, if it were not able to constitute recycling under that definition, the covered materials processed by the entity that utilizes the technology could not be deemed to have been recycled under the Act. Therefore, this subsection is necessary to ensure that, when conducting a study to initiate the development of a responsible end market, a PRO or Independent Producer

evaluates relevant technological factors that could otherwise invalidate the designation of a responsible end market or the PRO's or Independent Producer's ability to comply with the Act.

#### **Subsection (b)(1)(B)**

The purpose of this subsection is to specify the second requirement of the study conducted pursuant to subsection (b)(1). This subsection requires a PRO or Independent Producer to evaluate the feasibility of collecting, transporting, processing, and recycling the covered material. Whether a responsible end market can be developed and sustained may depend in part on infrastructure and activities that are outside of the end market's control, including the operations of local jurisdictions, recycling service providers, intermediate supply chain entities, and others. If any stage of the recycling process is not feasible with respect to a covered material, that may impact the feasibility of the responsible end market for that material. Therefore, this subsection is necessary to ensure that, when conducting a study to initiate the development of a responsible end market, a PRO or Independent Producer evaluates relevant feasibility concerns that could impact the ability of an end market to be developed and sustained in compliance with the Act.

#### **Subsection (b)(1)(C)**

The purpose of this subsection is to specify the third requirement of the study conducted pursuant to subsection (b)(1). This subsection requires a PRO or Independent Producer to evaluate how any current or new end market can meet the requirements set forth in section 18980.4. This is necessary because this information may impact whether a PRO or Independent Producer decides to make the necessary investments to develop the end market. If the end market cannot satisfy the standards specified in section 18980.4, it cannot become a responsible end market, and covered materials sent to it cannot be considered recycled under the Act.

Therefore, this information is highly relevant to a PRO or Independent Producer that is required to invest in the development of responsible end markets or explore alternatives. Additionally, the inclusion of current end markets is necessary because modifying existing infrastructure is more expedient than developing an entirely new end market. Upgrading an end market to a responsible end market is a more efficient method to ensure that all covered materials are sent for recycling in accordance with the Act. Therefore, this subsection is necessary to ensure that, when conducting a study to initiate the development of a responsible end market, a PRO or Independent Producer evaluates relevant considerations regarding the responsible end market criteria that could impact the ability of an end market to be developed and sustained in compliance with the Act.

#### **Subsection (b)(1)(D)**

The purpose of this subsection is to specify one way in which a PRO or Independent Producer that is conducting a study pursuant to subsection (b)(1) can achieve the requirements of subsections (b)(1)(A) through (b)(1)(C). This subsection provides that the study may include pilot programs to test the components specified in subsections

(b)(1)(A) through (b)(1)(C). Without this subsection, a PRO or Independent Producer might not understand the extent to which it must evaluate the requirements set forth in subsection (b)(1)(A) through (b)(1)(C), or how it must perform such evaluations. This subsection is therefore necessary to offer additional guidance as to how a PRO or Independent Producer might decide to study, evaluate, and demonstrate the feasibility of potential end markets for covered materials, consistent with subsections (b)(1)(A) through (b)(1)(C), before investing substantial and potentially unnecessary resources in the development of those end markets.

### **Subsection (b)(2)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to include the findings of a study conducted pursuant to subsection (b)(1) in its plan or plan amendment if, following the study, the PRO or Independent Producer determines that a responsible end market exists or can exist for the covered material. In such instances, this subsection provides that the plan or plan amendment must include the required contents described in the following subsections (b)(2)(A) through (b)(2)(E). This is necessary to ensure that CalRecycle has the opportunity, before approving a plan or plan amendment, to review and evaluate the proposed identification or development of a new responsible end market and to verify whether such end market satisfies the requirements described in section 18980.4 such that it will facilitate the PRO's or Independent Producer's compliance with the requirements of the Act. This is also necessary to establish a clear process and uniform standards for a PRO or Independent Producer that has identified a potential new responsible end market following a study under subsection (b)(1).

### **Subsection (b)(2)(A)**

The purpose of this subsection is to specify the first piece of information a PRO or Independent Producer must include in its plan or plan amendment when it has determined that a responsible end market exists or can exist for the applicable covered material. This subsection requires the plan or plan amendment to include a description of the end market. This is necessary to ensure that CalRecycle has the opportunity, before approving a plan or plan amendment, to identify, review, and evaluate the proposed new responsible end market and to verify that it satisfies the requirements described in section 18980.4. Such a description is necessary to ensure CalRecycle can make an accurate and informed decision when it reviews a plan or plan amendment that proposes a new end market for approval.

### **Subsection (b)(2)(B)**

The purpose of this subsection is to specify the second piece of information a PRO or Independent Producer must include in its plan or plan amendment when it has determined that a responsible end market exists or can exist for the applicable covered material. This subsection requires the plan or plan amendment to include a justification of how the end market can meet the standards specified in section 18980.4 for the covered material. This is necessary to ensure that CalRecycle has the opportunity, before approving a plan or plan amendment, to review and evaluate the proposed new

responsible end market and to verify that it can satisfy the requirements of a responsible end market that are established in section 18980.4. Such a description is necessary because the Act requires a PRO or Independent Producer to develop responsible end markets for covered materials that do not have a responsible end market, and in order to verify whether a PRO or Independent has complied with this requirement, CalRecycle must have the necessary information to verify whether the proposed responsible end market actually satisfies the requirements of a responsible end market.

### **Subsection (b)(2)(C)**

The purpose of this subsection is to specify the third piece of information a PRO or Independent Producer must include in its plan or plan amendment when it has determined that a responsible end market exists or can exist for the applicable covered material. This subsection requires the plan or plan amendment to include a budget and investment strategy that describes how the PRO or Independent Producer will fund the development of the end market, along with any necessary development of collection, transportation, and processing infrastructure. This is necessary to ensure that CalRecycle has the opportunity, before approving a plan or plan amendment, to review and evaluate the proposed budget and investment strategy for a proposed new responsible end market, as well as any new intermediate supply chain entities it may require, and to verify that the budget and investment strategy comply with the requirements of the Act, including, for instance, sections 42051.1(c)(2) and 42051.1(j)(1)(A) and (B) of the PRC.

### **Subsection (b)(2)(D)**

The purpose of this subsection is to specify the fourth piece of information a PRO or Independent Producer must include in its plan or plan amendment when it has determined that a responsible end market exists or can exist for the applicable covered material. This subsection requires the plan or plan amendment to include a timeline detailing the proposed end market development. This is necessary to ensure that CalRecycle has the opportunity, before approving a plan or plan amendment, to review and evaluate the timeline of the proposed end market development and to verify that any necessary end market will be developed according to a timeline that will enable the PRO or Independent Producer to meet its requirements under the Act, including, for instance, the requirements set forth in section 42050 of the PRC. For example, CalRecycle must be apprised of the expected timeline for a proposed end market development to verify whether that end market can be expected to facilitate the applicable covered materials being considered recyclable in the state prior to January 1, 2032, as required by section 42050(b) of the PRC.

### **Subsection (b)(2)(E)**

The purpose of this subsection is to specify the fifth piece of information a PRO or Independent Producer must include in its plan or plan amendment when it has determined that a responsible end market exists or can exist for the applicable covered material. This subsection requires the plan or plan amendment to include an

explanation of how the weight of covered material recycled is estimated, consistent with section 18980.3.2(b)(2). Section 18980.3.2(b)(2)(C) provides that, for end markets not identified under section 18980.4(b)(1) through (6), a PRO or Independent Producer must identify in its study conducted under subsection (b)(1) whether the method described in section 18980.3.2(b)(2)(A) or (B) is most appropriate for estimating the weight recycled by that end market. Section 18980.3.2(b)(2)(A) and (B) describe different methods for estimating the weight recycled depending on the covered materials at issue; section 18980.3.2(b)(2)(A) applies to covered materials that are recycled and sold or transferred as feedstock, while section 18980.3.2(b)(2)(B) applies to covered materials that are converted into a recycled organic product. Because these sections establish different calculation methods for estimating the weight of material recycled, the specific calculation method that applies to the proposed new end market will necessarily impact the PRO's or Independent Producer's ability to comply with the requirements of the Act with respect to the covered material, including, for instance, the recycling rate requirement set forth in section 42050(c) of the PRC. This component is therefore necessary to ensure CalRecycle has the opportunity, before approving the plan or plan amendment, to review and evaluate the calculation method that will apply to the proposed new responsible end market and to verify that it will be able to meet the necessary recycling rate requirements under the Act.

### **Subsection (b)(3)**

The purpose of this subsection is to establish when a PRO or Independent Producer is not required to conduct a study pursuant to subsection (b)(1). This subsection specifies that a PRO or Independent Producer is not required to conduct a study if it instead opts to phase out the covered material such that it will no longer sell, offer for sale, or distribute the covered material in the state. This subsection also requires the PRO or Independent Producer to invest in alternatives to that covered material to facilitate phasing it out. This is necessary because the Act requires a PRO or Independent Producer to develop responsible end markets only for covered materials it sells, offers for sale, or distributes; therefore, the PRO or Independent Producer must either develop the necessary responsible end markets or cease selling, offering for sale, or distributing the applicable covered materials. This subsection is necessary to ensure that, when a PRO or Independent Producer opts to pursue the latter course, it does not need to conduct a study under subsection (b)(1) that is intended to facilitate the development of new responsible end markets. Requiring a PRO or Independent Producer that opts to phase out its covered material to conduct such a study would be unnecessarily expensive and burdensome and is not warranted by the requirements of the Act.

Therefore, this subsection is necessary to offer clear guidance to any such PRO or Independent Producer and to avoid any unnecessary expenses and burdens. That this subsection requires such a PRO or Independent Producer to invest in alternatives to the covered material to phase it out is necessary to ensure the PRO or Independent Producer is committed to the phasing out of the covered material and is not causing unnecessary delay or improperly avoiding having to conduct the study under subsection (b)(1).

### **Subsection (c)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer that conducts a study pursuant to subsection (b)(1) to notify CalRecycle of the study and to disclose the date on which the study was initiated. This is necessary to establish a clear and uniform process governing the notification by a PRO or Independent Producer to CalRecycle of the study. Such notification is necessary to ensure CalRecycle is apprised of the initiation of a study and its date of initiation, which may be relevant to its oversight of the PRO's or Independent Producer's implementation of its plan or compliance with the requirements of the Act. Moreover, the date of initiation is necessary to ensure that a PRO or Independent Producer cannot unnecessarily prolong the study or delay its completion.

### **Subsection (d)**

The purpose of this subsection is to establish the obligation of a PRO or Independent Producer to include the results of the study in a plan, plan amendment, or annual report upon the study's completion. This is necessary to ensure that CalRecycle can review and evaluate the results of the study and verify whether the PRO or Independent Producer acted in compliance with the Act in light of such results. Moreover, this is necessary because, while subsection (b)(2) requires a PRO or Independent Producer that has determined that a responsible end market exists or can exist for the covered material to include specified information in its plan or plan amendment, that requirement does not apply to every study, irrespective of its results, that is conducted under (b)(1). For instance, if a study results in a finding that no responsible end market exists or can exist for the covered material, the PRO or Independent Producer would not be required to share that information with CalRecycle under subsection (b)(2). Therefore, this subsection is necessary to ensure CalRecycle is provided with all necessary information regarding the study that may be relevant to its assessment of a PRO's or Independent Producer's compliance with the requirements of the Act.

## **ARTICLE 5. REQUIREMENTS FOR PRODUCERS**

### **§ 18980.5. PRODUCER COMPLIANCE**

#### **Subsection (a)**

The purpose of this subsection is to establish the deadline for producers to register with CalRecycle. This subsection provides that each producer must register with CalRecycle within 30 days of the effective date of this chapter. The establishment of a registration deadline is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle. The registration deadline within 30 days of the effective date of this chapter is necessary because it provides a producer with sufficient time after the adoption of the regulations to review the regulations and become aware of its registration obligation, while also ensuring that a producer will register early enough to leave it with sufficient time after registration to compile and organize its data in advance of its data reporting submission deadline under section 18980.10.1(c)(1). Therefore, this reporting deadline is necessary to ensure a producer has enough time to comply with each of its initial

obligations following adoption of the regulations. This deadline is also necessary so that CalRecycle and the PRO can identify the universe of producers that will need to comply with the Act and regulations either as members of the PRO or as Independent Producers. Furthermore, the separate registration deadline for entities that become producers later than 30 days after the effective date of this chapter but prior to January 1, 2027, is necessary because such entities are not required to register under the Act until they become producers. It would be nonsensical to require an entity to register with the Department as a producer within 30 days of the effective date of the regulations if that entity did not become a producer until after that 30-day period has already concluded. A rolling registration deadline for such entities is necessary because an entity can become a producer at any time. A registration deadline for such entities of 30 days after becoming a producer is necessary because it provides the entities with sufficient time to submit their registration to CalRecycle without causing unnecessary delay or allowing them excessive time to sell, offer for sale, or distribute covered materials without coming into compliance with the Act.

### **Subsection (b)**

One purpose of this subsection is to specify the deadline for each producer to either become a participant in an approved PRO or apply to be an Independent Producer. This subsection provides that each producer must either apply to become a participant of an approved PRO or apply to be an Independent Producer within 30 days after the effective date of this chapter. This provision is necessary to implement and interpret sections 42051(b)(1) and (2) of the PRC, which, read together, require a producer to comply with the requirements of the Act either by participating in an approved PRO plan or as an Independent Producer. This subsection also provides that entities that become producers later than 30 days after the effective date of this chapter but before January 1, 2027, must apply within 30 days of becoming a producer. This subsection is necessary because such entities are not required to participate in an approved PRO or be an Independent Producer until they become producers. It would be nonsensical to require an entity to take one of these two compliance actions within 30 days of the effective date of the regulations if that entity did not become a producer until after that 30-day period has already concluded. A rolling registration deadline for such entities is necessary because an entity can become a producer at any time. A deadline of 30 days after becoming a producer for such entities to apply to become a participant in an approved PRO or apply to be an Independent Producer is necessary because it provides the entities with sufficient time to prepare and submit their application without causing unnecessary delay or allowing them excessive time to sell, offer for sale, or distribute covered materials without coming into compliance with the Act.

Another purpose of this subsection is to specify to whom this obligation applies. This subsection provides that this obligation applies to a person if the covered material for which the person is a producer is sold, offered for sale, imported, or distributed in the state by any person. This is necessary because, to be identified as the producer of covered materials under section 42041(w) of the PRC and section 18980.1.1 of the regulations, an entity is not itself required to sell, offer for sale, import, or distribute

those covered materials in the state. Therefore, the prohibition in section 42051(b)(1) against selling, offering for sale, importing, or distributing covered material in the state only makes sense if such prohibition extends to any person if the covered material for which the person is a producer is sold, offered for sale, imported, or distributed in the state by any person.

This subsection is therefore necessary to ensure that each producer of covered material is governed by the requirement to comply with the Act either by participating in an approved PRO plan or as an Independent Producer, whether or not the producer itself sells, offers for sale, imports, or distributes covered materials in the state.

### **Subsection (c)**

The purpose of this subsection is to establish a deadline for entities that become producers on or after January 1, 2027, to register with CalRecycle and become a participant producer or apply to be an Independent Producer. This subsection requires such entities to register with CalRecycle and either become a participant producer or apply to be an Independent Producer within six months of becoming a producer. While section 42051(b)(1) establishes a clear deadline of January 1, 2027, for producers that are in existence as of that date, the Act does not establish or address a similar deadline for entities that become producers on or after that date. This subsection is therefore necessary to establish a clear and uniform timeline by which entities that become producers on or after January 1, 2027, must either become a participant producer or apply to be an Independent Producer. A rolling deadline for such entities is necessary because an entity can become a producer at any time. Furthermore, a deadline for such entities within six months of becoming a producer is necessary because it provides the entities with sufficient time to determine whether they want to comply with the Act by participating in a PRO or as an Independent Producer without causing unnecessary delay or otherwise allowing the covered materials to continue to be sold, offered for sale, imported, or distributed in the state without the producer having committed to how it intends to comply with the Act.

### **Subsection (d)**

The purpose of this subsection is to establish the requirement and deadline for each producer that applies to become a participant of an approved PRO to submit to the PRO its supply data for the 2023 calendar year. This subsection requires each such producer to, at the time of its application, submit to the PRO its supply data for the 2023 calendar year. This subsection is necessary to ensure that a PRO receives all relevant data as soon as possible to facilitate its compliance with the Act, including those under section 42057 of the PRC, and section 18980.9 of the proposed regulations. This subsection is also necessary to ensure the PRO can review all relevant information prior to its decision to approve a producer to become a participant in its plan. This subsection also clarifies the meaning of “supply data” as constituting the information described in section 18980.10.2 of these regulations. This is necessary to offer clear, uniform guidance to producers and a PRO as to the scope of the supply data required to be provided under this subsection.

## **§ 18980.5.1. APPLICATION FOR INDEPENDENT PRODUCER COMPLIANCE**

### **Subsection (a)**

One purpose of this subsection is to establish the registration and application requirements for Independent Producers. This subsection provides that a producer seeking to comply with the Act as an Independent Producer must first register with CalRecycle according to the process set forth in section 18980.10(a). This is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle and to ensure that CalRecycle is made aware of, and has the necessary information on file for, any producer seeking to comply with the Act as an Independent Producer. This subsection is therefore necessary to ensure CalRecycle is provided with all the information necessary for its evaluation of the Independent Producer application. Moreover, this is necessary because, to effectively oversee the implementation of producer responsibility plans and to assess whether the requirements of the Act are being met, CalRecycle must be able to identify producers, assess their compliance with the Act, and communicate with producers when necessary. This subsection also requires a producer seeking to comply with the Act as an Independent Producer to submit an application for individual compliance to the Department. Such application must include the information set forth in subsections (a)(1) and (a)(2). This is necessary because a producer can only be approved to be an Independent Producer if it meets the criteria set forth in section 42051(b)(2)(A). However, that section does not specify how CalRecycle will determine whether the criteria have been satisfied.

Therefore, this subsection is necessary to establish a clear and uniform application process by which a producer seeking to comply with the Act as an Independent Producer submits all information necessary to enable CalRecycle to make a determination as to whether it satisfies the conditions of section 42051(b)(2)(A).

Another purpose of this subsection is to require the electronic submission of Independent Producer applications. An electronic application process is necessary for CalRecycle to efficiently receive and evaluate the application.

### **Subsection (a)(1)**

The purpose of this subsection is to establish the first requirement for Independent Producer applications that are submitted to CalRecycle. This subsection specifies that an Independent Producer application must identify the types of covered material the Independent Producer is selling, offering for sale, importing, or distributing in or into the state. To be approved to comply with the Act as an Independent Producer, a producer must satisfy the criteria set forth in section 42051(b)(2)(A) of the PRC with respect to the covered material it sells, offers for sale, imports, or distributes in or into the state. Thus, when assessing an Independent Producer's application, CalRecycle must know which covered material the Independent Producer sells, offers for sale, imports, or distributes in or into the state. This subsection is therefore necessary to ensure CalRecycle is made aware of the covered materials that will be relevant to its assessment of an Independent Producer's application and to ensure it understands

the scope and nature of the proposed Independent Producer's compliance obligations under the Act. This subsection is necessary to ensure that, before approving a producer to comply with the Act as an Independent Producer, CalRecycle can review and evaluate its application and verify that the Independent Producer satisfies the criteria of section 42051(b)(2)(A).

### **Subsection (a)(2)**

The purpose of this subsection is to establish the second requirement for Independent Producer applications that are submitted to CalRecycle. This subsection specifies that an Independent Producer application must include information that demonstrates compliance with the requirements of section 42051(b)(2)(A) of the PRC. To be approved to comply with the Act as an Independent Producer, a producer must be able to demonstrate, and CalRecycle must determine, that it meets the criteria established in section 42051(b)(2)(A). Thus, CalRecycle must verify that the Independent Producer satisfies the criteria set forth in that section when reviewing its application. This subsection is therefore necessary to ensure that, before approving a producer to comply with the Act as an Independent Producer, CalRecycle can review and evaluate its application and verify that the Independent Producer satisfies the criteria of section 42051(b)(2)(A).

### **Subsection (b)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve an Independent Producer application. This subsection specifies that CalRecycle will approve an Independent Producer application if it establishes that the producer satisfies the requirements of section 42051(b)(2)(A) of the PRC and this chapter. Because that section provides that CalRecycle determines at its sole discretion whether the Independent Producer has demonstrated satisfaction of the criteria, applicants may be confused about how CalRecycle will evaluate any such demonstration. This subsection is therefore necessary to offer clear guidance to an Independent Producer as to how to prepare an application that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve an Independent Producer application if it demonstrates satisfaction of these criteria. This provision is also necessary to ensure consistency, certainty, and fairness in CalRecycle's evaluation of the Independent Producer application.

Another purpose of this subsection is to clarify the compliance status of a producer during the pendency of its Independent Producer application. This subsection provides that CalRecycle will not consider the applicant to be in violation of section 42051(b)(1) of the PRC before CalRecycle has notified the applicant of its approval or denial of the application. That section provides that a producer shall not sell, offer for sale, import, or distribute covered materials in the state unless it is approved to participate in the plan of an approved PRO. However, that section does not specify whether a producer that is not approved to participate in a PRO's plan, but that has submitted an Independent Producer application pursuant to section 42051(b)(2)(A), is subject to its purview.

Because compliance with the Act as an Independent Producer under section 42051(b)(2)(A) is an alternative to, rather than in addition to, participation in a PRO under section 42051(b)(1), it would be unreasonable to consider a producer in violation of section 42051(b)(1) while the producer is attempting to comply with section 42051(b)(2)(A). For instance, if an Independent Producer application is ultimately approved by CalRecycle, any violation by that producer of section 42051(b)(1) during the pendency of its application would be nonsensical because it is no longer required to participate in the plan of an approved PRO. This subsection is therefore necessary to ensure that producers that attempted to comply with section 42051(b)(2)(A) are treated in a manner that is fair and consistent with the statutory framework. This provision is necessary to ensure transparency and offer clear guidance to applicants as to their compliance obligations and enforcement expectations once they have submitted an application and after they have received a determination on the application from CalRecycle.

### **Subsection (c)**

One purpose of this subsection is to establish the process and obligations of a producer following the denial by CalRecycle of its Independent Producer application. This subsection specifies that the producer must become a participant in a PRO or submit a revised application within 30 days of receiving CalRecycle's notice of denial.

Furthermore, this subsection specifies that, if CalRecycle denies the revised application, the producer must become a participant in a PRO within 30 days of receiving notice of the second denial. This subsection is necessary to establish a clear and uniform process that offers guidance to producers as to the timeline and obligations that will govern their compliance with the requirements of the Act, specifically section 42051(b)(1) or (b)(2)(A) of the PRC, following the denial of an Independent Producer application. The 30-day timeline for becoming a participant in a PRO or submitting a revised application is necessary because it provides producers with sufficient time to make an informed decision and take the necessary actions without providing excessive time that might allow for unnecessary delay to its requirement to come into compliance with either section 42051(b)(1) or (b)(2)(A) of the PRC. Furthermore, the allowance for a revised application is necessary to ensure that Independent Producer applications are treated in a way that is fair and consistent with the statutory framework. The choice of complying under section 42051(b)(1) or (b)(2)(A) is a foundational decision for complying with the requirements of the Act and achieving its objectives; if a producer can demonstrate that it satisfies the criteria of section 42051(b)(2)(A), and if that producer believes it can better achieve the requirements of the Act as an Independent Producer, it should have the opportunity to cure any defects in its original application and have its application reevaluated by CalRecycle. Therefore, this subsection is necessary to provide producers with an adequate opportunity to comply with the Act as Independent Producers.

Another purpose of this subsection is to clarify the compliance status of a producer following the denial of its Independent Producer application. This subsection provides

that CalRecycle will not consider the producer to be in violation of section 42051(b)(1) of the PRC until after the 30-day period following its receipt of the notice of denial. Section 42051(b)(1) does not specify its compliance timeline for a producer that has made an unsuccessful attempt to become an Independent Producer by making a demonstration under section 42051(b)(2)(A). Because section 42051(b)(2)(A) allows for an alternative means of complying with the requirement in section 42051(b)(1), it would be unreasonable to deem a producer to be in violation of section 42051(b)(1) as soon as it has failed to gain approval under section 42051(b)(2)(A). Rather, a 30-day period allows a producer that failed to gain approval under section 42051(b)(2)(A) sufficient time to begin participating in a PRO and to come into compliance with section 42051(b)(1) without being deemed to be in violation of the Act. This subsection is therefore necessary to ensure that producers that attempted to comply with section 42051(b)(2)(A) are treated in a manner that is fair and consistent with the statutory framework.

#### **Subsection (d)**

The purpose of this subsection is to clarify the compliance status of a producer that submits a second revised application following the denial of its revised Independent Producer application. This subsection provides that, notwithstanding subsections (b) and (c), a producer submitting a second revised application following the denial of its revised application will be considered in violation of section 42051(b)(1) of the PRC during the pendency of the application unless the producer is a participant of the PRO. This is necessary to ensure that a producer that has already received a denial of its Independent Producer application and its revised Independent Producer application cannot avoid having to begin participating in a PRO by continuing to submit further revised applications. This subsection is necessary because a producer's compliance with either section 42051(b)(1) or (b)(2)(A) is necessary to its ability to meet the requirements of the Act and achieve its objectives. After denying multiple of its Independent Producer applications, it is necessary for CalRecycle to direct the producer to begin participating in a PRO with an approved plan, consistent with section 42051(b), even if it chooses to simultaneously submit a second revised Independent Producer application. This is necessary to ensure that all producers begin to make progress in coming into compliance with the requirements of the Act without unnecessary delay and that CalRecycle is able to enforce against violations of the Act if a producer has repeatedly failed to come into compliance with both section 42051(b)(1) and (b)(2)(A).

### **§ 18980.5.2. EXEMPTIONS FOR SMALL PRODUCERS**

#### **Subsection (a)**

One purpose of this subsection is to establish the registration and application requirements for producers seeking an exemption under section 42060(a)(5) of the PRC. This subsection provides that a producer seeking such an exemption must register with CalRecycle according to the process set forth in section 18980.10(a) of the regulations. This is necessary to implement section 42060(a)(2) of the PRC, which

requires CalRecycle to establish a mandatory process for producers to register with CalRecycle, and to ensure that CalRecycle is made aware of, and has the necessary information on file for, any producer seeking to become exempt from requirements of the Act under section 42060(a)(5). This subsection is therefore necessary to ensure CalRecycle is provided with all the information necessary for its evaluation of the application for such an exemption. This subsection also requires a producer seeking such an exemption to submit an application to CalRecycle. Such application must include the information set forth in subsections (a)(1) and (a)(2). This is necessary because a producer can only be approved for an exemption under section 42060(a)(5) if it meets the criteria set forth in that section. However, that section does not specify how CalRecycle will determine whether the criteria have been satisfied. Therefore, this subsection is necessary to establish a clear and uniform application process by which a producer seeking to become exempt from requirements of the Act under section 42060(a)(5) submits all information necessary to enable CalRecycle to determine whether it satisfies the criteria of that section.

Another purpose of this subsection is to require the electronic submission of applications for an exemption under section 42060(a)(5). An electronic application process is necessary for CalRecycle to efficiently receive and evaluate the application and subsequent renewal requests.

#### **Subsection (a)(1)**

The purpose of this subsection is to establish the first requirement for an application for an exemption that is submitted pursuant to subsection (a). This subsection specifies that a producer's exemption application must include records showing that the producer's gross sales in the state in the most recent calendar year were less than one million dollars. Section 42060(a)(5)(A) of the PRC requires CalRecycle to exempt producers that had gross sales of less than one million dollars in the state in the most recent calendar year, but it does not specify how CalRecycle will be able to access this information. Therefore, this subsection is necessary to ensure that CalRecycle is provided with all information that may be necessary and relevant to its review and evaluation of the application.

#### **Subsection (a)(2)**

The purpose of this subsection is to establish the second requirement for an application for an exemption that is submitted pursuant to subsection (a). This subsection specifies that a producer's exemption application must include specified information about the nature of the producer's business. Section 42060(a)(5)(B) of the PRC provides that, even if the producer had gross sales of less than one million dollars in the state in the most recent calendar year, CalRecycle may still decline to exempt a producer under section 42060(a)(5) if it determines that an exemption would hinder the ability of a type of covered material or covered material category from complying with the requirements of the Act. However, the Act does not specify how CalRecycle will be able to access the information necessary to make this determination. The specified information about the nature of the producer's business

that is required by this subsection is relevant and necessary to any assessment by CalRecycle as to whether the standard established in section 42060(a)(5)(B) is satisfied. Therefore, this subsection is necessary to ensure that CalRecycle is provided with all information that may be necessary and relevant to its review and evaluation of the application.

**Subsection (b)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve an application for an exemption under section 42060(a)(5) of the PRC. This subsection specifies that CalRecycle will approve an application if it meets the requirements of section 18980.5.2 of the regulations, unless CalRecycle determines that the exemption would hinder a type of covered material or covered material category from satisfying the requirements of section 42050 of the PRC. While section 42060(a)(5)(A) requires CalRecycle to exempt producers that had gross sales in the state of less than one million dollars in the most recent calendar year, section 42060(a)(5)(B) provides that, notwithstanding section 42060(a)(5)(A), CalRecycle may decline to exempt a producer if it determines that such exemption would hinder the ability of a type of covered material or covered material category from complying with the requirements of the Act. Therefore, this subsection is necessary to implement section 42060(a)(5)(B) and to offer clear and consistent guidance to producer applicants as to the standard that CalRecycle will apply when evaluating exemption applications for approval.

Another purpose of this subsection is to establish a producer applicant's obligation to provide supplemental information upon request. This subsection specifies that, if CalRecycle lacks sufficient information, the producer applicant is required to supplement the application with any information that is deemed necessary and requested by CalRecycle. This subsection is necessary to ensure that CalRecycle is provided with all information that may be necessary and relevant to its review and evaluation of the application.

Finally, another purpose of this subsection is to establish the effective date and duration of exemptions under section 42060(a)(5). This section specifies that an exemption is effective on the date the application is approved and is valid for two years. An effective date is necessary to establish a clear and uniform process that will govern all applications under this section and to ensure that producer applicants cannot delay or avoid complying with the requirements of the Act during the pendency of their applications. A two-year duration for the exemption is appropriate to reasonably limit the burden on small businesses of reestablishing the appropriateness of the exemption. Additionally, section 42060(a)(5)(B) allows CalRecycle not to grant an exemption if exempting a particular applicant would hinder a type of covered material or a covered material category from complying with the Act. Because circumstances regarding a covered material or covered material category's status of compliance with the Act may change over time, the Legislature reasonably must have intended for the exemption to expire.

**Subsection (c)**

The purpose of this subsection is to establish the process, timelines, and review standards that will govern the renewal of an exemption under section 42060(a)(5) of the PRC. This section provides that, between 120 days and 90 days before the expiration date, a small producer seeking to renew its exemption must provide CalRecycle with updated information satisfying the requirements of subsection (a), and that CalRecycle will evaluate the application according to the standards set forth in subsection (b). If approved, the renewal is valid for two additional years from the original expiration date. Requiring updated information is necessary because the exemption is based on gross sales in the most recent calendar year, and an approved exemption is valid for two years, so, by the time of renewal, updated sales data will be available and relevant to CalRecycle's evaluation of the renewal request. Requiring requests to be submitted between 120 and 90 days before expiration is necessary to ensure that renewal requests are not submitted unreasonably early, while ensuring that CalRecycle has sufficient time to evaluate the request before the exemption expires. These submission and review timelines are also consistent with others in the Act and regulations.

Clarifying that CalRecycle will evaluate the application according to the standards set forth in subsection (b) is necessary to offer clear and consistent guidance to small producers as to the standard that CalRecycle will apply when evaluating requests for renewal and for consistency with the statutory framework. Finally, clarifying that renewal extends the exemption for the two-year period beginning on the date the exemption otherwise would have expired is necessary to avoid ambiguity. Without such clarification, it would not be clear that renewal does not begin a new two-year period as of the date renewal is approved.

**Subsection (d)**

The purpose of this subsection is to specify the compliance obligations of a producer that is no longer exempt under section 42060(a)(5). This subsection provides that a producer that is no longer exempt shall be subject to the requirements of the Act and section 18980.5 of the regulations. This is necessary for completeness, specifically, to ensure producers that are no longer exempt know that they must comply with applicable requirements. While section 42060(a)(5) exempts certain producers from specific requirements of the Act, this subsection is necessary to offer clear and explicit guidance to any such producer that it must comply with all applicable requirements upon the loss of its exemption.

**Subsection (e)**

The purpose of this subsection is to establish the registration obligations of a producer that is exempt under section 42060(a)(5) of the PRC. This subsection specifies that a producer that is exempt must maintain registration with CalRecycle pursuant to section 18980.10(a) of the regulations. This is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle, and to ensure that all exempted producers maintain current and accurate registration and contact information on file with CalRecycle. To effectively

oversee the implementation of the Act and to assess whether its requirements are being met, CalRecycle must be able to identify which producers have an active exemption and how it can communicate with any exempted producer if necessary. Moreover, section 42060(a)(5) does not exempt small producers from the requirements of section 42050(b) of the PRC; the maintenance of a small producer's registration is therefore necessary to ensure it continues to meet the requirements of section 42050(b).

## **ARTICLE 6. REQUIREMENTS FOR THE PRODUCER RESPONSIBILITY ORGANIZATION**

### **§ 18980.6. PRODUCER PARTICIPATION GENERAL REQUIREMENTS**

#### **Subsection (a)**

The purpose of this subsection is to specify the information a PRO must provide in a notification to CalRecycle regarding producer non-compliance and producers that no longer participate in a PRO's plan pursuant to section 42051(d) of the PRC. Listing all applicable requirements enables a PRO to go through the list to determine whether it has included all required components in a notification to CalRecycle. Requiring such information, as detailed in subsections (a)(1) and (2), is necessary for CalRecycle to effectively implement and enforce section 42051(d) of the PRC, including by ensuring that the PRO implements its plan.

#### **Subsection (a)(1)**

One purpose of this subsection is to further specify the information, delineated by covered material category, that a PRO is obligated to report when a participating producer is non-compliant by introducing and giving context to the list that follows. 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 form and substance of the notification. Listing all applicable requirements relevant to producer non-compliance enables a PRO to go through the list to ensure it includes all required components in a notification to CalRecycle. Requiring the information to be delineated by covered material category enables CalRecycle to understand the effects of such producer noncompliance on the PRO's ability to implement its plan and comply with the Act.

Another purpose of this subsection is to ensure that the PRO provides information relevant to section 42082 of the PRC, which requires CalRecycle to publish a list of non-compliant covered material categories, by producer. The producer-specific information identified in this subsection is necessary for CalRecycle to satisfy that requirement.

#### **Subsection (a)(1)(A)**

The purpose of this provision is to ensure that a 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, protocols to ensure the PRO becomes aware of producer violations, and record maintenance protocols sufficient 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 noncompliant material. Such product-identifying information may include stock keeping units and distinguishing physical properties of the product. Such information is necessary because enforcing the Act and verifying producer and PRO compliance requires CalRecycle to be able to clearly identify products relevant to compliance.

To enforce the Act, it is necessary to identify the product that is at the root of the noncompliance. Furthermore, this product-specific information is necessary 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, protocols to ensure the PRO becomes aware of producer violations, and record maintenance protocols sufficient to demonstrate participant producer compliance).

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 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)(D) (discussed below), the PRO needs to be able to articulate the adverse effects it needs to offset.

### **Subsection (a)(1)(D)**

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 section 42051.1(m)(1), (2), and (4) of the PRC (requiring that the plan contains adequate incentives for compliance, protocols to ensure the PRO becomes aware of producer violations, and record maintenance protocols sufficient to demonstrate participant producer 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, delineated by covered material category, that 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)(2) of the PRC establishes that the PRO is required to notify CalRecycle within 30 days 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 form and substance of the notification. Listing all applicable requirements relevant to producer non-participation enables a PRO to go through the list to ensure it includes all required components in a notification to CalRecycle. Requiring the information to be delineated by covered material category enables CalRecycle to understand the effects of such producer non-participation on the PRO's ability to implement its plan and comply with the Act and on the non-participating producer's ability to comply with the Act.

Another purpose of this subsection is to ensure that the PRO provides information relevant to section 42082 of the PRC, which requires CalRecycle to publish a list of non-compliant covered material categories, by producer. The producer-specific information identified in this subsection is necessary for CalRecycle to satisfy that requirement.

### **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. Such product-identifying information may include stock keeping units and distinguishing physical properties of the product. Such information is necessary because enforcing the Act and verifying producer and PRO compliance requires CalRecycle to be able to clearly identify products relevant to compliance.

**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)(2) of the PRC establishes that the PRO is required to notify CalRecycle within 30 days of the date a producer no longer participates in the PRO's approved plan, but it does not specify the information that the PRO is required to provide to CalRecycle when making such a notification. 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 must include the date the producer no longer participated in the plan and the producer's reason, if known, for its non-participation. The rationale for this provision is that CalRecycle needs to know when the producer ceased participating in the plan to assess the duration of potential non-compliance by the PRO or the producer, which may result in daily penalties. For instance, by knowing the exact date on which the producer no longer participated in the PRO's approved plan, CalRecycle will be able to assess whether the PRO notified CalRecycle in compliance with the timeline established in section 42051(d) of the PRC and whether the relevant non-participating producer submitted a timely plan to comply with this chapter as an Independent Producer pursuant to section 42051(b) of the PRC.

Additionally, this provision is necessary because CalRecycle's response to the producer's 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 to bring an enforcement action against the producer and to include the producer on the list pursuant to section 42082 of the PRC; if a producer ceases to participate 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 a producer's non-participation is caused by the PRO's termination of that 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)(2) of the PRC establishes that the PRO is required to notify CalRecycle within 30 days 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 must provide an explanation and documentation sufficient to demonstrate there was good cause for dismissal if the

producer was dismissed by the PRO. This provision is necessary to ensure the PRO considers the criteria and complies with the process set forth in its plan pursuant to section 42051.1(m)(3) of the PRC when dismissing a producer from its plan.

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 a producer's non-participation is caused by the PRO's dismissal of that 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)(D)**

One purpose of this subsection is to further specify the information that the PRO is obligated to report to CalRecycle when a producer no longer participates in the PRO's plan. Section 42051(d)(2) of the PRC establishes that the PRO is required to notify CalRecycle within 30 days 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. The PRO must identify the effects of such non-participation and related non-compliance, if any, in its notification to CalRecycle. This is necessary to ensure CalRecycle obtains information regarding the non-participation and non-compliance sufficient to enable CalRecycle to understand the effects of such non-participation and non-compliance on the PRO's implementation of its approved plan. Such information is necessary to allow the Department to understand whether, and to what extent, the PRO's approved plan must be amended to remain in compliance with the Act, including, for instance, the fee schedule pursuant to section 42053 of the PRC.

#### **Subsection (b)**

The purpose of this subsection is to specify the standard that must be satisfied before a PRO can dismiss producers from participating in its producer responsibility plan. This subsection provides that a PRO may dismiss producers from participating in its plan only for good cause, after undertaking a good-faith effort to resolve the good cause. This provision is necessary to establish uniform standards and procedures by which a PRO will manage the dismissal of producers from its plan. This provision ensures that both a PRO and its participating producers are aware of the conditions that might warrant the PRO's dismissal of a producer from the PRO's plan. Without this provision, the PRO and participating producers would lack clear guidance on the conditions that might justify a PRO's dismissal of its participating producers from its plan, and there would be less certainty and consistency in the dismissal process. This provision is also necessary to protect producers from any unfair, unnecessary, premature, or otherwise improper dismissal by a PRO. Requiring good cause and a good-faith effort to resolve the good cause is necessary to ensure the PRO has a proper basis for dismissing the producer.

#### **Subsection (b)(1)**

The purpose of this subsection is to specify the conditions that constitute good cause for the purpose of dismissals under subdivision (b). This subsection provides that good cause for dismissal must be based on the producer's substantial noncompliance, and that a producer's noncompliance is substantial if it causes the PRO to incur financial harm, imposes a significant burden on the PRO, or creates the risk that the PRO or other producers will violate the Act. This provision establishes clear criteria for a PRO to determine if it has good cause to dismiss a producer and provides clarity to producers to enable them to avoid being dismissed.

This provision is necessary to establish uniform standards by which a PRO will manage the dismissal of producers from its plan. This provision ensures that both a PRO and its participating producers are aware of the conditions that constitute good cause sufficient to warrant the proper dismissal of a producer from the PRO's plan. Without this provision, the PRO and participating producers would lack clear guidance on the conditions that might justify a PRO's dismissal of its participating producers from its plan, and there would be less certainty and consistency in the dismissal process. This provision is also necessary to protect producers from any unfair, unnecessary, premature, or otherwise improper dismissal by a PRO. The requirement for good cause based on substantial noncompliance and the enumeration of conditions that rise to the level of substantial noncompliance are necessary to ensure that a PRO has a proper basis for dismissing the producer.

#### **Subsection (b)(2)**

The purpose of this subsection is to specify the minimum procedures a PRO must follow before dismissing a producer from participating in its plan. This subsection provides that the PRO's good faith effort to resolve the good cause requires, at a minimum, notice to the producer of the required corrective actions and a reasonable opportunity for the producer to cure the good cause. This subsection also specifies that a PRO must not dismiss a producer if the producer performs the required actions.

This provision is necessary to ensure that a producer always receives notice of any alleged good cause basis for its dismissal and a reasonable opportunity to cure the good cause prior to its dismissal from participating in a PRO's plan. The dismissal of a producer from participating in a PRO's plan may significantly impact that producer's ability to comply with the Act. For instance, such a dismissal may require the producer to submit a plan to comply with the Act as an Independent Producer pursuant to section 42051(b)(2) of the PRC. This provision is necessary to protect producers against any unfair, unnecessary, premature, or otherwise improper dismissal by a PRO, and to provide producers with the information and opportunity necessary to avoid such a dismissal.

#### **Subsection (b)(3)**

The purpose of this subsection is to reasonably limit a PRO's obligation to provide a producer with the opportunity to cure good cause as set forth in subsection (b)(2).

Requiring the PRO to repeatedly afford a producer with notice and the opportunity to

cure with respect to the same conduct or circumstances would enable producers to abuse the protections established in subsection (b)(2) by repeatedly failing to implement corrective actions without meaningful consequence. This provision is necessary to create a workable balance between, on the one hand, protecting producers against improper dismissals, and, on the other hand, allowing a PRO to have control over the implementation of its plan where a producer has demonstrated an unwillingness or inability to cure its repeated or ongoing conduct that constitutes substantial noncompliance. Not requiring a notice and cure period for conduct or circumstances that were the subject of a notice within the previous year reasonably achieves that balance. Without these provisions, a producer could continually jeopardize the compliance of the PRO and other producers participating in the PRO's plan without being dismissed from the plan.

### **Subsection (c)**

The purpose of this subsection is to specify the standard that must be satisfied before a PRO can refuse to accept a producer as a participant in its producer responsibility plan. This subsection provides that a PRO may refuse to accept a producer as a participant only for good cause, after exerting good faith effort to resolve the good cause. The details provided in the subsequent subsections enable a PRO to determine whether it has good cause to refuse to accept a producer as a participant, and if it has appropriately exerted good faith effort to resolve the good cause.

Overall, this subsection is necessary to establish uniform standards and procedures by which a PRO will manage the acceptance of, or refusal to accept, producers as participants in its plan. This provision ensures that both a PRO and its participating producers are aware of the conditions that might warrant the PRO's refusal to accept a producer as a participant in the PRO's plan. Without this provision, the PRO and participating producers would lack clear guidance on the conditions that might justify a PRO's refusal to accept producers as participants in its plan, and there would be less certainty and consistency in the acceptance process. This provision is also necessary to protect producers from any unfair or otherwise improper refusal by a PRO. The requirements for good cause and the exertion of good faith effort to resolve the good cause are necessary to ensure the PRO has a proper basis for refusing to accept the producer.

### **Subsection (c)(1)**

The purpose of this subsection is to specify the circumstances that constitute good cause for a PRO to refuse to accept a producer as a plan participant. This provision is necessary to establish uniform standards by which a PRO will manage the acceptance of, or refusal to accept, producers as participants in its plan. This provision ensures that both a PRO and any producer seeking to participate in its plan are aware of the circumstances that constitute good cause sufficient to warrant the proper refusal by a PRO. Without this provision, the PRO and producers seeking to participate in its plan would lack clear guidance on the conditions that might justify a PRO's refusal to accept producers to participate in its plan, and there would be less certainty and consistency in

the acceptance or refusal process. This provision setting forth the various circumstances that constitute good cause is also necessary to protect producers from any unfair or otherwise improper refusal by a PRO and to ensure that a PRO has a proper basis for refusing to accept the producer.

#### **Subsection (c)(1)(A)**

The purpose of this subsection is to specify the first of three circumstances that constitute good cause for a PRO to refuse to accept a producer as a plan participant. This subsection provides that good cause for a PRO's refusal can be based on the producer's failure to provide information reasonably required by the PRO for acceptance of the producer, consistent with the PRO's approved plan.

This provision is necessary to establish uniform standards by which a PRO will manage the acceptance of, or refusal to accept, producers as participants in its plan. This provision ensures that both a PRO and any producer seeking to participate in its plan are aware that this circumstance constitutes good cause sufficient to warrant the proper refusal by a PRO. Specifically, this provision provides notice to both a PRO and producers that a PRO may have good cause to refuse to accept a producer as a participant in its plan if the producer fails to provide information required by the PRO. Without this provision, the PRO and producers seeking to participate in its plan would lack clear guidance on the type of information that is required for the acceptance of the producer and the appropriate consequence for the producer's failure to provide such information, and there would be less certainty and consistency in the acceptance and refusal process. It is necessary to allow the PRO to refuse to accept a producer based on the producer's failure to provide information required by the PRO's plan because that producer, if accepted, would likely soon be subject to dismissal from the plan pursuant to subdivision (b) for its substantial noncompliance with the requirements of the PRO plan.

#### **Subsection (c)(1)(B)**

The purpose of this subsection is to specify the second of three circumstances that constitute good cause for a PRO to refuse to accept a producer as a plan participant. This subsection provides that good cause for a PRO's refusal can be based on the availability of information or evidence that clearly establishes that the producer is unwilling to exert good faith effort to comply with the Act.

This provision is necessary to establish uniform standards by which a PRO will manage the acceptance of, or refusal to accept, producers as participants in its plan. This provision ensures that both a PRO and any producer seeking to participate in its plan are aware that this circumstance constitutes good cause sufficient to warrant the proper refusal by a PRO. Specifically, this provision provides notice to both a PRO and producers that a PRO may have good cause to refuse to accept a producer as a participant in its plan if the PRO has information or evidence that clearly establishes that the producer is unwilling to exert good faith effort to comply with the Act. Without this provision, the PRO and producers seeking to participate in its plan would lack clear guidance on the effect of such information or evidence, and there would be less

certainty and consistency in the acceptance and refusal process. It is necessary to allow the PRO to refuse to accept a producer based on the availability of this information or evidence because such information or evidence clearly establishes that, if accepted, the producer would likely soon be subject to dismissal from the plan pursuant to subdivision (b) for its substantial noncompliance with the Act.

### **Subsection (c)(1)(C)**

The purpose of this subsection is to specify the last of the three circumstances that constitute good cause for a PRO to refuse to accept a producer as a plan participant. This subsection provides that good cause for a PRO's refusal can be based on the PRO's previous dismissal of the producer pursuant to subdivision (b) for good cause that still exists.

This provision is necessary to establish uniform standards by which a PRO will manage the acceptance of, or refusal to accept, producers as participants in its plan. This provision ensures that both a PRO and any producer seeking to participate in its plan are aware that this circumstance constitutes good cause sufficient to warrant the proper refusal by a PRO. Specifically, this provision provides notice to both a PRO and producers that a PRO may have good cause to refuse to accept a producer as a participant in its plan if the PRO has previously dismissed the producer for good cause pursuant to subdivision (b), and the cause identified in the notice preceding the dismissal still exists. Without this provision, the PRO and producers seeking to participate in its plan would lack clear guidance on the effect of such previous dismissal, and there would be less certainty and consistency in the acceptance and refusal process. It is necessary to allow the PRO to refuse to accept a producer based on the previous dismissal of that producer for good cause that still exists because, if accepted, the producer would likely again be subject to dismissal from the plan pursuant to subdivision (b) for the same reason it was previously dismissed.

### **Subsection (c)(2)**

The purpose of this subsection is to specify the minimum procedures a PRO must follow before refusing to accept a producer as a participant in its plan. This subsection provides that the PRO's good faith effort to resolve the good cause requires, at a minimum, notice to the producer of the required corrective actions and a reasonable opportunity for the producer to cure the good cause. This subsection also specifies that a PRO must accept the producer as a participant if it performs the required actions and that the producer shall not be deemed to have violated section 42051(b)(1) of the PRC.

This provision is necessary to ensure that a producer always receives notice of any alleged good cause basis for the PRO's refusal to accept the producer and a reasonable opportunity to cure the good cause before such refusal can happen. The refusal of a producer to participate in a PRO's plan may significantly impact that producer's ability to comply with the Act. For instance, such a refusal may require the producer to submit a plan to comply with the Act as an Independent Producer pursuant to section 42051(b)(2) of the PRC. This provision is necessary to protect producers against any unfair or otherwise improper refusal by the PRO, and to provide producers

with the information and opportunity necessary to avoid such a refusal. Moreover, it is necessary to specify that a producer that has been accepted as a participant after receiving notice and performing the necessary corrective actions shall not be deemed to have violated section 42051(b)(1) of the PRC to clearly explain the legal effect of successful corrective action during the period.

### **Subsection (c)(3)**

The purpose of this subsection is to specify the compliance status of a producer that has received the notice and opportunity to cure pursuant to subsection (c)(2). This subsection provides that a producer who has received such notice and opportunity to cure is considered a participant in the PRO for purposes of section 42051(b) of the PRC during the cure period.

This provision is necessary to ensure that a producer is not prematurely deemed to have violated the Act while taking corrective actions within the allotted time to cure a good cause. This provision is necessary to ensure uniform standards in the enforcement process and to ensure fairness, certainty, and consistency in the acceptance or refusal process.

### **Subsection (c)(4)**

The purpose of this subsection is to reasonably limit a PRO's obligation to provide a producer with the opportunity to cure good cause as set forth in subsection (c)(2).

Requiring the PRO to repeatedly afford producers the opportunity to cure with respect to the same conduct or circumstances would enable producers to abuse the protections established in subsection (c)(2) by repeatedly failing to resolve the basis for the PRO's decision without meaningful consequence.

This provision is necessary to create a workable balance between, on the one hand, protecting producers against improper refusals, and, on the other hand, allowing a PRO to have control over the implementation of its plan where a producer seeking to participate in its plan has demonstrated an unwillingness or inability to cure its repeated or ongoing conduct constituting good cause for dismissal or refusal. Not requiring a notice and cure period for conduct or circumstances that were the basis for dismissal or refusal within the previous year reasonably achieves that balance. Without these provisions, a producer acting in bad faith could rely on the compliance status conferred under subsection (c)(3) to avoid enforcement by continuously seeking to participate in a PRO's plan despite its continued conduct constituting good cause for dismissal or refusal.

## **§ 18980.6.1. PRODUCER RESPONSIBILITY PLAN SUBMISSION**

### **Subsection (a)**

The purpose of this subsection is to specify the date by which an approved PRO must prepare and submit a plan to the advisory board unless it chooses to submit its plan according to the timeline described in subsection (b). This subsection provides that a PRO must submit such a plan to the advisory board on or before April 1, 2026.

This subsection is necessary because, while section 42051.2 of the PRC describes the process and timeline for the various stages of review as part of the PRO's plan submittal, it does not specify the date by which the PRO must initiate this process by submitting its plan to the advisory board. A submittal date of April 1, 2026, is necessary outside of the timeline described in subsection (b) because, under section 42051 of the PRC, producers must be participating in an approved plan by January 1, 2027, and April 1, 2026, is the latest date that will allow sufficient 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 by January 1, 2027. A submission date of April 1, 2026, to the advisory board will allow 60 calendar days for the advisory board to review and comment, 120 calendar days for the PRO to revise its plan in response to the advisory board's comments, and 90 calendar days for CalRecycle to review and respond, consistent with the timeline set forth in section 42051.2 of the PRC.

### **Subsection (b)**

The purpose of this subsection is to establish an optional, alternate timeline to the one described in subsection (a) for the submission of its producer responsibility plan to the advisory board. This subsection allows an approved PRO to submit its producer responsibility plan to the advisory board after April 1, 2026, but on or before June 15, 2026, subject to the conditions described in subsections (b)(1) and (b)(2). This subsection is necessary to provide an approved PRO with additional time and opportunity, if needed, following the registration and application of participant producers pursuant to sections 18980.5(a) and (b) of these regulations to receive, organize, and analyze relevant participant producer data and to incorporate such data into its proposed plan prior to submittal. This subsection is therefore necessary to ensure that the plan submission timeline is adequately flexible.

### **Subsection (b)(1)**

The purpose of this subsection is to establish the first of two conditions that must be satisfied if a PRO chooses to submit its producer responsibility plan pursuant to the alternate timeline described in subsection (b). This subsection provides that a PRO choosing to follow the alternate timeline must waive its right to the full 120-day period in paragraph (1) of subdivision (b) of section 42051.2 of the PRC, and must instead submit the plan to the Department with revisions within 60 calendar days of receipt of the advisory board's comments. This shortened period for revisions is necessary because, under section 42051 of the PRC, producers must be participating in an approved plan by January 1, 2027, and April 1, 2026, is the latest date for plan submission to the advisory board that would allow for the complete 120-day period for PRO revisions and the complete 90-day period for Department review described in paragraphs (1) and (2), respectively, of subdivision (b) of section 42051.2 of the PRC. Accordingly, by allowing for a delayed plan submission date of June 15, 2026, the alternate timeline described in subsection (b) requires condensed periods for revision and review to ensure that a plan will be approved by January 1, 2027. This subsection is necessary to ensure the PRO understands that, by choosing to follow

the alternate timeline described in subsection (b), it waives its statutory right to the full 120-day revision period established in paragraph (1) of subdivision (b) of section 42051.2 of the PRC. A condensed revision period of 60 calendar days is necessary to provide an approved PRO with sufficient time to review comments from the advisory board and public and to make the necessary revisions to the plan while also affording the PRO with sufficient flexibility to delay its plan submission if it needs additional time to incorporate relevant producer data into the plan.

### **Subsection (b)(2)**

The purpose of this subsection is to establish the second of two conditions that must be satisfied if a PRO chooses to submit its producer responsibility plan pursuant to the alternate timeline described in subsection (b). This subsection provides that, if a PRO chooses to follow the alternate timeline described in subsection (b), the Department must review the plan within 75 calendar days. This shortened period for review is necessary because, under section 42051 of the PRC, producers must be participating in an approved plan by January 1, 2027, and April 1, 2026, is the latest date for plan submission to the advisory board that would allow for the complete 120-day period for PRO revisions and the complete 90-day period for Department review described in paragraphs (1) and (2), respectively, of subdivision (b) of section 42051.2 of the PRC. Accordingly, by allowing for a delayed plan submission date of June 15, 2026, the alternate timeline described in subsection (b) requires condensed periods of revision and review to ensure that a plan will be approved by January 1, 2027. A condensed review period of 75 calendar days is necessary to provide the Department with sufficient time to review the plan for compliance with the Act while also affording the PRO with sufficient flexibility to delay its plan submission if it needs additional time to incorporate relevant producer data into the plan.

### **Subsection (c)**

The purpose of this subsection is to specify that any successor or additional PROs approved by CalRecycle will be required to prepare and submit a plan to the advisory board for review within six months of approval. This subsection is necessary to establish uniform procedures for the submission of successor or additional PRO plans and to ensure that a successor or additional PRO understands the timeline for submitting its plan. Unlike the initial PRO, whose plan must be approved by a date certain, there is no identifiable calendar date for a successor PRO or any additional PRO to have an approved plan. Requiring such plans to be submitted by a date certain would be inappropriate because the circumstances requiring a successor PRO have not yet arisen, and the decision to allow additional PROs is discretionary and can only be exercised in the future. Thus, this separate provision is necessary to establish the plan submittal timeline and process for these types of PROs.

The rationale for six months is to allow a successor or additional PRO sufficient time to prepare its plan pursuant to section 42051.1 of the PRC. This provision is necessary to strike a reasonable balance in providing the PRO with enough time to prepare its detailed plan without granting it excess time to cause unnecessary delay.

Allotting any additional time could result in the unnecessary delay of the submission, approval, and implementation of a successor or additional PRO's plan. Conversely, requiring submission within less than six months could be overly burdensome to the successor or additional PRO and could increase the likelihood of errors or missing components and minimize the chances of plan approval. Additionally, six months is consistent with the time allotted for Independent Producers to submit a plan to the advisory board, as specified in section 18980.7(a).

#### **Subsection (d)**

The purpose of this subsection is to specify that a PRO must make its producer responsibility plan publicly available for comment on its website upon submitting the plan to the advisory board. Section 42051.2(a) of the PRC anticipates that there will be comments from the public on the proposed plan but does not specify how the public must be made aware of the contents of the plan. This provision is necessary to ensure the public is consistently and reliably provided with a reasonable opportunity to review the contents of any proposed plan. The rationale for this provision is that the public will be able to review and comment on the proposed plan if it is posted on the PRO's website. In the Act, the Legislature endorsed the posting of other documents on the PRO's 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 concerning the PRO and producer responsibility plan requirements; these parties were in favor of creating opportunities for public input, including 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 that the PRO must include in plans submitted to CalRecycle a summary of all comments received from the advisory board and the public, and identify any revisions made in response to the comments. Pursuant to section 42051.2(a) of the PRC, the PRO is obligated to consider the advisory board and public comments. For CalRecycle to verify that this was done, plans submitted to CalRecycle must include a summary of the comments the PRO received and identify any revisions made to address the comments. The requirement for comments to be provided in a summarized form is necessary to reduce administrative costs and burdens on the PRO and CalRecycle.

This section also requires the PRO to make the plan submitted to CalRecycle available for public review by posting the plan to its website until it posts the approved plan. This provision is responsive to requests from members of the public in the informal workshops to foster public involvement and transparency in the plan development process and is necessary for promoting transparency of PRO activities. Without this provision, the public would not be able to determine what plan changes the PRO made in response to the advisory board and public comments. In the Act, the Legislature endorsed the posting of other documents on the PRO's website to

ensure that the public is aware of the PRO's actions; requiring the PRO's plan submitted to CalRecycle to be posted to its website ensures consistent transparency and availability to the public.

## **§ 18980.6.2. PRODUCER RESPONSIBILITY PLAN APPROVAL**

### **Subsection (a)**

The purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted producer responsibility plans. This subsection specifies that CalRecycle will approve a PRO plan if it contains all elements required by the Act and meets all requirements of the chapter. This subsection further clarifies that, in determining whether a PRO plan contains all elements required by the Act and meets all requirements of the chapter, CalRecycle must consider all summarized comments and responsive revisions, if any, included pursuant to subdivision (e) of section 18980.6.1 of the regulations. This provision is necessary to ensure consistency, certainty, and fairness in CalRecycle's evaluation of the proposed plan and to provide a mechanism for CalRecycle to ensure the PRO appropriately considers and incorporates comments from the advisory board and public in its plan development, as required by sections 42051.2(a) and (b) of the PRC. This provision is necessary to offer clear guidance to a PRO on how to develop a plan that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a plan that satisfies these criteria.

### **Subsection (b)**

The purpose of this subsection is to clarify the standard by which CalRecycle will review submitted producer responsibility plans for conditional approvals and the effect of any conditional approvals granted by CalRecycle. This subsection provides that CalRecycle will grant conditional approval where certain elements of the submitted plan do not meet applicable requirements, but if conditions specified by CalRecycle are met, final approval will be warranted. This subsection provides examples of such conditions, including clarification to remove ambiguities or addition of information or data demonstrating that requirements have been met. Further, this subsection specifies that, while approval conditions are pending, the plan is considered approved for purposes of the Act and this chapter.

The Act authorizes CalRecycle to conditionally approve submitted proposed plans but does not define or describe the specifics or limitations of that authority. Accordingly, this subsection establishes clear guidelines for when CalRecycle will conditionally approve a submitted plan. This subsection is necessary to establish uniform standards for when and why plans will be conditionally approved by CalRecycle, and to inform a PRO of some of the common bases for conditional approval. CalRecycle provides non-exclusive examples based on its experience implementing other EPR programs to help a PRO and CalRecycle understand and identify typical defects that might render a submitted plan appropriate for conditional approval. These examples represent plan defects that would likely prevent a PRO from being able to comply with the Act and the chapter, and thus must be corrected before the plan can be approved, but that are not so significant as to render a submitted plan outright disapproved.

### **Subsections (c), (c)(1), and (c)(2)**

The purpose of these subsections is to develop a process for a PRO to revise and resubmit its plan no later than 12 months after it is conditionally approved. Pursuant to section 42051.2(b)(3) of the PRC, the PRO must resubmit a revised plan within 12 months of conditional approval. However, the Act does not identify intermediate steps to ensure the PRO completes the required plan revisions by the deadline or to enable appropriate coordination between the PRO and CalRecycle. CalRecycle fills in these specifics in this provision by requiring the PRO to submit to CalRecycle each month the estimated date of plan resubmittal and status updates describing how the PRO is addressing each condition.

Because the PRO can administer a conditionally approved plan for up to 12 months, CalRecycle needs condition-specific updates from the PRO at monthly intervals to demonstrate it is making continued progress to satisfy the conditions for approval. Additionally, the PRO needs to provide CalRecycle with reasonable certainty that it will complete plan revisions 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 monthly estimates of a timeline are necessary for CalRecycle to gauge the PRO's likelihood of providing an approvable plan at a date certain. If the PRO did not provide condition-specific updates, CalRecycle would be unable to support the PRO in addressing each condition to obtain final approval, leaving the PRO and CalRecycle with a plan that may not be approved.

Additionally, this provision specifies that PRO submittals are due by the last day of each month beginning the first full month after conditional approval. This timeline is appropriate because it establishes regular reporting and provides reasonable time for the PRO to prepare its updates. Requiring more than monthly updates would increase the burden on the PRO, and requiring less frequent updates would create the risk of CalRecycle not timely identifying problems with the PRO's approach to addressing the approval conditions.

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

### **Subsection (d)**

The purpose of this subsection is to specify the effect of a PRO's failure to meet the approval conditions of its proposed plan within 12 months of a conditional approval by CalRecycle. This subsection provides that, if a PRO does not meet CalRecycle's specified conditions of plan approval within 12 months of CalRecycle's determination, the conditional approval ends, and the PRO is deemed not in compliance with the Act and these regulations.

This provision is necessary to clarify the effect of section 42051.2(b)(3) of the PRC, which specifies that the PRO shall ensure the conditions are met within 12 months but does not make clear the effect of a PRO's failure to do so. This provision provides the necessary clarity and notice to a PRO as to the effect of any such failure: The PRO will be deemed not in compliance with the Act and these regulations. This clarification provides transparency to the PRO and producers participating in its plan that failure to meet conditions may subject them to potential penalties under the Act.

**Subsection (e)**

The purpose of this subsection is to make specific that a PRO's plan is valid for five years from the date of approval by CalRecycle. This is necessary because section 42051.2(d) of the PRC specifies that an approved plan has a lifespan of five years, without explicitly stating when the five-year period begins and ends.

The rationale for selecting the plan approval date as the date from which the five-year period begins is that this date will be memorialized by CalRecycle on paperwork provided to the PRO and preserved in CalRecycle's electronic files, making it easily accessible to CalRecycle and the PRO.

**§ 18980.6.3. REVIEW OF UPDATED PRODUCER RESPONSIBILITY PLAN**

**Subsection (a)**

The purpose of this subsection is to specify the date by which a PRO must submit its proposed updated plan to the advisory board. This subsection provides that a PRO must submit its proposed updated plan to the advisory board at least 180 days before the plan's expiration date.

Section 42051.2(d)(2) of the PRC requires a PRO to submit a proposed updated plan to the advisory board "[n]o less than 180 calendar days before" expiration of the approved plan. This statutory provision could be read to permit CalRecycle to set a deadline that is even earlier than the outer limit of "[n]o less than 180 calendar days" that is established in section 42051.2(d)(2) of the PRC. However, CalRecycle has determined that a deadline of 180 calendar days for the submission of a proposed updated plan provides the PRO, advisory board, and CalRecycle with sufficient time to follow the review and approval process set forth in statute while affording maximum flexibility to the PRO. This provision is thus necessary to provide the PRO with certainty and clarity as to the timeline it will be required to follow when submitting its proposed updated plan to the advisory board.

**Subsection (b)**

The purpose of this subsection is to establish the endpoint of the advisory board comment period for the PRO's proposed updated plan as "no later than" 60 calendar days after the PRO's submission of the proposed updated plan to the advisory board. The Act establishes a timeline for the advisory board's consideration of an initial proposed plan (60 days pursuant to section 42070(h) of the PRC) but does not explicitly address a timeframe for the advisory board's review of proposed plan

updates. This provision clarifies that the comment period set forth in section 42070(h) of the PRC applies to proposed updated plans just as it applies to initial proposed plans.

Another purpose of this subsection is to specify that the PRO must make the proposed updated plan publicly available for comment on its website after submitting the plan to the advisory board. Section 42051.2(a) of the PRC anticipates that there will be comments from the public on the proposed initial plan but does not specify how the public will be aware of the contents of the plan. To implement section 42051.2(a) of the PRC, CalRecycle established a public posting requirement in section 18980.6.1 of the regulations to enable the public to review the proposed initial plan on the PRO's internet website. It is reasonable and appropriate to subject proposed updated plans under section 42051.2(d) of the PRC to the same public comment requirements that govern proposed initial plans. This provision is necessary to clarify that the same public comment requirements of section 42051.2(a) of the PRC apply to proposed plan updates, including the requirement that the PRO make proposed plan updates available for review and public comment by, at minimum, posting the proposed updated plan to its internet website.

#### **Subsection (c)**

One purpose of this subsection is to specify the date by which a PRO must submit its proposed updated plan to CalRecycle. This subsection requires a PRO to submit its proposed updated plan to CalRecycle within 120 days of receiving advisory board comments. While section 42051.2(b)(1) of the PRC provides that a PRO must submit its initial plan to CalRecycle within 120 days of receiving comments from the advisory board, section 42051.2(d)(2) of the PRC is silent as to the comparable timeline for the PRO's submission of proposed updated plans to CalRecycle. Given other similarities in the processes and timelines that govern the PRO's submission of proposed initial plans and proposed updated plans under the Act, a comparable timeline of 120 days is appropriate and reasonable for the PRO's submission of a proposed updated plan to CalRecycle. This provision is therefore necessary to clarify that the same timeline of 120 calendar days applies when a PRO submits a proposed updated plan to CalRecycle.

Another purpose of this subsection is to specify that the PRO must include in its proposed updated plan submitted to CalRecycle a summary of all comments received from the advisory board and the public, and identify any revisions made in response to the comments. While section 42051.2(a) of the PRC requires the PRO to consider the advisory board and public comments that it receives in response to its proposed initial plan, section 42051.2(d)(2) of the PRC contemplates an opportunity for the advisory board to review the PRO's proposed updated plan but is otherwise silent as to the comparable requirement for the consideration of advisory board and public comments prior to the PRO's submission of its proposed updated plan to CalRecycle. Given other similarities in the processes and timelines that govern the PRO's submission of proposed initial plans and proposed updated plans under the Act, a comparable requirement for consideration of advisory board and public comments is appropriate and

reasonable for the PRO's submission of a proposed updated plan to CalRecycle. For CalRecycle to verify the PRO properly considered comments from the advisory board and public, proposed updated plans submitted to CalRecycle must include a summary of the comments the PRO received and identify any revisions made to the proposed updated plan to address the comments. This provision is therefore necessary to clarify that the same requirements for advisory board and public comments must be met and how such requirements can be verified when a PRO submits a proposed updated plan to CalRecycle.

Another purpose of this subsection is to clarify the minimum actions a PRO must take to make its proposed updated plan available to the public. This subsection requires the PRO to make its proposed updated plan available for public review by posting the proposed updated plan on its website until an approved updated plan is posted. This provision is responsive to requests made by members of the public through written submissions and in informal workshops to foster public involvement and transparency in the plan update process and is necessary for promoting transparency of PRO activities. Without this provision, the public would not be able to determine what plan updates the PRO made in response to the advisory board and public comments. 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; requiring the PRO's proposed updated plan submitted to CalRecycle to be posted to its internet website ensures consistent transparency and availability to the public.

#### **Subsection (d)**

The purpose of this subsection is to establish a mechanism by which CalRecycle can ensure that the PRO appropriately considers and incorporates comments from the advisory board and the public in developing its proposed updated plan. For the reasons articulated in subsection (c), a PRO must include in its proposed updated plan submission a summary of all comments received from the advisory board and the public, and it must further identify any revisions made in response to the comments. This subsection gives effect to this requirement by requiring CalRecycle to consider all summarized comments and any responsive revisions when reviewing the proposed updated plan submission for approval. This provision is necessary to offer clear guidance to a PRO and CalRecycle as to the review standard that will be employed by CalRecycle during the updated plan review process and to ensure that any comments received by the advisory board or public are properly considered in updated plans.

#### **Subsection (e)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted proposed plan updates. This subsection specifies that CalRecycle will approve a PRO's proposed updated plan if it contains all elements required by the Act and meets all requirements of the chapter. This provision is necessary to offer clear guidance to the PRO on how to develop a proposed updated plan that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a proposed updated plan that satisfies these criteria.

Another purpose of this subsection is to specify that an updated plan is valid for 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, without explicitly stating when the five-year period begins and ends or how it relates to updated plans. Establishing the plan approval date as the date on which the five-year period begins is the most straightforward application of the text of section 42051.2(d).

#### **Subsection (f)**

The purpose of this subsection is to specify that a PRO must post its updated approved plan on its website within five calendar days of approval by CalRecycle. For producers and others to implement an updated approved plan, it must be publicly available. Since the Act requires the PRO to post approved plans on its website, requiring updated plans to be posted in the same location ensures consistency. The rationale for requiring posting within five days of approval by CalRecycle is that the PRO needs only a small amount of time to receive an approval notification from CalRecycle and post the approved updated plan to its website. Shortening the time may be too onerous to the PRO, while a longer time is unnecessary since the PRO already must have an established website to easily upload the document to ensure regulated entities are aware of the updated plan.

### **§ 18980.6.4. PRODUCER RESPONSIBILITY PLAN AMENDMENTS**

#### **Subsection (a)**

The purpose of this subsection is to specify a timeline for the advisory board to review a PRO's proposed plan amendment and provide comments to the PRO. This subsection provides that the advisory board must review the PRO's proposed plan amendment and provide comments to the PRO within 60 calendar days of receiving the proposed plan amendment. This provision is necessary because section 42051.2(e)(1) of the PRC requires a PRO to submit a proposed plan amendment to the advisory board for review and comment, but it does not specify the timeline for that process. This provision clarifies that the advisory board has 60 days to review proposed plan amendments, which is consistent with the timeline provided for the advisory board's review of proposed producer responsibility plans (section 42051.2(a) of the PRC) and proposed updated plans (section 42051.2(d)(2) of the PRC). Allowing more than 60 days would unnecessarily delay the PRO's submission of proposed plan amendments to CalRecycle for approval, while allowing less than 60 days would constrict the advisory board's capacity to thoroughly consider the plan amendment and prepare its comments to the PRO.

#### **Subsection (b)**

The purpose of this subsection is to specify the required contents of proposed plan amendments that a PRO submits to CalRecycle. This subsection provides that the PRO must include in proposed plan amendments submitted to CalRecycle a summary of all comments received from the advisory board and identify any revisions made in response to the comments. While section 42051.2(e)(1) of the PRC requires a PRO to submit its proposed plan amendment to the advisory board for comment

prior to submitting the proposed plan amendment to CalRecycle, that statutory provision does not specify whether or how the PRO must incorporate any such comments into its submission to CalRecycle. This provision is therefore necessary to clarify the required contents of the proposed plan amendment, to ensure that the PRO properly considers any such comments from the advisory board before submitting its proposed plan amendment to CalRecycle, and to ensure that CalRecycle has the opportunity to verify that the proposed plan amendment reflects that the PRO complied with this requirement.

### **Subsection (c)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted proposed plan amendments. This subsection specifies that CalRecycle will approve a PRO's proposed plan amendment if it contains all the elements required by the Act and meets all requirements of the chapter. This subsection further clarifies that, in determining whether the proposed plan amendment contains all the elements required pursuant to the Act and meets all requirements of the chapter, CalRecycle must consider all summarized comments and responsive revisions, if any, included pursuant to subdivision (b). This provision is necessary to ensure consistency, certainty, and fairness in CalRecycle's evaluation of the proposed plan amendment and to provide a mechanism for CalRecycle to ensure the PRO appropriately considers and incorporates comments from the advisory board in developing its proposed plan amendments. This provision is necessary to offer clear guidance to a PRO on how to develop a proposed plan amendment that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a proposed plan amendment that satisfies these criteria.

Another purpose of this subsection is to specify the effect and timeline of an approved plan amendment. This subsection provides that the approval of a proposed plan amendment does not alter the expiration date of the plan. While section 42051.2(d)(1) of the PRC provides that an approved plan is valid for five years, that statutory provision specifically exempts approved plan amendments under section 42051.2(e) of the PRC. The specific exemption of plan amendments from this provision suggests that the Legislature intended for plan amendments to have no effect on the timeline for an approved plan. However, that is not explicitly stated in the Act. Therefore, this subsection is necessary to offer clear guidance as to the length of validity and operative expiration date for an approved plan that has been amended pursuant to section 42051.2(e) of the PRC.

### **Subsection (d)**

The purpose of this subsection is to specify that a PRO must post approved amended plans on its website within five calendar days of approval by CalRecycle. For producers and others to implement the amended plan, it must be publicly available. Since the Act requires the PRO to post approved plans on its website, requiring amended plans to be posted in the same location ensures consistency. The rationale for requiring posting within five days of approval by CalRecycle is that the PRO needs

only a small amount of time to receive an approval notification from CalRecycle and post the approved amended plan to its website. Shortening the time may be too onerous to the PRO, while a longer time is unnecessary since the PRO already must have an established website to easily upload the document to ensure regulated entities are aware of the amended plan.

## **§ 18980.6.5. ANNUAL REPORTS**

### **Subsection (a)**

The purpose of this subsection is to establish the timeline for annual reporting by a PRO. Doing so is necessary because subdivision (a) of section 42051.3 of the PRC requires the annual submission of a report and budget by the PRO but does not specify the timeline or process for the submissions. This subsection specifies that a PRO must submit the annual report in two phases: one submission comprising performance data from the previous year and another submission comprising the budget for the upcoming year. This phased approach is necessary to account for the likelihood that data may not be available early enough for all data and budgets to be submitted simultaneously.

### **Subsection (b)**

The purpose of this subsection is to establish the required contents for the first phase of the annual report, as well as the date by which the PRO must submit its first phase of reporting to CalRecycle. This subsection specifies that the PRO must include in its first phase of reporting the information described in subdivisions (a)(2) and (a)(3)(B), (C), (D), and (E) of section 42051.3 of the PRC, as well as any results of the independent audit described in subdivisions (b) and (c) of section 42054 of the PRC. This subsection also specifies that the PRO must submit the first phase of its annual report to CalRecycle by July 1 of each year. Section 42051.3 of the PRC requires a PRO to submit an annual report and budget to CalRecycle but does not specify a due date. CalRecycle needs to provide a due date for submission to provide certainty to the PRO and CalRecycle and aid the enforcement of the Act by clarifying when a PRO is or is not in breach of its obligations. CalRecycle selected July 1 for the first phase of reporting in part in response to public comment. Because the information required to be reported in the first phase consists of and is based on retrospective performance data from the previous year, the PRO will have sufficient time to receive, organize, and analyze the relevant data and incorporate such data into its annual report prior to July 1. If the first phase of the annual report were due prior to July 1, the data on which the PRO will rely for its reporting might not be available. By selecting July 1, the report will be able to be adequately informed by the relevant data and will be filed early enough to ensure that CalRecycle receives critical information regarding program implementation, and can provide important feedback to the PRO about its operation of the program, as near to the close of each reporting year as is feasible. A date later than July 1 would not allow enough time for CalRecycle review prior to the start of the next year and is consistent with reporting periods for other extended producer responsibility programs.

### **Subsection (c)**

The purpose of this subsection is to establish the required contents for the second phase of the annual report, as well as the date by which the PRO must submit its second phase of reporting to CalRecycle. This subsection specifies that the PRO must include in its second phase of reporting the information described in subdivision (a)(3)(A) of section 42051.3 of the PRC. This subsection also specifies that the PRO must submit the second phase of its annual report to CalRecycle by October 1 of each year. Section 42051.3 of the PRC requires a PRO to submit an annual report and budget to CalRecycle but does not specify a due date. CalRecycle needs to provide a due date for submission to provide certainty to the PRO and CalRecycle and aid the enforcement of the Act by clarifying when a PRO is or is not in breach of its obligations. CalRecycle selected October 1 for the second phase of reporting in part in response to public comment, including from the approved PRO. Because the information required to be reported in the second phase consists of prospective financial data for the upcoming year, the PRO will have sufficient time and adequate information to analyze the relevant data and prepare the necessary budget forecasts prior to October 1. If the second phase of the annual report were due prior to October 1, the data, information, or forecasts on which the PRO will rely for its budget might not be available. By selecting October 1, the budget will be able to be adequately informed by the relevant data and will be filed early enough to ensure that CalRecycle receives critical financial information regarding program implementation for the upcoming year, and can provide important feedback to the PRO before the budget takes effect. A date later than October 1 would not allow enough time for CalRecycle review prior to the start of the next year.

### **Subsection (d)**

The purpose of this subsection is to specify that a PRO must make each phase of its annual report publicly available on its website upon submission of that phase to CalRecycle and until the PRO posts its approved annual report. Section 42051.3 of the PRC requires the PRO to submit and make publicly available on its website annual reports and budgets but does not specify when the posting must occur. To ensure that the PRO knows what to post and when, this subsection specifies that the posting requirement applies upon each submission (the first phase and the second phase) and upon approval of the full annual report. The PRO needs to publish the submitted phases of the report and the approved report for transparency between the PRO, the public, and the advisory board. This provision is necessary to enable interested parties and CalRecycle to review annual reports concurrently and to ensure their awareness upon CalRecycle's approval.

### **Subsection (e)**

The purpose of this subsection is to establish the timeline and approval criteria that apply to CalRecycle's review of submitted annual reports. This subsection clarifies that, after submission of the second phase of an annual report, CalRecycle will approve the annual report if it meets the requirements in section 18980.9.1 and section

42051.3 of the PRC. That this approval happens only after the submission of the second phase of the annual report is necessary to offer clear, uniform guidance to a PRO and CalRecycle as to the timeline for approvals and to ensure CalRecycle's approval determination will be based on the complete annual report materials. Section 18980.9.1 is the appropriate regulatory reference because that is the section addressing annual reports. Section 42051.3 of the PRC is the relevant statutory reference because it contains the statutory elements of the annual report. This provision is necessary to specify the requirements of the Act and these regulations that a PRO must meet for CalRecycle to approve its annual reports. If the PRO is unable to identify the relevant substantive requirements, it will be unable to provide an approvable annual report to CalRecycle.

#### **Subsection (f)**

The purpose of this subsection is to specify that a PRO must publish approved annual reports on its website within five calendar days of CalRecycle approval. CalRecycle needs to provide a due date for posting to provide certainty to the PRO and CalRecycle and to aid the enforcement of the Act by clarifying when a PRO is in breach of its obligations. The rationale for requiring posting within five days of CalRecycle approval is that the PRO needs only a small amount of time to receive an approval notification from CalRecycle and post the approved annual report to its website. Shortening this time may be too onerous to the PRO, while a longer time is unnecessary since the PRO already must have an established website to which it can easily upload the report to ensure interested parties are aware of CalRecycle's approval.

### **§ 18980.6.6. DOCUMENT SUBMITTALS**

#### **Subsection (a)**

The purpose of this subsection is to specify the procedures and criteria for when a PRO submits certain documents to CalRecycle, specifically, producer responsibility plans, updated producer responsibility plans, plan amendments, annual reports, and associated documents. This subsection provides the clarity necessary for the PRO to understand its obligations and how CalRecycle will evaluate whether they have met those obligations.

#### **Subsection (a)(1)**

One purpose of this subsection is to specify that a PRO must submit the documents subject to section 18980.6.6 to CalRecycle electronically. This is necessary to establish a consistent standard and format of submission. Moreover, specifying electronic submission is necessary because it facilitates near-instantaneous transmittal to CalRecycle, which supports the PRO in meeting submittal deadlines, enables effective document retention by CalRecycle, allows for the appropriate CalRecycle personnel to access documents for review easily, and minimizes the cost and time burden associated with mailing.

Another purpose of this subsection is to establish that the date a PRO electronically

submits the documents subject to section 18980.6.6 will be considered the date of receipt by CalRecycle. CalRecycle needs to clarify when it considers the document submitted to provide certainty to the PRO and CalRecycle and aid the enforcement of the Act by providing clarity when a PRO is or is not in breach of its obligations. Because electronic transmissions are nearly instantaneous, it is reasonable to assume that an electronic transmission is received by CalRecycle on the same day it is submitted by a PRO.

### **Subsection (a)(2)**

The purpose of this section is to specify that all PRO documents subject to section 18980.6.6 must be complete and correct. For CalRecycle to rely on the information contained in documents submitted by a PRO, it needs assurance that the documents contain the required information and are accurate. If plans, reports, and other documents are incomplete, CalRecycle will lack important information necessary to evaluate the documents. Additionally, section 42051.3(b)(2) of the PRC explicitly requires that annual reports be complete, but it does not specify the standard for completeness, so this subsection provides necessary clarity. If a PRO provides documents that are not correct, CalRecycle's determinations will be based on inaccurate information, which could result in CalRecycle approving something that it would not have approved if it had received correct information.

Another purpose of this subsection is to introduce the criteria for what CalRecycle will consider a complete and correct document. This is necessary to ensure that the PRO can find the specific standards of completeness and correctness that follow.

### **Subsection (a)(2)(A)**

The purpose of this subsection is to specify the standard for completeness of a submitted document: The document must meet all applicable requirements in sections 18980.6.1, 18980.6.3, 18980.6.4, 18980.6.5, 18980.8, 18980.8.1, and 18980.9.1 and contain sufficient detail for CalRecycle to determine that the requirements were met. Those sections necessarily underlie the completeness requirement because they explicitly and comprehensively address the subject matter identified in subsection (a).

### **Subsection (a)(2)(B)**

The purpose of this subsection is to specify that CalRecycle will consider a document correct if all information provided is accurate, exact, and is signed and certified under penalty of perjury as specified in subsection (a)(3). The rationale for requiring information to be accurate is to provide assurance to CalRecycle that documents are free from error as a result of the exercise of the PRO's due care. The rationale for requiring the information to be exact is that the PRO needs to explain facts with precision so that CalRecycle and interested parties can rely on the information. If the information contains errors or does not reflect the requisite precision, CalRecycle will be unable to ascertain that the requirements of the Act will be or have been met.

Given the connection between the "correct" element of the perjury provision and the requirement regarding correctness found in this subsection, it is appropriate for the

meaning of the perjury statement regarding correctness to be included in this subsection. Additionally, this provision uses a similar standard as other existing regulations, such as solid waste regulations under 27 CCR section 21563(d)(2), that specify what CalRecycle considers “correct” for the purpose of approving or denying documents.

### **Subsection (a)(3)**

One purpose of this subsection is to require that all documents subject to section 18980.6.6 be signed by a properly authorized individual. This provision is necessary because document submissions must be attributable to the entity whose obligations the submissions are intended to fulfill. Requiring a signature also ensures that the individual submitting the documents understands that they are holding themselves out as an authorized representative of the PRO.

Another purpose of this subsection is to specify that the individual signing the document must attest to the correctness of the information submitted under penalty of perjury. Requiring such a declaration is necessary to ensure that the individual is appropriately authorized and to guard against the submission of false information.

### **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 all documents subject to section 18980.6.6 that are submitted to CalRecycle, except for those to which specified exemptions apply. Additionally, this subsection directs parties to Article 14, 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 to specific document submittals required under the Act or how to identify records they claim to be exempt from mandatory disclosure provisions.

Another purpose of this subsection is to explain what CalRecycle will do with appropriately identified trade secret information; specifically, CalRecycle will withhold that information from public disclosure subject to the requirements and limitations set forth in Article 14. Including a reference to Article 14 ensures that Independent Producers will be aware of all provisions inof these regulations affecting whether documents submitted to CalRecycle will be considered public records.

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, and 42063(c) of the PRC, which extends those protections to the annual report submission. The exemption does not apply to information in summary form that cannot be attributed to specific entities. Given that CalRecycle may not immediately recognize information presented by the PRO to be financial, production, or sales data or that it may be aware that it is such data but unaware of whether it is or not attributable to specific entities, portions of PRO plans that the PRO claims contain

such information need to be specifically be identified by the PRO, and that a cover letter is submitted along with the plan or other documents setting forth the basis for such claims. Moreover, it is necessary to make clear that these provisions apply to all document submissions provided in association with the annual report and plan submissions, not just the final approved plan or final approved annual report. If the protection of this information applied only to the approved report or plan, the information would be disclosable when the plan or annual report is in draft form or would be disclosable in supplementary documents that are never, in themselves, approved. Disclosing the information in such a way runs entirely contrary to the purpose of the protections set forth in section 42051.2(b)(5) and 42063(c) of the PRC. The Public Records Act exemption itself logically must apply generally to all documents submitted to CalRecycle pursuant to section 18980.6.6, or else the exemption would be effectively meaningless.

## **§ 18980.6.7. ECO-MODULATED FEE AND FEE SCHEDULE**

### **Subsection (a)**

The purpose of this subsection is to specify the costs that a PRO must charge its participant producers pursuant to subdivision (b) of section 42053 of the PRC and the amount of time for which the participant producer fee schedule will be based on such costs. This subsection specifies that, prior to CalRecycle's approval of a PRO's initial plan and for two years following that approval, a PRO must charge participant producers a fee based on the items specified in section 42053(b) of the PRC that are also listed in subsections (a)(1) through (a)(4). By presenting a list of items, further detailed below, this subsection clearly lays out requirements related to the fee, so that a PRO and participating producers can readily understand how the PRO must assess it.

This provision is necessary to specify the timeline for a PRO to stop charging participant producers a fee based on the items identified in section 42053(b) of the PRC and begin charging the fee established pursuant to section 42053(a) and based on the fee schedule described in section 42053(c) of the PRC. While costs under section 42053(b) apply "during the first two years of operation and during the preparation of the plan," that section does not clarify when plan preparation concludes or when the two years of operation are deemed to have occurred. This subsection is therefore necessary to clarify that "preparation of the plan" under section 42053(b) of the PRC refers to the period prior to CalRecycle's approval of the initial PRO plan and that "the first two years of operation" under section 42053(b) of the PRC refers to the two years immediately following that approval. That the PRO is allowed to charge its participant producers a fee based on section 42053(b) of the PRC for the two years immediately following approval of the initial PRO plan is necessary because such fee requires less producer-specific data than the alternate eco-modulated fee under section 42053(a) and based on the fee schedule described in section 42053(c) of the PRC. This subsection is therefore necessary to ensure the PRO has sufficient time and opportunity to receive, organize, and analyze relevant producer data and to

incorporate such data into an eco-modulated fee schedule pursuant to section 42053(c) of the PRC before the PRO is required to begin charging participant producers eco-modulated fees according to section 42053(a) of the PRC.

#### **Subsections (a)(1) through (a)(4)**

The purpose of these subsections is to list the items that a PRO must use as a basis for establishing the fee it charges participant producers prior to CalRecycle's approval of its initial plan and for the two years following that approval. These subsections are necessary for clarity, completeness, and consistency with sections 42053(b) and 42064 of the PRC that specify the cost criteria. Costs to cover the environmental mitigation requirements of section 42064 of the PRC are included as an estimated cost of implementing the plan because, pursuant to section 42064, that is a necessary cost that is incurred by the PRO commencing in the 2027 calendar year. Additionally, it is necessary for CalRecycle to identify the components included within the costs to reimburse CalRecycle for administration, implementation, and oversight of the Act to ensure transparency regarding how CalRecycle calculates its costs. Furthermore, CalRecycle's cost criteria identified in subsection (a)(4) are consistent with CalRecycle's costs for other EPR programs that CalRecycle oversees.

#### **Subsection (b)**

The purpose of this subsection is to specify the fees that a PRO must charge its participant producers pursuant to subdivision (a) of section 42053 of the PRC and the timeline in which it must begin charging such fees. This subsection specifies that, beginning two years following the approval of a PRO's plan, the PRO must charge each participant producer fees pursuant to subdivision (a) of section 42053 of the PRC, and that such fees must be based on the fee schedule described in subdivision (c) of section 42053 of the PRC and eco-modulated as described in the plan. Furthermore, this subsection specifies that a PRO must account for the costs to ensure that covered materials and covered material categories meet the requirements of the chapter, including minimization of environmental and public health impacts of covered material and the end-of-life management of covered material. It is necessary to require the PRO to begin charging its participant producers eco-modulated fees two years following the approval of a PRO's plan because subdivision (b) of section 42053 of the PRC, as implemented in subdivision (a) of this section, clarifies that, until this point, the PRO must instead charge its participant producers a fee based on the items specified in subdivision (b) of section 42053 of the PRC.

Additionally, section 42053(d)(1)(D) of the PRC states that a PRO must account for costs related to ensuring that plan implementation avoids and minimizes impacts on disadvantaged or low-income communities or rural areas but does not clarify the scope of this requirement. It is necessary for a PRO to consider potential impacts on these communities and areas that may occur during the end-of-life management of covered material, including through the collection, processing, recycling, or remanufacturing processes, to ensure it appropriately establishes eco-modulated

fees. Without clarifying that a PRO must minimize these impacts of covered material and the end-of-life management of covered material, there would be no assurance that a PRO will properly account for all applicable environmental and public health impacts in its eco-modulated fees. This would risk resulting in the inaccurate assessment of participant producer fees and an improperly funded plan. To comply with section 42053(a) of the PRC, a PRO must develop a fee schedule that ensures that its budget is fully funded.

### **Subsection (c)**

The purpose of this subsection is to clarify the timeline for the PRO's assessment of participant producer fees under subdivisions (a) and (b) of section 42053 of the PRC. This subsection provides that, notwithstanding subdivisions (a) and (b) of this section, the PRO may charge each participant producer annual fees pursuant to subdivision (a) of section 42053 of the PRC at any time following approval of the initial plan if it determines it has sufficient data to establish a fee schedule described in section 42053 of the PRC and to eco-modulate fees as described in the plan. While subsections (a) and (b) of this section allow a PRO to charge participant producer fees under subsection (b) of section 42053 of the PRC during the two years following approval of an initial plan, this subsection is necessary to clarify that a PRO has the option to instead begin charging its participant producer eco-modulated fees under section 42053(a) of the PRC any time after the approval of the initial plan and within those two years if it has sufficient data to establish the necessary fee schedule. Therefore, while the timeline in subsections (a) and (b) of this section may be necessary to provide the PRO with sufficient time and opportunity to receive, organize, and analyze the relevant producer data and to incorporate such data into its fee schedule, this subsection is necessary to provide the PRO with additional flexibility to modify the timeline in which it charges participant producers eco-modulated fees under subdivision (a) of section 42053 of the PRC if it has sufficient data within the two years following approval of an initial plan.

### **Subsection (d)**

The purpose of this subsection is to specify that a PRO must include any special assessments charged to participant producers pursuant to section 42053(f) of the PRC in its fee schedule for participant producers. This is necessary to ensure PROs account for special assessments when determining the amount of fees to charge participant producers to fully fund the budget in their plan. If a certain covered material imposes unusual costs or requires special actions to make system improvements, a PRO must ensure those necessary activities are properly funded. Accordingly, the special assessment needs to be reflected in the PRO's fee schedule for completeness, transparency, and consistency with the Act.

### **Subsection (e)**

The purpose of this subsection is to present a list of requirements applicable to a PRO setting individual assessments to charge participant producers due to the unique circumstances of their covered material pursuant to section 42053(c)(1) of the PRC.

Listing all applicable individual assessment factors enables a PRO to go through the list to ensure the individual assessments it charges to participant producers account for all required items. This subsection is necessary to provide specificity to a PRO on how it must determine individual producer assessments and ensure transparency to participant producers on how their assessments will be established.

### **Subsection (e)(1)**

The purpose of this subsection is to specify that the first step a PRO must take to develop individual assessments to charge participant producers is to develop the base fee rate for each covered material category. Additionally, this subsection introduces a list of actions a PRO must take to determine covered material category base fees that are outlined in subsections (e)(1)(A) through (e)(1)(D) that follow. Listing all requirements applicable to determining base fee rates enables a PRO to go through the list to ensure it addresses all required items. This subsection is necessary to provide clarity to a PRO on how it must determine the base fee rate for each covered material category as required by section 42053(d) of the PRC.

### **Subsection (e)(1)(A)**

The purpose of this subsection is to specify that a PRO must include in the fee schedule in its plan a justification for its base fee rates for each covered material category that addresses each factor specified in section 42053(d) of the PRC and is informed by relevant data. This is necessary and required as section 42053(d) of the PRC states that a PRO must develop a fee schedule based on factors specified in sections 42053(d)(1) through 42053(d)(4) of the PRC. Thus, a PRO must demonstrate that its base fee rates for each covered material category account for all required factors. This provision is further necessary to enable CalRecycle to verify that a PRO's fee schedule complies with the Act. If a PRO did not include the justification required by this subsection, it could include only the base fee rate amounts in its plan, and CalRecycle would have no mechanism to determine whether the requirements of sections 42053(d)(1) through (d)(4) of the PRC were properly included.

Additionally, this subsection requires a PRO to reference the most recent relevant data, including the needs assessment pursuant to 42061(a) of the Public Resources Code, the most recent material characterization study, source reduction data, data pertaining to recycling rates, and data pertaining to biodegradation or disintegration rates of compostable covered materials. This is necessary for transparency and for ensuring that the PRO presents a complete justification for its fee schedule based on empirical data.

### **Subsection (e)(1)(B)**

The purpose of this subsection is to enable a PRO to explain and justify any contradictions it observes in the base fee rate compared with the results of the most recent needs assessment or material characterization studies. This provision is necessary because a PRO may consider other data sources specified in subsection (e)(1)(A) to determine base fee rates that may not align with the most recent needs

assessment or material characterization studies. Additionally, a PRO may have access to alternative data sources that will enable it to more accurately set base fees for each covered material category. This provision is necessary to ensure a PRO is not precluded from applying other data in setting base fee rates, while maintaining transparency to CalRecycle, producers, and interested parties regarding why the data utilized contradicts other publicly available data sources. If a PRO could not explain such contradictions, CalRecycle would be unable to determine whether a PRO correctly established the base fee rates, when the proposed base fee rates could more accurately reflect the cost burden of the applicable covered material category. While CalRecycle anticipates that the data generated from the most recent needs assessment and waste characterizations studies will be reliable, this provision is necessary to enable a PRO to base its fees on alternative relevant data when justified, and to ensure accurate calculation of base fees.

### **Subsection (e)(1)(C)**

The purpose of this subsection is to establish a required element of the PRO's determination of a base fee rate under subsection (e)(1). This subsection specifies that a PRO must set base fee rates for covered material categories to account for investments or expenditures necessary to develop responsible end markets, implement source reduction measures, or shift to reuse and refill systems. This provision is necessary because producers of covered material categories that lack responsible end markets may impose a greater financial burden on the program than covered material categories that are readily recycled with responsible end markets in place. To ensure that producers that sell, offer for sale, distribute, or import covered material in covered material categories that are more expensive to manage per the above pay their corresponding share of the program costs, it is necessary for a PRO to charge base fee rates to these covered material categories that account for these costs. Further, if the PRO were not required to account for these expenditures in its base fee rates, producers would lack incentives to design packaging and food service ware to be reusable, refillable, recyclable, or compostable without a higher financial burden, and this may hinder the success of the PRO and other participant producers. Additionally, this provision is necessary to implement section 42053(c)(1) of the PRC by ensuring that the fee schedule reflects the relative burden and expense of recycling or composting each producer's covered material.

### **Subsection (e)(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 participant producers that utilize an alternative collection program. In establishing a reduced base fee rate for an alternative collection program, a PRO must consider relevant factors, including the recovery rate, contamination rate, recycling rate, and other environmental impacts of the alternative collection program compared to the statewide curbside collection for the same materials. If a PRO sets an alternative reduced base fee rate, it must include in its justification pursuant to subsection (e)(1)(A), an explanation of why the reduced base

fee rate is warranted. This provision is necessary to enable a PRO to set lower base fee rates for producers that utilize alternative collection programs that perform in a more effective or efficient manner than curbside collection. Financially incentivizing producers to use alternative collection programs encourages producers to use or establish these programs that can increase recovery rates, reduce contamination rates, and improve recycling rates consistent with the goals of the Act. Because producers may pay more to use alternative collection programs to maximize recycling, establishing reduced base fee rates for these producers will incentivize more producers to take on the cost.

### **Subsection (e)(2)**

The purpose of this subsection is to present a list that establishes how a PRO must calculate the total individual assessment for each participant producer. Listing all applicable individual assessment factors enables a PRO to go through the list to ensure the total individual assessments it charges to participant producers account for all required items. This is necessary to provide clarity and transparency on how a PRO calculates each total individual assessment.

### **Subsection (e)(2)(A)**

The purpose of this subsection is to specify that the first step in calculating the total individual assessment for each participant producer is to calculate the base fee for each covered material category applicable to the producer by multiplying the covered material category base fee rate by the weight of covered material in that covered material category sold, distributed, or imported in or into the state the prior year. This provision is necessary to ensure that a PRO consistently and accurately assesses fees to participant producers based on the cost burden to manage the covered material each producer sold, distributed, or imported in or into the state. Calculating base fees in this way is equitable to producers and incentivizes source reduction, and design for reusability and recyclability by charging fees based on covered material category and weight sold, distributed, or imported. If base fees were calculated in a different way, such as a per-item flat rate for all covered material, producers would be unlikely to take action to minimize waste or design recyclable products, contrary to the goals of the Act.

### **Subsection (e)(2)(B)**

The purpose of this subsection is to specify that the second step in calculating the total individual assessment for each participant producer is to add the base fees calculated pursuant to subsection (e)(2)(A). This provision is necessary to ensure that per-item a PRO consistently and accurately assesses fees to participant producers based on the cost burden to manage the covered material each producer puts into the California market.

Calculating total individual assessments in this way is equitable to producers and incentivizes source reduction, and design for reusability and recyclability by charging fees based on covered material category and weight sold, distributed, or imported. If total individual assessments were calculated in a different way, such as a per-item flat rate for all covered material, there would be less of an incentive for producers to

take actions to minimize waste or design recyclable products, contrary to the goals of the Act. This subsection is also necessary to identify that the total individual assessment is the sum of the base fees for each covered material category.

### **Subsection (f)**

The purpose of this subsection is to specify that a PRO must include a justification for setting fee adjustments for participant producers pursuant to section 42053(c)(2) of the PRC, including malus fees or credits. Another purpose of this subsection is to present a list of requirements applicable to the justification that are further specified in subsections (f)(1) and (f)(2). Listing all requirements applicable to setting adjustments enables a PRO to go through the list to ensure it addresses all required items. This provision is necessary to ensure that a PRO demonstrates any adjustments are warranted and applied by PROs to participant producers transparently and consistently.

### **Subsection (f)(1)**

The purpose of this subsection is to specify that a PRO's justification for malus fees and credits must address the factors specified in section 42053(e) of the PRC, and must be informed by relevant data. The data should serve as evidence to justify a credit or a 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. Requiring the use of specific data sources and types is necessary to ensure transparency and to ensure that the PRO presents a complete justification for malus fees and credits based on empirical data.

Additionally, this subsection requires a PRO to inform its justification for setting malus fees and credits on the most recent needs assessment, most recent material characterization study pursuant to 42061(a) of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to biodegradation or disintegration rates of compostable covered materials. This subsection specifies that these sources are the minimum sources a PRO must use and allows a PRO to consult other relevant data sources it may have. This provision is necessary to ensure a PRO uses the best available empirical data to justify malus fees and credits, which maximizes the accuracy of the fees charged to producers in reflecting the cost burden each covered material category imposes on the program.

### **Subsection (f)(2)**

The purpose of this subsection is to enable a PRO to demonstrate and justify any contradictions it observes in the malus fees or credits it sets compared with the results of the most recent needs assessment or material characterization studies. This provision is necessary because a PRO may consider other data sources specified in subsection (f)(1) to set malus fees and credits that may not align with the most recent needs assessment or material characterization studies. Additionally, a PRO may have access to additional verifiable data sources that will enable it to more accurately set malus fees or credits for each covered material category. This provision is necessary to ensure a PRO is not precluded from applying other verifiable data in setting malus fees and credits, while ensuring transparency to CalRecycle, producers, and interested

parties regarding why the data utilized contradicts other publicly available data sources. If a PRO could not demonstrate and justify such contradictions, CalRecycle may be unable to determine whether a PRO correctly established the malus fees or credits, when the proposed malus fees or credits could more accurately reflect the cost burden of the applicable covered material category. While CalRecycle anticipates the data generated from the recent needs assessment and waste characterizations study are reliable, this provision is necessary to enable a PRO to base its malus fees and credits on additional verifiable relevant data when justified.

#### **Subsection (g)**

The purpose of this subsection is to specify that a PRO must develop and provide to CalRecycle a formula to calculate a participant producer's portion due to the California Plastic Pollution Mitigation Fund pursuant to section 42053(c)(5) of the PRC. Pursuant to section 42064(f) of the PRC, the formula must be based on the number of plastic components and the weight of plastic covered material a producer offers for sale, sells, distributes, or imports in or into the state. This provision is necessary to ensure that a PRO consistently applies methodology to calculate each producer's share of the payments due to the California Plastic Pollution Mitigation Fund. This is necessary to provide transparency to CalRecycle and participant producers regarding how a PRO determines each participant's share and ensure consistency and equity. Because CalRecycle is responsible for calculating the portion of the environmental mitigation surcharge owed by Independent Producers, it is also necessary for CalRecycle to make that accounting and share it with the PRO so that the PRO is aware of its share of the surcharge after accounting for amounts owed by Independent Producers.

#### **Subsection (h)**

The purpose of this subsection is to interpret section 42053(d)(2) of the PRC and to clarify the meaning of when recycling or composting is made more difficult by the incorporation of specific elements. This subsection provides that, for the purpose of section 42053(d)(2) of the PRC, any publication incorporated into a plan pursuant to section 18980.8(j) of the PRC applies. This is necessary because section 42053(d)(2) of the PRC only references "the Association of Plastic Recyclers design guide or other relevant industry association," but it does not further specify what publications may be relied upon in setting such fees. This subsection further specifies that an element of covered material is considered to make recycling more difficult according to the design guide incorporated in section 18980.8(j)(1) of the PRC if it "requires test results" or otherwise prevents the covered material from being considered "preferred." Interpreting the design guide's "preferred" category to mean that any covered material that has elements that make 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. This is necessary because any such element of covered material that makes recycling more difficult in such a way, and that imposes an increased cost, must be accounted for with a fee that is sufficient to cover the increased cost. This is necessary to ensure the plan is

fully funded and to ensure consistent and equitable application of fees across participant producers.

#### **Subsection (i)**

The purpose of this subsection is to specify that a PRO must charge a malus fee to participant producers that use covered material that contains a chemical included on the list established in section 25249.8 of the Health and Safety Code. This subsection is necessary to interpret section 42053(e)(4) of the PRC, which specifies the presence of hazardous materials as one factor for a PRO to consider in setting malus fees or credits but does not specify how to apply this requirement. Section 42053(e)(4) of the PRC specifically references hazardous materials identified by the Office of Environmental Health Hazard Assessment (OEHHA) as a type of hazardous material presence for which malus fees must be adjusted. Accordingly, CalRecycle looked to OEHHA and determined it necessary to clarify that a PRO must 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 to prevent the use of such hazardous material. This is necessary to establish a consistent understanding of what “hazardous material” means in the context of this statutory provision.

#### **Subsection (j)**

The purpose of this subsection is to specify that a PRO must provide a credit to producers that use plastic covered material derived from renewable materials. This provision is necessary to interpret section 42053(e)(7) of the PRC that establishes 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. 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 purpose of section 42053(e)(7) of the PRC to mean materials that are wholly derived from a natural resource that is not of mineral or fossil fuel origin, without resulting in the net depletion of the resource. Additionally, this provision provides examples of potentially renewable material to further clarify the definition. This provision is necessary because the Act does not define “renewable materials,” a phrase that is subject to interpretation. The interpretation provided is consistent with both the plain meaning of the word “renewable” and the generally understood meaning of what it means for a natural resource to be “renewable.”

#### **Subsection (j)(2)**

The purpose of this subsection is to require a PRO to specify and provide justification

for the feedstocks used to produce the covered material when a PRO awards a credit pursuant to this section. This is necessary to provide clarity and transparency as to the sources used to generate covered material and to enable CalRecycle to verify that they meet the definition for “renewable materials” specified in subsection (j)(1).

## **§ 18980.6.8. RECORDKEEPING AND REPORTING REQUIREMENTS**

### **Subsection (a)**

The purpose of this subsection is to present a list of the records a PRO must maintain to document specified information. Listing all applicable recordkeeping requirements enables a PRO to go through the list to ensure it maintains records that document all required information. This information is necessary to implement the plan requirements and meet the data collection requirements of the Act, as further specified in the discussion of the individual information items that together constitute that list.

### **Subsection (a)(1)**

The purpose of this subsection is to present a list of the records a PRO must maintain for the previous calendar year to document information that must be disaggregated by each participant producer. Listing all applicable annual recordkeeping requirements for each covered material category that must be disaggregated by each participant producer enables a PRO to go through the list to ensure it maintains records that document all required information. Furthermore, the rationale for disaggregation is that the Act requires some reporting to be disaggregated, while in other instances it is not required to be disaggregated. In order for CalRecycle to analyze data in a meaningful way, and analyze it alongside data from Independent Producers, data needs to be presented at the producer level. Also, for a PRO to report correctly and accurately, a PRO needs records to substantiate the claims made in its reports, and thus needs to maintain said records that document the same disaggregation requirements as the reports themselves.

### **Subsections (a)(1)(A) through (a)(1)(C)**

The purpose of these subsections is to specify that a PRO must maintain records documenting the total weight of material sold, distributed, or imported in or into the state, the total number of plastic components sold, distributed, or imported in or into the state, and the total weight of material recycled for each covered material category, disaggregated by each participant producer. Pursuant to section 42052(a) of the PRC, a PRO must annually report this information to CalRecycle on behalf of each producer who participates in the PRO’s approved plan. To report the required information, a PRO needs to rely on records that support its reports. Additionally, CalRecycle must be allowed to access and review a PRO’s records during an audit to ensure that the PRO’s reporting is true and correct and that the PRO and participating producers are complying with the Act. Furthermore, section 42052(d) of the PRC specifies that CalRecycle establish a form and manner for a producer or PRO to maintain records of covered materials offered for sale, sold, distributed, or imported into the state necessary for CalRecycle to determine compliance with the Act during an audit. These provisions establish the required form and manner, consistent with the

Legislature's directive in section 42052(d) of the PRC.

**Subsection (a)(1)(D)**

The purpose of this subsection is to specify that a PRO must maintain records documenting the total weight of material disposed of for each covered material category, disaggregated by each participant producer. The rationale for requiring a PRO to maintain these records is that disposal information is necessary to determine recycling rates for each covered material category. For a PRO to accurately report recycling rates for each covered material category, it needs records and documentation to substantiate the reporting.

**Subsection (a)(2)**

The purpose of this subsection is to list the records a PRO must maintain to document information for covered material collected and recycled or disposed of through a program other than curbside collection programs, for each covered material category. Listing the recordkeeping requirements is necessary to clearly set forth the PRO's statutory obligations.

**Subsections (a)(2)(A) through (a)(2)(C)**

The purpose of these subsections is to specify that a PRO must maintain records documenting the total weight of material collected, the total weight of material recycled, and the total weight of material disposed of through programs other than curbside collection programs for each covered material category.

This provision is necessary to enable a PRO to document its compliance with section 42052(a)(3) of the PRC, which requires a PRO to annually report to CalRecycle information regarding covered material not collected through a curbside collection program. For a PRO to accurately report the required information to CalRecycle, it needs records and documentation to substantiate the reporting. This is further necessary to enable CalRecycle to obtain the records it needs from a PRO when conducting investigations and audits to determine producers' progress and compliance with the requirements of the Act and these regulations. For example, CalRecycle needs these records to verify achievement of the recycling rates set forth in section 42057 of the PRC.

**Subsection (b)**

The purpose of this subsection is to present a list of records a PRO must maintain. Listing the required records provides the clarity needed to ensure the PRO understands its record maintenance obligations.

**Subsection (b)(1)**

The purpose of this subsection is to specify that a 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 this section to present a clear and thorough list of the PRO's record retention requirements.

**Subsection (b)(2)**

The purpose of this subsection is to specify that a PRO must maintain copies of contracts and agreements until three years after their terms end. One obligation of a PRO is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to ensure that a PRO keeps records that can substantiate the PRO's compliance with that requirement and other requirements related to the intermediate supply chain.

Additionally, CalRecycle must have access to obtain and review this supporting documentation to ensure a PRO accurately reports information regarding its service providers and management methods. Requiring that these records be maintained during each contract's term and for three years afterward is reasonably necessary to enable CalRecycle to investigate potential violations of the Act. Moreover, the Act expressly requires retention of three years of records documenting compliance (section 42051.1(m)(4)).

### **Subsection (b)(3)**

The purpose of this subsection is to specify that a PRO must maintain supporting records used to create reports required by section 18980.10.1. To report the required information to CalRecycle, a PRO needs to rely on records that support and substantiate the reports. CalRecycle must have access to obtain and review a PRO's records during an audit to ensure the PRO's reporting is true and correct and that the PRO and participating producers are complying with the Act.

### **Subsection (b)(4)**

The purpose of this subsection is to specify that a PRO must maintain records of information it obtains pursuant to section 18980.4.2(c) to annually verify that each end market it uses satisfies the relevant requirements. One obligation of a PRO is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to clarify that a PRO must keep records of its annual verifications that end markets qualify as responsible end markets. CalRecycle must be able to request and review these records to determine whether the PRO complied with its obligations.

### **Subsection (b)(5)**

The purpose of this subsection is to specify that a PRO must maintain copies of compliance audits and investigations of responsible end markets conducted pursuant to section 18980.4.2. One obligation of a PRO is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to clarify that a PRO must keep records substantiating that it audited and investigated end markets to ensure that they qualify as responsible end markets. CalRecycle must be able to request and review these records to determine whether a PRO complied with its obligations.

### **Subsection (b)(6)**

The purpose of this subsection is to specify that a PRO must maintain records required by section 18980.3.3(c)(4)(A) that demonstrate the applicability of any exemptions from

certification requirements because the materials comprise fiber and do not incorporate any plastics or polymers. Section 18980.3.3(c)(4)(A) specifies the documentation required for a PRO to support the claim for an exemption that must be provided to CalRecycle upon request. CalRecycle must be able to request and review these records to ensure a PRO is appropriately carrying out the required processes and that the materials truly meet the established standard.

#### **Subsection (b)(7)**

The purpose of this subsection is to specify that a PRO must maintain records of complaints it receives on responsible end markets in response to the implementation of the formal complaint process identified in the PRO's plan pursuant to section 18980.8(f) and section 42051.1(c)(5) of the PRC. This provision is necessary to enable CalRecycle to request and review these records to ensure a PRO is appropriately carrying out the required complaint process identified in its plan.

#### **Subsection (c)**

The purpose of this subsection is to specify that producers must maintain records either directly or in a PRO's custody that are sufficient to demonstrate their compliance with section 42052(d) of the PRC and be available for inspection by CalRecycle or other authorized agency. This provision is necessary to clarify how producers must maintain records for CalRecycle to determine compliance with the Act and these regulations. It also allows producers flexibility to directly maintain records or for a PRO to maintain appropriate records on a producer's behalf.

#### **Subsection (d)**

One purpose of this subsection is to specify that a PRO must maintain all specified records for at least three years. The three-year period is necessary to ensure that CalRecycle can conduct investigations and audits to assess compliance with the Act. The three-year period is also consistent with the PRO's record maintenance obligations with respect to participating producers' compliance, as set forth in section 42051.1(m)(4) of the PRC.

Another purpose of this subsection is to specify that all records, including those required pursuant to a PRO's record maintenance protocol, be available for inspection by CalRecycle, its representatives, or other duly authorized regulatory agencies. This is necessary to ensure that all necessary regulatory agencies can request and access the relevant records they may reasonably rely upon when conducting investigations.

#### **Subsection (e)**

The purpose of this subsection is to specify how CalRecycle will request records and how and when an entity must provide the requested records to CalRecycle. Specifically, the entity with the records will provide CalRecycle records necessary to determine compliance within 10 calendar days of receiving a written request from CalRecycle. The rationale for allowing an entity 10 days to provide records 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. Requiring

records in less than 10 days may not allow entities sufficient time to locate the records and provide them to CalRecycle. Conversely, allowing more than 10 days would impact CalRecycle's ability to review and consider the records in a timely manner to accurately assess an entity's compliance. Further, this requirement is reasonable as entities must maintain records in a manner that will facilitate prompt availability to CalRecycle upon request.

Additionally, this subsection specifies that, at CalRecycle's option, records must be provided either by allowing CalRecycle or another duly authorized regulatory agency with physical access during normal business hours or by electronically submitting the records to CalRecycle. This provision is necessary to provide clarity to regulated entities regarding when and how they will be required to provide records to CalRecycle. Business hours are a frequently used time of inspection for administrative warrantless searches. The rationale for ensuring access to another duly authorized agency is to facilitate timely access to documentation necessary for CalRecycle to determine compliance. This provision is necessary because, in some circumstances, records may be required from an entity that is more efficiently or effectively accessed by another agency, such as a local enforcement agency. Finally, allowing for electronic submission of records is necessary to maximize convenience and expediency to both CalRecycle and regulated entities and to allow an affordable and timely method for submission of required records when appropriate.

**Subsection (f)**

The purpose of this subsection is to specify that the weight of material recycled must be determined according to the requirements identified in section 18980.3.2(b)(2) which specifies the required methodology for calculating weight recycled. This provision is necessary to ensure clarity for a PRO on where to find relevant requirements located elsewhere in the chapter that are necessary for the purposes of this article.

**Subsection (g)**

The purpose of this subsection is to specify that the weight of material disposed of must be determined according to the requirements identified in section 18980.3.2(b)(3), which specifies the required methodology for calculating weight disposed of. This provision is necessary to ensure clarity for a PRO on where to find relevant requirements located elsewhere in the chapter that are necessary for the purposes of this article.

**ARTICLE 7. REQUIREMENTS FOR INDEPENDENT PRODUCERS**

**§ 18980.7. INDEPENDENT PRODUCER PLAN SUBMISSION**

**Subsection (a)**

The purpose of this subsection is to specify the date by which an approved Independent Producer must prepare and submit a producer responsibility plan to the advisory board as specified in section 42051.2 of the PRC. This subsection provides that an Independent Producer must submit such a plan to the advisory board within six months of CalRecycle's approval of the Independent Producer.

This subsection is necessary because, while section 42051.2 of the PRC describes the process and timelines for the various stages of review as part of the Independent Producer's plan submittal, it does not specify the date by which an Independent Producer must initiate this process by submitting its plan to the advisory board. A submission deadline within six months of approval is necessary because it allows an Independent Producer sufficient time to thoughtfully prepare its plan and provide it to the advisory board for review. Allotting any additional time would unnecessarily delay an Independent Producer's implementation of its plan and could risk delaying CalRecycle's ability to ensure that the requirements of the Act are met. Conversely, requiring submission at an earlier date could provide an Independent Producer with insufficient time to prepare a plan that is free of errors and that has a high likelihood of being approved by CalRecycle. Additionally, a timeline requiring Independent Producers to submit plans to the advisory board within six months of approval is consistent with the time allotted for a successor or additional PRO approved by the Department to submit a plan to the advisory board, as specified in section 18980.6.1(b).

#### **Subsection (b)**

The purpose of this subsection is to specify that an Independent Producer must make its producer responsibility plan publicly available for comment on its website upon submitting the plan to the advisory board. Section 42051.2(a) of the PRC anticipates that there will be comments from the public on proposed plans but does not specify how the public must be made aware of the contents of the plans. This provision is necessary to ensure the public is consistently and reliably provided with a reasonable opportunity to review the contents of any proposed plan. The rationale for this provision is that the public will be able to review and comment on the Independent Producer's proposed plan if it is posted on the Independent Producer's website. In the Act, the Legislature endorsed the posting of documents on a PRO's website to ensure that the public is aware of the PRO's actions, and the same logic applies to Independent Producers who choose to individually comply with the Act without participating in a PRO. When an Independent Producer chooses to implement its own plan, its plan must meet all of the applicable requirements for PRO plans, subject to section 18980.8(b) of the regulations, and must meet the same requirements of the Act as the PRO. Accordingly, requiring Independent Producers to post proposed plans to their websites ensures transparency and accessibility to the public and holds Independent Producers to the same standards of accessibility that apply to a PRO.

Additionally, CalRecycle received feedback from interested parties during the informal rulemaking process in March 2023 and July 2023 concerning the PRO and producer responsibility plan requirements; these parties were in favor of creating opportunities for public input, including in the development of plans, plan updates, and plan amendments. This provision is responsive to that feedback.

#### **Subsection (c)**

One purpose of this subsection is to specify that Independent Producers must include in plans submitted to CalRecycle a summary of all comments received from the advisory board and the public, and identify any revisions made in response to the

comments. Section 42051(b)(2)(B)(i) of the PRC requires Independent Producers to develop and implement a producer responsibility plan that meets the same requirements applicable to PRO plans, including requirements pertaining to the advisory board and public comments. Pursuant to section 42051.2(a) of the PRC, the PRO is obligated to consider the advisory board and public comments. For CalRecycle to verify that Independent Producers comply with this requirement, plans submitted to CalRecycle must include a summary of the comments Independent Producers received from the advisory board and the public and identify any plan revisions made to address the comments. The requirement for comments to be provided in a summarized form is necessary to reduce administrative costs and burdens on the Independent Producer and CalRecycle.

This section also requires an Independent Producer to make the plan submitted to CalRecycle available to the public by posting the plan to its website until it posts the approved plan. This provision is responsive to requests from members of the public in informal workshops to foster public involvement and transparency in the plan development process and is necessary for promoting transparency of Independent Producer activities. Without this provision, the public would not be able to determine what plan changes an Independent Producer made in response to the advisory board and public comments. In the Act, the Legislature endorsed the posting of documents on a PRO's internet website to ensure that the public is aware of the PRO's actions, and the same logic applies to Independent Producers who choose to individually comply with the Act without participating in a PRO. When an Independent Producer chooses to implement its own plan, its plan must meet all of the applicable requirements for PRO plans, subject to section 18980.8(b) of the regulations, and must meet the same requirements of the Act as the PRO. Accordingly, requiring Independent Producers to post proposed plans to their websites ensures transparency and accessibility to the public and holds Independent Producers to the same standards of accessibility that apply to a PRO.

#### **Subsection (d)**

One purpose of this subsection is to specify the process for terminating an Independent Producer's plan. This subsection requires that an Independent Producer submit a written notice of intent to terminate its plan to CalRecycle. This is necessary because the statute does not set forth a process for terminating an Independent Producer's plan, and it is foreseeable that an Independent Producer may want or need to terminate its approved plan at some point. While section 42051.1(f) of the PRC establishes the Closure and Transfer Plan requirements that will govern the dissolution of a PRO or the revocation of a PRO's plan, that statutory provision is not applicable to Independent Producers, and no comparable provision of statute provides for the termination of an Independent Producer's plan. Requiring an Independent Producer to submit a written notice of intent to terminate its plan to CalRecycle is necessary to ensure that CalRecycle is apprised of the termination and to establish a written record of it.

Another purpose of this subsection is to establish the effective date of termination of

an Independent Producer's plan. This subsection specifies that the termination is effective as of the date CalRecycle receives the written notice of intent to terminate, unless such written notice indicates that the termination is conditioned upon the Independent Producer joining a PRO, in which case the plan will not be considered terminated until the producer has been accepted to participate in a PRO. This is necessary to ensure that an Independent Producer can notify CalRecycle of its intent to terminate its plan without immediately being deemed in violation of the Act.

## **§ 18980.7.1 INDEPENDENT PRODUCER PLAN APPROVAL**

### **Subsection (a)**

The purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted Independent Producer plans. This subsection specifies that CalRecycle will approve an Independent Producer plan if it contains all elements required by the Act and meets all requirements of the chapter. This subsection further clarifies that, in determining whether an Independent Producer plan contains all the elements required pursuant to the Act and meets all requirements of the chapter, CalRecycle must consider all summarized comments and responsive revisions, if any, included pursuant to subdivision (c) of section 18980.7 of the regulations. This provision is necessary to ensure consistency, certainty, and fairness in CalRecycle's evaluation of the proposed plan and to provide a mechanism for CalRecycle to ensure an Independent Producer appropriately considers and incorporates comments from the advisory board and public in its plan development, as required by sections 42051.2(a) and (b) of the PRC. This provision is necessary to offer clear guidance to Independent Producers on how to develop a plan that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a plan that satisfies these criteria.

### **Subsection (b)**

The purpose of this subsection is to clarify the standard by which CalRecycle will review submitted Independent Producer plans for conditional approvals and the effect of any conditional approvals granted by CalRecycle. This subsection provides that CalRecycle will grant conditional approval where certain elements of the submitted plan do not meet applicable requirements, but if conditions specified by CalRecycle are met, final approval will be warranted. This subsection provides examples of such conditions, including clarification to remove ambiguities or addition of information or data demonstrating that requirements have been met. Further, this subsection specifies that, while approval conditions are pending, the Independent Producer's plan is considered approved for purposes of the Act and these regulations.

The Act authorizes CalRecycle to conditionally approve submitted proposed plans but does not define or describe the specifics or limitations of that authority. Accordingly, this subsection establishes clear guidelines for when CalRecycle will conditionally approve a submitted Independent Producer plan. This subsection is necessary to establish uniform standards for when and why plans will be conditionally approved by CalRecycle, and to inform an Independent Producer of some of the common bases

for conditional approval. CalRecycle provides non-exclusive examples based on its experience implementing other EPR programs to help Independent Producers and CalRecycle understand and identify typical defects that might render a submitted plan appropriate for conditional approval. These examples represent plan defects that would likely prevent an Independent Producer from being able to comply with the Act and the chapter, and thus must be corrected before the plan can be approved, but that are not so significant as to render a submitted plan outright disapproved.

### **Subsections (c), (c)(1), and (c)(2)**

The purpose of these subsections is to develop a process for an Independent Producer to revise and resubmit its plan to CalRecycle no later than 12 months after it is conditionally approved. Section 42051(b)(2)(B)(i) of the PRC requires an Independent Producer to develop and implement a plan that meets all of the applicable requirements for PRO plans. Pursuant to section 42051.2(b)(3) of the PRC, conditionally approved plans must be revised and resubmitted to CalRecycle within 12 months of conditional approval. However, the Act does not identify intermediate steps to ensure an Independent Producer completes the required plan revisions by the deadline or to enable appropriate coordination between the Independent Producer and CalRecycle. CalRecycle fills in these specifics in this provision by requiring the Independent Producer to submit to CalRecycle each month the estimated date of plan resubmittal and status updates describing how the Independent Producer is addressing each condition.

Because the Independent Producer can administer a conditionally approved plan for up to 12 months, CalRecycle needs condition-specific updates from the Independent Producer at monthly intervals to demonstrate it is making continued progress to satisfy the conditions for approval. Additionally, the Independent Producer needs to provide CalRecycle with reasonable certainty that it will complete plan revisions by the statutory deadline. Furthermore, these estimates and updates need to be provided over the course of the Independent Producer's work. If the Independent Producer did not estimate how long it would take to resubmit its plan to CalRecycle, the burden of establishing a timeline would fall on CalRecycle, and the Independent Producer may not find that timeline reasonable, causing unnecessary back-and-forth. The monthly estimates of a timeline are necessary for CalRecycle to gauge the Independent Producer's likelihood of providing an approvable plan at a date certain. If the Independent Producer did not provide condition-specific updates, CalRecycle would be unable to support the Independent Producer in addressing each condition to obtain final approval, leaving the Independent Producer and CalRecycle with a plan that may not be approved.

Additionally, this provision specifies that the Independent Producer submittals are due by the last day of each month beginning the first full month after conditional approval. This timeline is appropriate because it establishes regular reporting and provides reasonable time for the Independent Producer to prepare its updates. Requiring more than monthly updates would increase the burden on the Independent Producer, and

requiring less frequent updates would create the risk of CalRecycle not timely identifying problems with the Independent Producer's approach to addressing the approval conditions.

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

#### **Subsection (d)**

The purpose of this subsection is to specify the effect of an Independent Producer's failure to meet the approval conditions of its proposed plan within 12 months of a conditional approval by CalRecycle. This subsection provides that, if an Independent Producer does not meet CalRecycle's specified conditions of plan approval within 12 months of CalRecycle's determination, the conditional approval ends, and the Independent Producer is deemed not in compliance with the Act and these regulations.

This provision is necessary to clarify the effect of section 42051.2(b)(3) of the PRC, which requires that approval conditions be satisfied within 12 months but does not make clear the effect of an Independent Producer's failure to satisfy them. This provision provides the necessary clarity and notice to an Independent Producer as to the effect of any such failure: The Independent Producer will be deemed not in compliance with the Act and these regulations. This clarification provides transparency to Independent Producers that failure to meet conditions may subject them to potential penalties under the Act.

#### **Subsection (e)**

The purpose of this subsection is to make specific that an Independent Producer plan is valid for five years from the date of approval by CalRecycle. This is necessary because section 42051.2(d) of the PRC specifies that an approved plan has a lifespan of five years, without explicitly stating when the five-year period begins and ends.

The rationale for selecting the plan approval date as the date from which the five-year period begins is that this date will be memorialized by CalRecycle on paperwork provided to the Independent Producer and preserved in CalRecycle's electronic files, making it easily accessible to CalRecycle and the Independent Producer.

### **§ 18980.7.2. REVIEW OF UPDATED INDEPENDENT PRODUCER PLAN**

#### **Subsection (a)**

The purpose of this subsection is to specify the date by which an Independent Producer must submit its proposed updated plan to the advisory board. This subsection provides that an Independent Producer must submit its proposed updated plan to the advisory board at least 180 days before the plan's expiration date.

Section 42051(b)(2)(B)(i) of the PRC requires an Independent Producer to develop and implement a plan that meets all of the applicable requirements for PRO plans, and section 42051.2(d)(2) of the PRC requires an Independent Producer to submit a

proposed updated plan to the advisory board “[n]o less than 180 calendar days before” expiration of the approved plan. This statutory provision could be read to permit CalRecycle to set a deadline that is even earlier than the outer limit of “[n]o less than 180 calendar days” that is established in section 42051.2(d)(2) of the PRC. However, CalRecycle has determined that a deadline of 180 calendar days for the submission of a proposed updated plan provides Independent Producers, the advisory board, and CalRecycle with sufficient time to follow the review and approval process set forth in statute while affording maximum flexibility to Independent Producers. This provision is thus necessary to provide Independent Producers with certainty and clarity as to the timeline they will be required to follow when submitting proposed updated plans to the advisory board.

### **Subsection (b)**

One purpose of this subsection is to establish the endpoint of the advisory board comment period for the Independent Producer’s proposed updated plan as “no later than” 60 calendar days after the Independent Producer’s submission of the proposed updated plan to the advisory board. Section 42051(b)(2)(B)(i) of the PRC requires an Independent Producer to develop and implement a plan that meets all of the applicable requirements for PRO plans. The Act establishes a timeline for the advisory board’s consideration of an initial proposed plan (60 days pursuant to section 42070(h) of the PRC) but does not explicitly address a timeframe for the advisory board’s review of proposed plan updates. This provision clarifies that the comment period set forth in section 42070(h) of the PRC applies to proposed updated plans just as it applies to initial proposed plans.

Another purpose of this subsection is to specify that an Independent Producer must make its proposed updated plan publicly available for comment on its website after submitting the plan to the advisory board. Section 42051.2(a) of the PRC anticipates that there will be comments from the public on the proposed initial plan but does not specify how the public will be aware of the contents of the plan. To implement section 42051.2(a) of the PRC, CalRecycle established a public posting requirement in section 18980.7 of the regulations to enable the public to review the proposed initial plan on the Independent Producer’s internet website. It is reasonable and appropriate to subject proposed updated plans under section 42051.2(d) of the PRC to the same public comment requirements that govern proposed initial plans.

This provision is necessary to clarify that the same public comment requirements of section 42051.2(a) of the PRC apply to proposed plan updates, including the requirement that the Independent Producer make proposed plan updates available for review and public comment by, at minimum, posting the proposed updated plan to its internet website.

### **Subsection (c)**

One purpose of this subsection is to specify the date by which an Independent Producer must submit its proposed updated plan to CalRecycle. This subsection requires submission of the proposed updated plan to CalRecycle within 120 days of

receiving advisory board comments. While section 42051.2(b)(1) of the PRC provides that an initial plan must be submitted to CalRecycle within 120 days of receiving comments from the advisory board, section 42051.2(d)(2) of the PRC is silent as to the comparable timeline for submission of proposed updated plans to CalRecycle. Given other similarities in the processes and timelines that govern an Independent Producer's submission of proposed initial plans and proposed updated plans under the Act, a comparable timeline of 120 days is appropriate and reasonable for an Independent Producer's submission of a proposed updated plan to CalRecycle. This provision is therefore necessary to clarify that the same timeline of 120 calendar days applies when an Independent Producer submits a proposed updated plan to CalRecycle.

Another purpose of this subsection is to specify that an Independent Producer must include in its proposed updated plan submitted to CalRecycle a summary of all comments received from the advisory board and the public, and identify any revisions made in response to the comments. While section 42051.2(a) of the PRC requires an Independent Producer to consider the advisory board and public comments that it receives in response to its proposed initial plan, section 42051.2(d)(2) of the PRC contemplates an opportunity for the advisory board to review the Independent Producer's proposed updated plan but is otherwise silent as to the comparable requirement for the consideration of advisory board and public comments prior to the Independent Producer's submission of its proposed updated plan to CalRecycle. Given other similarities in the processes and timelines that govern an Independent Producer's submission of proposed initial plans and proposed updated plans under the Act, a comparable requirement for consideration of advisory board and public comments is appropriate and reasonable for the Independent Producer's submission of a proposed updated plan to CalRecycle. For CalRecycle to verify the Independent Producer properly considered comments from the advisory board and public, proposed updated plans submitted to CalRecycle must include a summary of the comments the Independent Producer received and identify any revisions made to the proposed updated plan to address the comments. This provision is therefore necessary to clarify that the same requirements for advisory board and public comments must be met and how such requirements can be verified when an Independent Producer submits a proposed updated plan to CalRecycle.

Another purpose of this subsection is to clarify the minimum actions an Independent Producer must take to make its proposed updated plan available to the public. This subsection requires an Independent Producer to make its proposed updated plan available for public review by posting the proposed updated plan on its website until an approved updated plan is posted. This provision is responsive to requests made by members of the public through written submissions and in informal workshops to foster public involvement and transparency in the plan update process and is necessary for promoting transparency of Independent Producers' activities. Without this provision, the public would not be able to determine what plan updates the Independent Producer made in response to the advisory board and public comments. In the Act, the Legislature endorsed the posting of other documents on an

Independent Producer's website to ensure that the public is aware of the Independent Producer's actions; requiring the Independent Producer's proposed updated plan submitted to CalRecycle to be posted on its website ensures consistent transparency and availability to the public.

#### **Subsection (d)**

The purpose of this subsection is to establish a mechanism by which CalRecycle can ensure that an Independent Producer appropriately considers and incorporates comments from the advisory board and the public in developing its proposed updated plan. For the reasons articulated in subsection (c), an Independent Producer must include in its proposed updated plan submission a summary of all comments received from the advisory board and the public, and it must further identify any revisions made in response to the comments. This subsection gives effect to this requirement by requiring CalRecycle to consider all summarized comments and any responsive revisions when reviewing the proposed updated plan submission for approval. This provision is necessary to offer clear guidance to an Independent Producer and CalRecycle as to the review standard that will be employed by CalRecycle during the updated plan review process and to ensure that any comments received by the advisory board or public are properly considered in updated plans.

#### **Subsection (e)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted proposed plan updates. This subsection specifies that CalRecycle will approve an Independent Producer's proposed updated plan if it contains all elements required by the Act and meets all requirements of the chapter.

This provision is necessary to offer clear guidance to Independent Producers on how to develop a proposed updated plan that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a proposed updated plan that satisfies these criteria.

Another purpose of this subsection is to specify that an updated plan is valid for five years from the date of approval by CalRecycle. Section 42051(b)(2)(B)(i) of the PRC requires an Independent Producer to develop and implement a plan that meets all of the applicable requirements for PRO plans. Accordingly, this subsection is necessary because section 42051.2(d) of the PRC specifies that an approved plan has a lifespan of five years, without explicitly stating when the five-year period begins and ends or how it relates to updated plans. Establishing the plan approval date as the date on which the five-year period begins is the most straightforward application of the text of section 42051.2(d).

#### **Subsection (f)**

The purpose of this subsection is to specify that an Independent Producer must post its updated approved plan on its website within five calendar days of approval by CalRecycle. For producers and others to implement an updated approved plan, it must be publicly available. Since the Act requires a PRO to post its approved updated

plans on its website, requiring Independent Producers to post their approved updated plans on their websites ensures consistency. The rationale for requiring posting within five days of approval by CalRecycle is that an Independent Producer needs only a small amount of time to receive an approval notification from CalRecycle and post the approved updated plan to its website. Shortening the time may be too onerous to the Independent Producer, while a longer time is unnecessary since the Independent Producer already must have an established website to easily upload the document to ensure regulated entities are aware of the updated plan.

### **§ 18980.7.3. INDEPENDENT PRODUCER PLAN AMENDMENTS**

#### **Subsection (a)**

The purpose of this subsection is to specify a timeline for the advisory board to review an Independent Producer's proposed plan amendment and provide comments to the Independent Producer. This subsection provides that the advisory board must review the Independent Producer's proposed plan amendment and provide comments to the Independent Producer within 60 calendar days of receiving the proposed plan amendment. This provision is necessary because section 42051.2(e)(1) of the PRC requires an Independent Producer to submit applicable proposed plan amendments to the advisory board for review and comment, but it does not specify the timeline for that process. This provision clarifies that the advisory board has 60 days to review proposed plan amendments, which is consistent with the timeline provided for the advisory board's review of proposed producer responsibility plans (section 42051.2(a) of the PRC) and proposed updated plans (section 42051.2(d)(2) of the PRC). Allowing more than 60 days would unnecessarily delay the Independent Producer's submission of proposed plan amendments to CalRecycle for approval, while allowing less than 60 days would constrict the advisory board's capacity to thoroughly consider the plan amendment and prepare its comments to the Independent Producer.

#### **Subsection (b)**

The purpose of this subsection is to specify the required contents of proposed plan amendments that an Independent Producer submits to CalRecycle. This subsection provides that the Independent Producer must include in the proposed plan amendments submitted to CalRecycle a summary of all comments received from the advisory board and identify any revisions made in response to the comments. While section 42051.2(e)(1) of the PRC requires an Independent Producer to submit its proposed plan amendment to the advisory board for comment prior to submitting the proposed plan amendment to CalRecycle, that statutory provision does not specify whether or how the Independent Producer must incorporate any such comments into its submission to CalRecycle.

This provision is therefore necessary to clarify the required contents of the proposed plan amendment, to ensure that the Independent Producer properly considers any such comments from the advisory board before submitting its proposed plan amendment to CalRecycle, and to ensure that CalRecycle has the opportunity to verify that the proposed plan amendment reflects that the Independent Producer

complied with this requirement.

### **Subsection (c)**

One purpose of this subsection is to establish uniform standards by which CalRecycle will review and approve submitted proposed plan amendments. This subsection specifies that CalRecycle will approve an Independent Producer's proposed plan amendment if it contains all the elements required by the Act and meets all requirements of the chapter. This subsection further clarifies that, in determining whether the proposed plan amendment contains all the elements required pursuant to the Act and meets all requirements of the chapter, CalRecycle must consider all summarized comments and responsive revisions, if any, included pursuant to subdivision (b). This provision is necessary to ensure consistency, certainty, and fairness in CalRecycle's evaluation of the proposed plan amendment and to provide a mechanism for CalRecycle to ensure the Independent Producer appropriately considers and incorporates comments from the advisory board in developing its proposed plan amendments. This provision is necessary to offer clear guidance to an Independent Producer on how to develop a proposed plan amendment that CalRecycle will approve and to ensure that CalRecycle cannot decline to approve a proposed plan amendment that satisfies these criteria.

Another purpose of this subsection is to specify the effect and timeline of an approved plan amendment. This subsection provides that the approval of a proposed plan amendment does not alter the expiration date of the plan. While section 42051.2(d)(1) of the PRC provides that an approved plan is valid for five years, that statutory provision specifically exempts approved plan amendments under section 42051.2(e) of the PRC. The specific exemption of plan amendments from this provision suggests that the Legislature intended for plan amendments to have no effect on the timeline for an approved plan. However, that is not explicitly stated in the Act. Therefore, this subsection is necessary to offer clear guidance as to the length of validity and operative expiration date for an approved plan that has been amended pursuant to section 42051.2(e) of the PRC.

### **Subsection (d)**

The purpose of this subsection is to specify that an Independent Producer must post approved amended plans on its website within five calendar days of approval by CalRecycle. For producers and others to implement the amended plan, it must be publicly available. Since the Act requires the PRO to post approved plans on its website, requiring Independent Producers to post amended plans on their websites ensures consistency. The rationale for requiring posting within five days of approval by CalRecycle is that the Independent Producer needs only a small amount of time to receive an approval notification from CalRecycle and post the approved amended plan to its website. Shortening the time may be too onerous to the Independent Producer, while a longer time is unnecessary since the Independent Producer already must have an established website to easily upload the document to ensure regulated entities are aware of the amended plan.

## **§ 18980.7.4. INDEPENDENT PRODUCER ANNUAL REPORTS**

### **Subsection (a)**

The purpose of this subsection is to specify that an Independent Producer must submit an annual report that includes an annual budget to CalRecycle no later than October 1 of each year. This is necessary because section 42051.3(a) of the PRC requires submission of annual reports and budgets but does not specify a due date. CalRecycle needs to provide a due date for submission to provide certainty to the Independent Producer and CalRecycle and aid the enforcement of the Act by clarifying when an Independent Producer is in breach of its obligations. CalRecycle selected October 1 for consistency with the reporting timeline for a PRO, as set forth in subsection (c) of section 18980.6.5 of these regulations. Because the annual report includes an annual budget consisting of prospective financial data for the upcoming year, the Independent Producer will have sufficient time and adequate information to analyze the relevant data and prepare the necessary budget forecasts prior to October 1. If the Independent Producer's annual report and budget were due prior to October 1, the data, information, or forecasts on which the Independent Producer will rely for its budget might not be available. By selecting October 1, the budget will be able to be adequately informed by the relevant data and will be filed early enough to ensure that CalRecycle receives critical financial information regarding program implementation for the upcoming year and can provide important feedback to the Independent Producer before the budget takes effect. A date later than October 1 would not allow enough time for CalRecycle review prior to the start of the next year.

### **Subsection (b)**

The purpose of this subsection is to specify that an Independent Producer must make its annual report publicly available on its website upon submission to CalRecycle until the Independent Producer posts its approved annual report. Section 42051.3 of the PRC requires an Independent Producer to submit and make publicly available on its website annual reports and budgets but does not specify when the posting must occur. To ensure that Independent Producers know what to post and when, this subsection specifies that the posting requirement applies upon submission of the annual reports and upon approval by CalRecycle. Independent Producers need to publish submitted reports and the approved reports for transparency between the Independent Producer, the public, and the advisory board. This provision is necessary to enable interested parties and CalRecycle to review annual reports concurrently and to ensure awareness upon CalRecycle's approval.

### **Subsection (c)**

The purpose of this subsection is to clarify that CalRecycle will approve annual reports that meet the requirements in section 18980.9.1 and section 42051.3 of the PRC. This provision is necessary to specify the applicable requirements of the Act and these regulations that Independent Producers must meet for CalRecycle to approve annual reports. If an Independent Producer is unable to identify the relevant substantive requirements, it will be unable to provide an approvable annual report to CalRecycle.

### **Subsection (d)**

The purpose of this subsection is to specify that an Independent Producer must publish approved annual reports on its website within five calendar days of CalRecycle approval. CalRecycle needs to provide a due date for posting to provide certainty to Independent Producers and CalRecycle and aid the enforcement of the Act by clarifying when an Independent Producer is in breach of its obligations. The rationale for requiring posting within five days of CalRecycle approval is that Independent Producers need only a small amount of time to receive an approval notification from CalRecycle and post approved annual reports to its website. Shortening this time may be too onerous to Independent Producers, while a longer time is unnecessary since Independent Producers already must have an established website to easily upload the report to ensure interested parties are aware of CalRecycle's approval.

## **§ 18980.7.5. INDEPENDENT PRODUCER DOCUMENT SUBMITTALS**

### **Subsection (a)**

The purpose of this subsection is to specify the procedures and criteria for when an Independent Producer submits documents to CalRecycle. This provision applies to Independent Producer submissions to CalRecycle of producer responsibility plans, updated producer responsibility plans, plan amendments, annual reports, and other associated documents. This subsection provides the clarity necessary for Independent Producers to understand their obligations and how CalRecycle will evaluate whether they have met those obligations.

### **Subsection (a)(1)**

One purpose of this subsection is to specify that an Independent Producer must submit documents to CalRecycle electronically. This is necessary to establish a consistent standard and format of submission. Moreover, specifying electronic submission is necessary because it facilitates near-instantaneous transmittal to CalRecycle, which supports the Independent Producer in meeting submittal deadlines, enables effective document retention by CalRecycle, allows for the appropriate CalRecycle personnel to easily access documents for review, and minimizes the cost and time burden associated with mailing.

Another purpose of this subsection is to establish that the date an Independent Producer electronically submits a document will be considered the date of receipt by CalRecycle. CalRecycle needs to clarify when it considers a document submitted to provide certainty to Independent Producers and CalRecycle and aid the enforcement of the Act by providing clarity when an Independent Producer is in breach of its obligations. Because electronic transmissions are nearly instantaneous, it is reasonable to assume that an electronic transmission is received by CalRecycle on the same day it is submitted by an Independent Producer.

### **Subsection (a)(2)**

The purpose of this section is to specify that all Independent Producer documents

subject to section 18980.7.5 must be complete and correct. For CalRecycle to rely on the information contained in documents submitted by an Independent Producer, it needs assurance that the documents contain the required information and are accurate. If plans, reports, and other documents are incomplete, CalRecycle will lack important information necessary to evaluate the documents. Additionally, section 42051.3(b)(2) of the PRC explicitly requires that annual reports be complete, but it does not specify the standard for completeness, so this subsection provides necessary clarity. If an Independent Producer provides documents that are not correct, CalRecycle's determinations will be based on inaccurate information, which could result in CalRecycle approving something that it would not have approved if it had received correct information.

Another purpose of this subsection is to introduce the criteria for what CalRecycle will consider a complete and correct document. This is necessary to ensure that the Independent Producer can find the specific standards of completeness and correctness that follow.

#### **Subsection (a)(2)(A)**

The purpose of this subsection is to specify that CalRecycle will consider a document complete that contains provisions and sufficient detail intended to meet all applicable requirements in sections 18980.7, 18980.7.2, 18980.7.3, 18980.7.4, 18980.8, and 18980.9.1. Those sections necessarily underlie the completeness requirement because they explicitly and comprehensively address the subject matter identified in subsection (a).

#### **Subsection (a)(2)(B)**

The purpose of this subsection is to specify that CalRecycle will consider a document correct if all information provided is accurate, exact, and is signed and certified under penalty of perjury as specified in subsection (a)(3). The rationale for requiring information to be accurate is to provide assurance to CalRecycle that documents are free from errors because of the exercise of the Independent Producer's due care, which is what accuracy entails. The rationale for requiring the information to be exact is that the Independent Producer needs to explain facts with precision so that CalRecycle and interested parties can rely on the information. If the information does not reflect the requisite precision, CalRecycle will be unable to ascertain that the requirements of the Act will be or have been met. Additionally, this provision uses a similar standard as other existing regulations, such as solid waste regulations under 27 CCR, section 21563(d)(2), that specify what CalRecycle considers "correct" for the purpose of approving or denying documents.

#### **Subsection (a)(3)**

One purpose of this subsection is to require that all documents subject to section 18980.7.5 be signed by a properly authorized individual. This provision is necessary because document submissions must be attributable to the entity whose obligations the submissions are intended to fulfill. Requiring a signature also ensures that the individual submitting the documents understands that they are holding themselves out

as an authorized representative of the producer.

Another purpose of this subsection is to specify that the individual signing the document must attest to the correctness of the information submitted under penalty of perjury. Requiring such a declaration is necessary to ensure that the individual is appropriately authorized and to guard against the submission of false information.

### **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 all documents submitted to CalRecycle, subject to specified exemptions that may apply. Additionally, this subsection directs parties to Article 14, 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 to specific document submittals required under the Act or how to identify records they claim to be exempt from mandatory disclosure provisions.

Another purpose of this subsection is to explain what CalRecycle will do with appropriately identified trade secret information; specifically, CalRecycle will withhold that information from public disclosure subject to the requirements and limitations set forth in Article 14. Including a reference to Article 14 ensures that Independent Producers will be aware of all provisions of these regulations affecting whether documents submitted to CalRecycle will be considered public records.

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 producer responsibility 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 an Independent Producer plan that the Independent Producer claims contain such information must specifically be identified, and that a cover letter is submitted along with the plan or other documents setting forth the basis for 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 within a document that can be attributable to specific entities. Moreover, it is necessary that these provisions apply to all document submissions, not just the approved plan. Although section 42051.2(b)(5) of the PRC expressly refers only to the approved plan, the Public Records Act exemption itself logically must apply generally to all documents submitted to CalRecycle pursuant to section 18980.7.5, or else the exemption would be effectively meaningless.

### **§ 18980.7.6. INDEPENDENT PRODUCER ENVIRONMENTAL MITIGATION FEE**

The purpose of this subsection is to specify the methodology that CalRecycle will use to determine the percentage that an Independent Producer will pay of the environmental

mitigation fee based on the total amount of plastic covered material produced and reported by all producers. This subsection provides that the percentage will be calculated using the weight of the plastic covered material and the percentage calculated using the number of plastic components. Because the surcharge under section 42064(h)(1) of the PRC must be based on both the number of plastic components and the weight of plastic covered material, it is necessary to explicitly include these considerations in the calculation methodology to ensure the percentage determined by CalRecycle is consistent with the requirements of the Act.

This provision is necessary to ensure transparency and consistency in how CalRecycle calculates the portion of the environmental mitigation fee that Independent Producers must pay.

## **§ 18980.7.7 INDEPENDENT PRODUCER RECORDKEEPING AND REPORTING REQUIREMENTS**

### **Subsection (a)**

The purpose of this subsection is to present a list of the records Independent Producers must maintain to document specified information. Listing all applicable recordkeeping requirements enables an Independent Producer to go through the list to ensure it maintains records that document all required information. This information is necessary to implement the plan requirements and meet the data collection requirements of the Act, as further specified in the discussion of the individual information items that together constitute that list.

### **Subsection (a)(1)**

The purpose of this subsection is to present a list of the records an Independent Producer must maintain for the previous calendar year to document information for each covered material category. Independent Producers must maintain documents sufficient for CalRecycle to determine whether they have satisfied their obligation to provide complete and accurate reports. Listing the annual recordkeeping requirements for each covered material category provides the clarity needed to ensure Independent Producers understand their record maintenance obligations.

### **Subsections (a)(1)(A) through (a)(1)(C)**

The purpose of these subsections is to specify that an Independent Producer must maintain records documenting the total weight of material sold, distributed, or imported in or into the state, the total number of plastic components sold, distributed, or imported in or into the state, and the total weight of material recycled for each covered material category. Pursuant to section 42052(a) of the PRC, an Independent Producer must annually report this information to CalRecycle. To report the required information, an Independent Producer needs to rely on records that support its reports.

Additionally, CalRecycle may need to access and review an Independent Producer's records during an audit to ensure that the Independent Producer's reporting is true and correct and that the Independent Producer is complying with the Act.

Furthermore, section 42052(d) of the PRC requires CalRecycle to establish a form and manner for a producer to maintain records of covered materials offered for sale, sold, distributed, or imported into the state necessary for CalRecycle to determine compliance with the Act during an audit. These provisions establish the required form and manner, consistent with the Legislature's directive in section 42052(d) of the PRC.

**Subsection (a)(1)(D)**

The purpose of this subsection is to specify that an Independent Producer must maintain records documenting the total weight of material disposed of for each covered material category. The rationale for requiring an Independent Producer to maintain these records is that disposal information is necessary to determine recycling rates for each covered material category. If an Independent Producer is to accurately report recycling rates for each covered material category, it needs records and documentation to substantiate the reporting.

**Subsection (a)(2)**

The purpose of this subsection is to list the records an Independent Producer must maintain to document information for covered material collected and recycled or disposed of through a program other than curbside collection programs, for each covered material category. Listing the recordkeeping requirements is necessary to clearly set forth the Independent Producer's statutory obligations.

**Subsections (a)(2)(A) through (a)(2)(C)**

The purpose of this subsection is to specify that an Independent Producer must maintain records documenting the total weight of material collected, the total weight of material recycled, and the total weight of material disposed of through programs other than curbside collection programs for each covered material category.

This provision is necessary to enable an Independent Producer to document its compliance with section 42052(a)(3) of the PRC, which requires Independent Producers to annually report to CalRecycle information regarding covered material not collected through a curbside collection program. If an Independent Producer is to accurately report the required information to CalRecycle, it needs records and documentation to substantiate the reporting. This is further necessary to enable CalRecycle to obtain the records it needs from an Independent Producer when conducting investigations and audits to determine progress and compliance with the requirements of the Act and these regulations. For example, CalRecycle needs these records to verify achievement of the recycling rates set forth in section 42057 of the PRC.

**Subsection (b)**

The purpose of this subsection is to present a list of records an Independent Producer must maintain. Listing the required records provides the clarity needed to ensure Independent Producers understand their record maintenance obligations.

**Subsection (b)(1)**

The purpose of this subsection is to specify that an Independent Producer must retain minutes, books, and records that clearly reflect the activities and transactions of the Independent Producer as required by section 42054(a) of the PRC. This provision is necessary for this section to present a clear and thorough list of the PRO's record retention requirements.

**Subsection (b)(2)**

The purpose of this subsection is to specify that an Independent Producer must maintain copies of contracts and agreements until three years after their terms end. One obligation of Independent Producers is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to ensure that Independent Producers keep records that can substantiate compliance with that requirement and other requirements related to the intermediate supply chain.

Additionally, CalRecycle may need to request and review this sort of supporting documentation to ensure an Independent Producer accurately reports information regarding its service providers and management methods. Requiring that these records be maintained during each contract's term and for three years afterward is reasonably necessary to enable CalRecycle to investigate potential violations of the Act. Moreover, the Act expressly requires retention of three years of records documenting compliance (section 42051.1(m)(4)).

**Subsection (b)(3)**

The purpose of this subsection is to specify that an Independent Producer must maintain supporting records used to create reports required by section 18980.10.1. To report the required information to CalRecycle, an Independent Producer needs to rely on records that support and substantiate the reports. CalRecycle may need to access and review an Independent Producer's records during an audit to ensure the Independent Producer's reporting is true and correct and that the Independent Producer is complying with the Act.

**Subsection (b)(4)**

The purpose of this subsection is to specify that an Independent Producer must maintain records of information it obtains pursuant to section 18980.4.2(c) to annually verify that each end market it uses satisfies the relevant requirements. One obligation of Independent Producers is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to ensure that Independent Producers keep records of their annual verifications that end markets qualify as responsible end markets. CalRecycle must be able to obtain such records to determine whether Independent Producers comply with their obligations.

**Subsection (b)(5)**

The purpose of this subsection is to specify that an Independent Producer must maintain copies of compliance audits and investigations of responsible end markets

conducted pursuant to section 18980.4.2. One obligation of Independent Producers is to ensure that recycling rate targets are met, and recycling, by definition, can only occur at responsible end markets. This subsection is necessary to ensure that Independent Producers keep records substantiating that they audited and investigated end markets to ensure that they qualify as responsible end markets. CalRecycle must be able to request and review these records to determine whether Independent Producers complied with their obligations.

#### **Subsection (b)(6)**

The purpose of this subsection is to specify that an Independent Producer must maintain records required by section 18980.3.3(c)(4)(A) that demonstrate the applicability of any exemptions from certification requirements because the materials comprise fiber and do not incorporate any plastics or polymers. Section 18980.3.3(c)(4)(A) specifies the documentation required for an Independent Producer to support the claim for an exemption that must be provided to CalRecycle upon request.

CalRecycle needs the ability to request and review these records to ensure an Independent Producer is appropriately carrying out the required processes and that the materials truly meet the established standard.

#### **Subsection (b)(7)**

The purpose of this subsection is to specify that an Independent Producer must maintain records of complaints it receives on responsible end markets in response to the implementation of the formal complaint process identified in the Independent Producer's plan pursuant to section 18980.8(f). This provision is necessary to enable CalRecycle to request and review these records to ensure an Independent Producer is appropriately carrying out the required complaint process identified in its plan.

#### **Subsection (c)**

The purpose of this subsection is to specify that Independent Producers must maintain records sufficient to demonstrate their compliance with section 42052(d) of the PRC and be available for inspection by CalRecycle or other authorized agency. This provision is necessary to clarify how Independent Producers are expected to maintain records sufficient for CalRecycle to determine compliance with the Act and these regulations.

#### **Subsection (d)**

One purpose of this subsection is to specify that an Independent Producer must maintain all specified records for at least three years. The three-year period is necessary to ensure that CalRecycle can conduct investigations and audits to assess compliance with the Act. The three-year period is also consistent with a PRO's record maintenance obligations with respect to participating producers' compliance, as set forth in section 42051.1(m)(4) of the PRC.

Another purpose of this subsection is to specify that all records, including those

required pursuant to the Independent Producer's record maintenance protocol, be available for inspection by CalRecycle representatives or other duly authorized regulatory agencies. This is necessary to ensure that all necessary regulatory agencies can request and access the relevant records they may reasonably rely upon when conducting investigations.

**Subsection (e)**

The purpose of this subsection is to specify how CalRecycle will request records and how and when an entity must provide the requested records to CalRecycle. Specifically, the entity with the records will provide CalRecycle records necessary to determine compliance within 10 calendar days of receiving a written request from CalRecycle. The rationale for allowing an entity 10 days to provide records 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. Requiring records in less than 10 days may not allow entities sufficient time to locate the records and provide them to CalRecycle. Conversely, allowing more than 10 days would impact CalRecycle's ability to review and consider the records in a timely manner to accurately assess an entity's compliance. Further, this requirement is reasonable as entities must maintain records in a manner that will facilitate prompt availability to CalRecycle upon request.

Additionally, this subsection specifies that, at CalRecycle's option, records must be provided either by allowing CalRecycle or another duly authorized regulatory agency with physical access during normal business hours or by electronically submitting the records to CalRecycle. This provision is necessary to provide clarity to regulated entities regarding when and how they will be required to provide records to CalRecycle. Business hours are a frequently used time of inspection for administrative warrantless searches. The rationale for ensuring access to another duly authorized agency is to facilitate timely access to documentation necessary for CalRecycle to determine compliance. This provision is necessary because, in some circumstances, records may be required from an entity that is more efficiently or effectively accessed by another agency, such as a local enforcement agency. Finally, allowing for electronic submission of records is necessary to maximize convenience and expediency to both CalRecycle and regulated entities and to allow an affordable and timely method for submission of required records when appropriate.

**Subsection (f)**

The purpose of this subsection is to specify that the weight of material recycled must be determined according to the requirements identified in section 18980.3.2(b)(2), which specifies the required methodology for calculating weight recycled. This provision is necessary to ensure clarity for an Independent Producer on where to find relevant requirements located elsewhere in the chapter that are necessary for the purposes of this article.

**Subsection (g)**

The purpose of this subsection is to specify that the weight of material disposed of must

be determined according to the requirements identified in section 18980.3.2(b)(3), which specifies the required methodology for calculating weight disposed of. This provision is necessary to ensure clarity for an Independent Producer on where to find relevant requirements located elsewhere in the chapter that are necessary for the purposes of this article.

## **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. This is necessary because PROs and Independent Producers are required to develop and implement a producer responsibility plan that meets specified requirements to comply with the Act and the chapter.

#### **Subsection (b)**

The purpose of this subsection is to specify that Independent Producer plans must meet the same requirements of PRO plans except for the requirements of sections 42051.1(d), (f), (j)(1)(D), (j)(3), and (m)(1) through (m)(3), 42051(d), 42053, 42053.5(a)(2), and 42056 of the PRC. This provision is necessary to provide clarity to Independent Producers regarding the requirements their plans must meet and identify inapplicable requirements to ensure Independent Producers understand their obligations to comply with the Act. The exceptions noted are necessary because they cannot logically apply to entities other than a PRO.

#### **Subsection (c)**

The purpose of this subsection is to present a list of additional information that PROs and Independent Producers must include in producer responsibility plans regarding technologies and means they will use to achieve recycling requirements pursuant to section 42051.1(b)(3) of the PRC. This provision is necessary to specify that the requirements in subsections (c)(1) through (c)(10) that follow are all related to technologies being utilized in a PRO or Independent Producer plan. The information provided pursuant to the provisions under subsection (c) ensures that CalRecycle can verify the recycling technologies meet the conditions specified in the definition of “recycle” or “recycling” pursuant to section 42041(aa) of the PRC. Listing all applicable technology-related plan requirements enables PROs and Independent Producers to go through the list to ensure they include all required information in their producer responsibility plans.

#### **Subsection (c)(1)**

The purpose of this subsection is to require that PROs and Independent Producers include in their plans explanations of how each technology they intend to utilize is employed in recycling. This is necessary to ensure that producer responsibility plans meet the requirements of section 42051.1(b)(3).

#### **Subsection (c)(2)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans a specification of the covered materials that are recycled by each technology they will utilize. This is necessary to ensure that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(3)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans a description of the level of contamination each recycling technology they will utilize is able to tolerate. This is necessary because many covered materials experience a certain amount of contamination, which often impacts whether those materials can be recycled. To understand whether each technology can be adequately utilized to meet the recycling requirements mandated by the Act, it is necessary to understand what level of contamination each technology can tolerate. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(4)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans a list of overall inputs to each recycling technology, including chemicals, if applicable. It is necessary to identify all inputs used with a specific recycling technology because inputs can impact residuals and outputs. Inputs can then be evaluated against end products, as required by subsection (c)(5), which informs important considerations such as whether a technology may generate hazardous waste. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(5)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans an account of end products, including quantities of byproducts or residuals and their respective dispositions. This is necessary for CalRecycle to evaluate whether the recycling technology will achieve the requirements of the Act. If a technology creates a disproportionate amount of end products that must be disposed of instead of being used in the marketplace, the technology may not be considered recycling. It will also provide transparency as to what further processing will be needed to ensure by-products and residuals are appropriately managed. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(6)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans the current operational status, including the current and proposed sites for each recycling technology. This provision is necessary to ensure clarity in plans regarding where recycling technologies are currently utilized and may be utilized in the future, based on operational status. 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 each recycling technology is or will be utilized. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(7)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans an assessment of potential public health and environmental impacts of each recycling technology to disadvantaged communities, low-income communities, or rural areas. This is necessary for CalRecycle to evaluate if plan implementation avoids or minimizes negative environmental or public health impacts on these communities as mandated by section 42051.1(n) of the PRC. Additionally, this provision is responsive to section 42041(aa)(5) of the PRC that directs CalRecycle to adopt regulations that encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(8)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans an evaluation of the efficiency of each technology 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 to ensure waste is minimized. Additionally, this provision is responsive to section 42041(aa)(5) of the PRC that directs CalRecycle to adopt regulations that encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(9)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans information on each recycling technology's financial viability, capacity, and cost-effectiveness. This is necessary to determine if the technologies the PRO or Independent Producer will utilize are financially feasible, can support the amount of material that needs to be recycled, and are economically efficient and practical. This requirement also ensures that producer responsibility plans meet the requirements of section 42051.1(b)(3).

**Subsection (c)(10)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans a demonstration that each technology meets the conditions specified in the definition of "recycle" or "recycling" pursuant to section 42041(aa) of the PRC. This is necessary to ensure the technologies specified plans are consistent with the definition of "recycle" or "recycling" and also ensures that the plans meet the requirements of section 42051.1(b)(3) of the PRC.

**Subsection (d)**

The purpose of this subsection is to present a list of requirements that PROs and Independent Producers must include in their plans regarding education and promotion efforts to educate ratepayers to improve the preparation and sorting of covered material. Listing all applicable requirements enables PROs and Independent Producers to go through the list to ensure they include all required information in their producer responsibility plans.

#### **Subsection (d)(1)**

The purpose of this subsection is to require in PRO and Independent Producer plans a description of what performance measures they will use to evaluate the performance of their education and outreach programs. This provision is necessary to ensure that those programs perform as required by the Act and promote increased awareness, program usage, and accessibility.

Performance measures also assist CalRecycle when evaluating program performance and determining whether a plan is being successfully implemented. This subsection also reflects and incorporates public feedback that CalRecycle received during the rulemaking process.

#### **Subsection (d)(2)**

The purpose of this subsection is to require that the education and outreach materials PROs and Independent Producers provide to consumers are accessible in languages that meet the needs of local demographics, consistent with section 7295 of the Government Code. This provision is necessary for consistency with other programs that CalRecycle oversees and to ensure that Californians are not deprived of program awareness or usage due to their language preferences. This subsection also reflects and incorporates public feedback CalRecycle received.

#### **Subsection (d)(3)**

The purpose of this subsection is to specify that PROs and Independent Producers include in their plans a process for coordinating education and promotional efforts between PROs, Independent Producers, local jurisdictions, recycling service providers, and alternative collection programs. This provision is necessary to avoid unnecessary duplication of efforts, maximize consistent messaging to increase the effectiveness of outreach, and avoid consumer confusion that could result from disjointed education strategies. This is also necessary to provide a process for local jurisdictions, recycling service providers, and alternative collection systems to include input for education and promotional efforts to meet their specific program needs. Further, this provision is necessary to specify the coordination efforts required by section 42051.1(e) of the PRC.

#### **Subsection (e)**

The purpose of this subsection is to specify that PROs and Independent Producers must include in their plans information regarding identifying and verifying responsible end markets specified in sections 18980.4(a)(4)(A), 18980.4.1(a)(1) through (a)(3) and (d), and 18980.4.3(a) and (d). This is necessary for completeness to maintain all plan

requirements in one section to provide clarity to PROs and Independent Producers.

### **Subsections (f), and (f)(1) through (f)(3)**

The purpose of these subsections is to specify that PROs and Independent Producers must include in their plans a formal complaint process to address complaints related to responsible end markets that outlines the steps to submit a complaint, criteria for assessing the complaint, and the process and timeline to resolve the complaint. These provisions are necessary to ensure people have a mechanism to inform PROs and Independent Producers of potential issues with the responsible end markets they utilize. This is necessary to ensure PROs and Independent Producers ensure that collected covered materials continue to be recycled at responsible end markets pursuant to section 18980.4(a). It is also necessary to ensure that a PRO or Independent Producer is able to document complaints against a responsible end market so that information is available to meet the requirements for responsible end markets in Article 4.

Subsection (f)(1) is necessary because if a person does not know how to submit complaints, it will be unable to inform the PRO or Independent Producer about critical information that could impact a market counting as a responsible end market under the Act. Accordingly, it is necessary for plans to specify the required steps to submit complaints.

Additionally, subsection (f)(2) is necessary to ensure PROs and Independent Producers have an unbiased and consistent method to assess the validity and severity of the complaints it receives to prioritize how it processes the complaints.

Subsection (f)(3) is necessary to ensure CalRecycle and parties submitting complaints are aware of how long it will take and what actions the PRO or Independent Producer will take to evaluate and resolve the complaints it receives. If there was no formal complaint processes, PROs and Independent Producers could continue to utilize materials markets that fail to benefit the environment or minimize risks to public health and worker health and safety as mandated by the Act.

### **Subsection (g)**

The purpose of this subsection and subsequent subsections is to establish requirements for producer responsibility plans concerning payment of costs incurred by local jurisdictions and others for purposes of the Act (referred to as “covered costs”). This is necessary because section 42051.1(g)(1) of the PRC requires the plan to address a process for determining and paying those costs but does not set forth the express parameters that the plan must address.

### **Subsection (g)(1)**

The purpose of this subsection is to establish January 1, 2023, as the earliest date on which covered costs may have been incurred. This is necessary because statute does not expressly state that only costs incurred after the Act became effective can be considered incurred for purposes of complying with the Act. Interpreting the Act not to encompass costs incurred before that date is appropriate because the text of section 42051.1(g)(1) is plain (“costs that will be incurred . . . under this chapter”), and a cost

cannot reasonably be said to have been incurred “under” a law before the law existed.

### **Subsections (g)(2), and (g)(2)(A) through (g)(2)(C)**

The purpose of these subsections is to describe the costs that are covered costs. In other words, these subsections interpret what section 42051.1(g)(1) describes as costs incurred “under this chapter.” Establishing express criteria is necessary because that term is inherently imprecise. Subsections (g)(2)(A) through (C) provide clarity by identifying three different circumstances under which costs reasonably can be said to have been incurred for purposes of complying with the Act. Subsection (g)(2)(A) accounts for costs that would have been expected in the absence of the Act but that are greater because of the Act’s requirements. This is necessary because costs that would have existed in the absence of the Act cannot be said to have been incurred for purposes of complying with it. Act. For the same reason, subsection (g)(2)(B) encompasses costs that are new and would not have been expected in the absence of the Act. Lastly, subsection (g)(2)(C) establishes that a PRO or Independent Producer can agree in advance of a cost being incurred that the cost will be covered. This is necessary for efficiency purposes and because, as further addressed in subsection (h), the ability to agree to pay costs is consistent with the requirement that plans include provisions for resolving disputes over costs. If a PRO or Independent Producer did not have that ability, a dispute could only be resolved by undertaking an adversarial process (e.g., arbitration or litigation) to completion.

### **Subsection (g)(3)**

The purpose of this subsection is to require the PRO or Independent Producer to provide written notices of its decision concerning the extent to which a cost is a covered cost. Written notice is necessary so that there is an unambiguous record of actions relevant to a PRO’s or Independent Producer’s compliance with payment obligations. That evidence is relevant to CalRecycle’s enforcement activities and to resolving disputes over such actions.

### **Subsection (g)(4)**

The purpose of this subsection is to require that the process ensure that determinations concerning payments and payments themselves are timely issued. This ensures that local jurisdictions and others do not face avoidable financial burden, which would contradict the fundamental purpose of requiring the PRO to pay costs.

**Subsection (g)(5)**

The purpose of this subsection is to require the PRO or Independent Producer to afford entities the opportunity to request a determination concerning anticipated costs. This provision is necessary for commonsense, cost-effective implementation of the Act. It is also necessary, as a practical matter, for the process to accommodate the costs identified in subsection (g)(2)(C) (costs agreed to in advance).

**Subsection (g)(6)**

The purpose of this subsection is to clarify that a producer responsibility plan need not be limited to offering a payment mechanism based on the identification of discrete costs. Instead, the plan can offer the choice for local jurisdictions or recycling service providers to have their costs covered using a performance-based mechanism. This is necessary to avoid unnecessary restrictions on how the PRO, in consultation with local jurisdictions and recycling service providers, can establish methods for identifying and paying costs in the most efficient ways possible. This flexibility may be especially important when costs have not yet been incurred but are anticipated. In those circumstances, relying on cost projections may be inexact, inefficient, and more likely to lead to disputes.

**Subsection (g)(7)**

The purpose of this subsection is to clarify that a PRO or Independent Producer need not consider whether a cost is a covered cost if it has already done so in advance of the cost being incurred. This provision is necessary to give logical effect to that predetermination and avoid the inefficiency of requiring the PRO or Independent Producer to conduct the same evaluation twice.

**Subsection (g)(8)**

The purpose of this subsection is to establish that the process that the PRO or Independent Producer uses to determine costs must include notification of determinations to local jurisdictions. This transparency ensures that local jurisdictions obtain information that may be relevant to the services provided to them under contracts with recycling service providers and to disputes that local jurisdictions may choose to raise with the PRO or Independent Producer pursuant to subsection (h). Such information may suggest, for example, that a recycling service provider's cost has already been paid through its contract with a local jurisdiction.

**Subsection (h)**

The purpose of this subsection is to establish the minimum requirements for the dispute resolution process that producer responsibility plans must include pursuant to section 42051.1(g)(2) of the PRC. This is necessary because CalRecycle has the express mandate to review and approve plans (e.g., sections 42051.2 and 42061.5(a)), as well as the specific mandate to ensure that plans are fully funded and address costs incurred by local jurisdictions and recycling service providers to implement the Act (e.g., section 42060(a)(1)). More generally, section 42060(a) requires CalRecycle's regulations to ensure that the Act's requirements and the "policy goal established in Section 41780.01 are met." Section 42051.1(g)(2), however, does not set forth any

criteria for CalRecycle's evaluation of whether the dispute resolution element of a plan is appropriate.

#### **Subsection (h)(1)**

The purpose of this subsection is to establish a procedural element that the dispute resolution process must implement. Requiring that local jurisdictions or recycling service providers be allowed to initiate the process is necessary because a dispute resolution process would have little, if any, usefulness if the aggrieved jurisdiction or recycling service provider did not have the right to initiate it. This subsection also clarifies that the right to initiate the process exists once the PRO or Independent Producer makes a determination of whether a cost is a covered cost, or if the PRO or Independent Producer fails to make a timely determination. These provisions are necessary because, as set forth in subsection (g), local jurisdictions or recycling service providers can obtain those determinations before incurring the costs at issue and may, as a practical matter, be unable to incur a cost until they have been established as a covered cost.

#### **Subsection (h)(2)**

The purpose of this subsection is to explain that the advisory board must review the dispute resolution process and consider whether to suggest changes to ensure the PRO and Independent Producer cover costs related to the Act. Section 42051.1(g)(2) of the PRC expressly requires the dispute resolution process to include the Advisory Board's review. This subsection clarifies the purpose of that review (so that the Advisory Board can offer advice concerning the process) and the procedural setting for it (as part of the Advisory Board's review of the plan containing the process). Those elements are necessary because section 42051.1(g)(2) does not expressly address them, but they are logically required for the Advisory Board's review to serve a function consistent with its advisory roles concerning implementation of the Act and review of producer responsibility plans (section 42051.2(a) and (e)(1) and section 42070(a), (f) and (h)).

#### **Subsection (h)(3)**

The purpose of this subsection is to specify that a PRO or Independent Producer's dispute resolution process must avoid unnecessary burden on local jurisdictions and recycling service providers. This provision is necessary to ensure that the dispute resolution process presents a reasonable opportunity to resolve disputes. If the process involves costs beyond what local jurisdictions and recycling service providers are likely to be able to absorb, it will have little utility, if any. For example, if the dispute resolution process is not highly likely to be significantly less costly than litigation, local jurisdictions and recycling service providers may be unlikely to utilize it.

#### **Subsection (h)(4)**

The purpose of this subsection is to explain the basic manner in which a producer responsibility plan must implement a dispute resolution process. The process must be presented as an express agreement that the PRO or Independent Producer necessarily will execute at the option of an aggrieved local jurisdiction or recycling service provider. Such an agreement is necessary because the effect of the dispute resolution process is to limit the parties' right to seek relief in court. Mandatory mediation is a condition that

must be met before a party can initiate litigation. In binding arbitration, the parties waive the right to seek any remedy in court. An enforceable agreement is a fundamental legal requirement for a party to have the right to require another party to submit to such limitations.

#### **Subsection (h)(4)(A)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must identify a particular service provider for mediations and arbitrations, with the flexibility for the parties to agree to any other entity. This is necessary to ensure that the process will use a well-established service provider that meets generally recognized standards for dispute resolution services. It also ensures that local jurisdictions and recycling service providers can decide whether to suggest that the parties use a different entity. It also provides information to local jurisdictions and recycling service providers relevant to the decision of whether to submit to the dispute resolution process to begin with.

#### **Subsection (h)(4)(B)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must confer upon arbitrators the authority to establish appropriate rules and procedures, which must comply with applicable requirements of the Code of Civil Procedure. This is necessary to ensure that the agreement does not impose unnecessarily burdensome, unfair, or legally inadequate procedures and because arbitrators can only have authority conferred upon them by consent of the parties. This subsection further explains that the parties may mutually consent to other rules and procedures. This ensures that the parties, who are best suited at the outset of the process to assess the complexity and importance of a given case, have reasonable flexibility to avoid unnecessarily complex or costly rules and procedures.

#### **Subsection (h)(4)(C)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must address how the parties will appoint mediators and arbitrators. The terms are typical for agreements to ensure that no party has more control over appointments than the other or can require the use of a mediator or arbitrator that is unqualified, biased, or otherwise unacceptable to another party.

#### **Subsection (h)(4)(D)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must provide for binding arbitration. This is necessary because arbitration can only be binding, such that it forecloses a judicial remedy, if a party expressly consents to a binding process. Moreover, the dispute resolution process must provide for binding arbitration, as opposed to non-binding arbitration, because the dispute resolution provision of section 42051.1(g)(2) would otherwise provide little, if any, benefit to local jurisdictions and recycling service providers. Non-binding arbitration necessarily does not empower a party to obtain an enforceable remedy in lieu of litigation. In contrast, the express requirement of section 42051.1(g)(2) that the process “resolve disputes” and “ensure that the PRO covers costs related to this chapter”

indicates that it was intended to result in legally enforceable resolutions of disputes.

Lastly, parties to a dispute can agree to non-binding arbitration under any terms they choose, without concern over whether they meet any standards for the outcome to be enforceable. Given those limitations, section 42051.1(g)(2) must be interpreted to require a PRO or Independent Producer to submit to binding arbitration upon demand by a local jurisdiction or recycling service provider.

#### **Subsection (h)(4)(E)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must provide that fees for mediation and arbitration services must be shared equally among parties, unless the parties agree otherwise. This is necessary to ensure that the agreement does not place unfair burden on local jurisdictions and recycling service providers that choose to utilize the dispute resolution process. The flexibility for the parties to agree otherwise is consistent with the contractual nature of mediations and arbitrations and reduces potential barriers to dispute resolution, such as where the process is cost-prohibitive for only one of the parties. This subsection clarifies, however, that each party is responsible for their own attorney's fees. This is necessary to ensure that the agreement cannot force a party to face unfair or uncertain costs that are beyond their control.

#### **Subsection (h)(4)(F), (h)(4)(F)(i), and (h)(4)(F)(ii)**

The purpose of this subsection is to establish that the agreement presented in a producer responsibility plan must identify the relevant statutory provisions and require that arbitrators apply them. This is necessary because an arbitration decision is only legally binding if it was within the arbitrator's authority to issue it, and arbitrators only have the authority conferred upon them by consent of the parties. Moreover, to avoid binding arbitration decisions that fail to apply the appropriate provisions of the Act, it is necessary to identify those provisions specifically. Section 42051.1(g)(2) of the PRC requires the dispute resolution process for disputes over costs incurred by local jurisdictions and recycling service providers. Accordingly, subsections (h)(4)(F) and (h)(4)(F)(i) identify the statutory provisions relevant to that issue, and subsection (h)(4)(F)(ii) points to the provisions earlier in this section explaining limitations on how the Act applies to Independent Producers.

#### **Subsection (h)(4)(G)**

The purpose of this subsection is to prohibit the dispute resolution process from conditioning the availability of arbitration on the aggrieved party's submission of a matter to mediation. Such a condition is often a feature of arbitration agreements but, in many circumstances, requires mediation despite the aggrieved party's judgment that a mediated settlement is impossible. In such cases, the only effect of mediation would be to impose unnecessary costs and delay. Given financial and time constraints that local jurisdictions and recycling service providers may frequently face, avoiding such an outcome is necessary.

#### **Subsection (h)(5)**

The purpose of this subsection is to clarify that this section does not restrict parties from

resolving disputes in any manner of their choosing. This is necessary to avoid confusion over the intended meaning and effect of the preceding provisions.

**Subsection (h)(6)**

The purpose of this subsection is to clarify that a producer responsibility plan cannot impose an obligation on local jurisdictions or recycling service providers to submit matters to mediation or arbitration. This is necessary to avoid confusion over the intended meaning and effect of the preceding provisions.

**Subsection (i)**

The purpose of this subsection is to specify the information PROs and Independent Producers must include in their plans regarding their process to evaluate whether covered materials meet the requirements to be considered recyclable. This is necessary to ensure transparency and accountability regarding how PROs and Independent Producers will assess the recyclability of covered material managed under their plans.

Additionally, including this information in plans enables CalRecycle to assess whether the proposed process provides the necessary certainty that covered material claimed to be recyclable will be recycled.

**Subsections (j), (j)(1), (j)(1)(A), (j)(1)(B), and (j)(2)**

The purpose of these subsections is to provide clarity and completeness regarding additional requirements that plans must include regarding design guides referenced in section 42355.51(d)(3)(A) of the PRC and other publications the PRO may rely upon to account for difficulty recycling or composting covered material. Inclusion of the design guides in the plan will facilitate accurate determinations of recyclability of covered materials, as set forth in section 18980.3(b)(1). Additionally, these provisions are necessary to facilitate PRO compliance with section 42053(d)(2) of the PRC, which requires PRO 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(g). This is necessary to provide additional specificity and clarity regarding the requirements of what the PRO must accomplish and include in their plan to ensure compliance with the Act and these regulations. Subsection (j)(1)(B) specifies the process for incorporating updated design guides into the plan via an updated or amended plan by identifying changes to the design guide that would affect the recyclability of covered materials and explaining impacts. This is necessary to ensure design guides relied upon by a PRO are not updated without allowing CalRecycle the opportunity to evaluate the changes that may affect the recyclability of covered materials.

Subsection (j)(2) ensures the PRO includes any additional publications it uses and relies upon in the PRO plan in their entirety. This allows for a PRO to utilize other relevant and reliable data to accomplish the requirements of PRC 42053(d)(2), while ensuring transparency and accountability that the data sources are appropriate. This provision 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 the Act and these regulations by allowing use of the most

accurate and applicable publications.

### **Subsection (k)**

The purpose of this subsection is to address coordination between PROs and Independent Producers and to ensure that all entities include a description of how this coordination will occur in their plans. Because it is possible that there will be multiple plans being implemented simultaneously (a PRO plan and an inestimable number of Independent Producer plans), it is necessary that these plans work in coordination to the maximum extent possible. Furthermore, section 42060(a)(7) requires CalRecycle to establish processes to require coordination between a PRO and Independent Producers. This provision is necessary as part of the coordination efforts that a PRO and Independent Producers must participate in.

### **§ 18980.8.1. PLAN REQUIREMENTS SPECIFIC TO A PRO Subsection (a)**

The purpose of this subsection is to specify that a PRO is required to include a Closure and Transfer Plan as part of its producer responsibility plan. CalRecycle included this requirement in section 18980.8.1 to clarify that it applies strictly to a PRO and not Independent Producers. The rationale for this distinction is that the purpose of the Closure and Transfer Plan is to settle the affairs of the PRO; a Closure and Transfer Plan for Independent Producers could not serve that purpose.

### **Subsection (b)**

The purpose of this subsection is to specify that a PRO is required to include a fee schedule in its plan using the requirements identified in section 18980.6.7. This provision is necessary to form a bridge between subsection 18980.8.1 (addressing PRO plan requirements) and the section that deals most directly with the substantive requirements of the fee schedule that will be included in the plan. Section 18980.6.7 is the section of these regulations that addresses the fee schedule. In order to ensure the reader could easily find regulatory requirements pertaining to the schedule, CalRecycle concentrated its discussion of the matter in that section and directs the reader to those criteria by means of this subsection. This is necessary to ensure specification of the fees that all participant producers are charged by the PRO in its plan. Additionally, this provision clarifies that requirements applicable to including a fee schedule in a plan apply strictly to a PRO and not Independent Producers.

### **Subsection (c)**

The purpose of this subsection is to require a PRO to describe in its plan the procedures and methods it will use to ensure that items claimed as the basis for source reduction through a shift to reuse and refill satisfy the requirements to be considered reusable or refillable. In order for CalRecycle to evaluate whether a PRO's proposed process demonstrates it will ensure that source reduction is actually occurring and the packaging and food service ware can actually be considered reusable or refillable, it is necessary for the PRO to explain the process in its plan. Additionally, this provision specifies that plans explain at a minimum how the PRO will confirm items are designed for durability, assess convenience, safety, and environmental risks, and determine the average number of uses or refills for packaging reused or refilled by producers. These criteria were specifically named because they are essential aspects of what it means to

be reusable or refillable, and they appropriately generalize what is discussed in section 18980.2.1 concerning what is considered reusable and refillable. Without their specific mention, the PRO might omit an important element required for the consideration of an item's reusable or refillable nature.

**Subsection (d)**

The purpose of this subsection is to specify that a PRO's record maintenance protocol identified in its plan must include requirements to ensure each producer provides the PRO records sufficient to demonstrate the producer's compliance with the plan and the Act. This provision is necessary to clarify the standard to which a PRO's record maintenance protocol will be held: The PRO needs to specify how they will satisfy the requirements of the Act. Absent such a provision, CalRecycle would lack insight into how the PRO planned to comply with its statutory records maintenance obligations and would become aware of problems only after the plan had been approved with significant, irremediable gaps in necessary data.

**Subsection (e)**

The purpose of this subsection is to clarify that the PRO Plan grants adaptive management authority to the trustee or agent when, during the effective period of the Closure and Transfer Plan, specific PRO plan elements conflict with the achievement of the Act's requirements. In these circumstances and upon approval by CalRecycle, the trustee or agent will develop and carry out adaptive management strategies to resolve such conflicts, including making changes to the fee schedule, all to ensure that the plan operates in a manner that does not conflict with the requirements of the Act. This provision is necessary to avoid otherwise irreconcilable conflicts involving the trustee's or agent's obligation to administer the program in compliance with the requirements of the Act and its responsibilities regarding the implementation of the PRO Plan it inherits.

Without such a provision, the reader might believe that the trustee or agent has no means of adapting a PRO plan that it inherits, even if, for example, the trustee or agent becomes the administrator of the program precisely because the PRO plan conflicted with the requirements of the Act and was revoked for that reason.

**§ 18980.8.2. CLOSURE AND TRANSFER PLAN REQUIREMENTS**

**Subsection (a)**

The purpose of this subsection is to present a list of required components 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. 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.

Listing all applicable Closure and Transfer Plan requirements enables a PRO to go through the list to ensure it includes a Closure and Transfer Plan in its producer responsibility plan that contains all required components.

Additionally, another purpose of this subsection is to establish when the Closure and Transfer Plan will become effective. When a PRO's plan is revoked, the Closure and Transfer Plan will be effective five days after actual revocation of the PRO plan. An effective date is necessary to give all entities involved in the Closure and Transfer Plan clarity regarding when they will need to perform their tasks. Given that the PRO may become aware of actual revocation through an order issued by CalRecycle and will not know when the order will be issued, it is appropriate for the Closure and Transfer Plan to be activated at some point after actual revocation. However, given that the PRO plan would have been revoked for cause, it would be inappropriate for the PRO to continue to administer the program fully for any meaningful period of time. Therefore, that period cannot be longer than five days after revocation. This ensures administration of the program moves from the PRO as rapidly as possible but also allows some time to make the required transitions. In its experience with other similar types of closure and transfer plans, CalRecycle has found that five days is a manageable time period for such a transfer.

In cases of plan termination or PRO dissolution, the plan becomes active on the date specified using the process identified in paragraph (7) of subdivision (b) of section 18980.8.2 of these regulations. Since termination or dissolution are at the initiative of the PRO, the PRO will be able to estimate in advance when it will have completed the necessary preparatory actions, it is appropriate for the plan to be activated on that date.

#### **Subsection (a)(1)**

The purpose of this subsection is to present a list of required information pertaining to the Trustees or Agents that will implement a PRO's Closure and Transfer Plan that a PRO must include as part of its plan. This is necessary to implement section 42056(b) and (d) of the PRC that specifies obligations of the trustee or escrow agent but does not specify that a PRO identify and provide information about the selected trustee or agent within its Closure and Transfer Plan. A PRO must identify its selected Trustees or Agents to demonstrate to CalRecycle that its Closure and Transfer Plan will be implemented by an appropriate entity as required by the Act.

Listing all applicable requirements enables a PRO to go through the list to ensure it includes a Closure and Transfer Plan in its producer responsibility plan that contains all required components.

#### **Subsections (a)(1)(A) and (a)(1)(B)**

One purpose of these subsections is to specify that a PRO must identify and provide contact information and affiliations for its Initial Trustee or Agent and Successor Trustee or Agent involved in implementing a Closure and Transfer Plan. This information is necessary because sections 42051.1(f) and 42056 of the PRC require specified actions

to occur to sustain the operations of a PRO's program in the event of a PRO's dissolution or a plan's termination or revocation. A PRO cannot demonstrate its Closure and Transfer Plan will satisfy its obligations if it does not identify the trustee or agent assigned to implement the PRO's most recently approved plan. Additionally, it is necessary for a PRO to identify a Successor Trustee or Agent to ensure there is no lapse in implementation of the plan if the PRO's Initial Trustee or Agent can no longer serve in its role. If there is no trustee or agent ready to serve when the Closure and Transfer Plan is executed or to take over for an Initial Trustee or Agent during implementation, if necessary, it is unlikely that the participants of the plan will continue to meet their obligations pursuant to the Act, thus frustrating the express purpose of the Closure and Transfer Plan, as explained in 42051.1(f) of the PRC: to ensure that producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of PRO dissolution or plan revocation.

Additionally, this subsection requires a PRO to provide the primary and secondary contact names, contact information, and affiliations of the Initial and Successor Trustees or Agents. This is necessary to ensure that CalRecycle coordinates with the appropriate persons and has the necessary information to communicate with them. Another purpose is to ensure that the trustees and agents identify their affiliation, which includes identifying the business or businesses they represent and their relationship to the PRO. If the named contact is a natural person employed by a legal person, like a corporation, it would be necessary for CalRecycle also to know the name of the legal person involved in the trusteeship or agency. Furthermore, in order to ensure that the trustee or agent can serve effectively without any conflicted interest in the entity that it will replace should the Closure and Transfer Plan be activated, it is necessary to know the trustee or agent's relationship with the PRO.

### **Subsection (a)(1)(C)**

The purpose of this subsection is to specify CalRecycle's relationship with the trustee or agent and the trust or escrow account.

Establishing CalRecycle as the beneficiary of the trust is necessary to ensure the money within a PRO's Closure Fund goes to its intended purpose and is adequately safeguarded during the implementation of a Closure and Transfer Plan. Although sections 42051.1(f) and 42056 of the PRC anticipate that a Closure Fund will receive the PRO's deposits and ensure that producers who formerly participated in the defunct plan will continue to meet their obligations if the PRO has dissolved, it does not specify who will be the beneficiary of that account. At dissolution, the PRO would no longer exist as a legal entity and would not be able to serve as a beneficiary of the account.

Under federal law, 501(c)(3) organizations like the PRO must permanently dedicate their assets to an exempt purpose, even at dissolution; naming a government entity as a beneficiary appears to meet the requirements for ensuring that the assets remain dedicated to an exempt purpose at dissolution. See Title 26 section 1.501(c)(3)-1(b)(4) of the Code of Federal Regulations ["An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would... [be distributed] to a State or local government, for a public purpose"]. The moneys in the

fund are collected from producers for the purpose of meeting their obligations under California law and they are transferred with the intention of continuing their compliance with California law. This regulation is needed to ensure that the moneys in the fund continue serving their in-state purpose.

Additionally, specifying that CalRecycle is the Trust Protector and may provide direction to the trustee or agent ensures that CalRecycle can help guide the ongoing implementation of the Closure and Transfer Plan and be responsive to requests from the trustee or agent to overcome challenges. Although sections 42051.1(f) and 42056 of the PRC anticipate the existence of a trust or escrow account, neither statutory provision explains CalRecycle's relationship to the trustee, escrow agent, trust account, or escrow account. This regulation clarifies the role of CalRecycle and fills in the details of those relationships. While CalRecycle can provide oversight of an entity carrying out a Closure and Transfer Plan, provide direction, and advise that entity, CalRecycle is not able to operate the Closure and Transfer Plan or the program. Consistent with section 42056(d) of the PRC, this provision makes clear that CalRecycle does not directly administer the trust or escrow account and instead, as appropriate, directs the trustee or escrow account holder. Establishing that CalRecycle can remove and replace a trustee or agent at its discretion is necessary to ensure that CalRecycle can effectively respond to a trustee or agent that fails to effectively implement its obligations, while maintaining the implementation of the Closure and Transfer Plan via a Successor Trustee or Agent.

#### **Subsection (a)(1)(D)**

The purpose of this subsection is for a PRO to describe how its Trustees or Agents have the requisite industry knowledge, financial expertise, and skill in contract administration to carry out the Closure and Transfer Plan and have agreed to the appointment. This provision is necessary to ensure that the trustee or agent has the appropriate credentials and ability to fulfill the role envisioned by the Legislature and has consented to fulfill the role required by the Act.

#### **Subsection (a)(1)(E)**

The purpose of this subsection is to specify that a PRO must include in its Closure and Transfer Plan the names and roles of key entities involved in the implementation of the Closure and Transfer Plan. 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. 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; 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)(1)(F)**

The purpose of this subsection is to specify that a PRO must describe in its Closure and Transfer Plan how the trustee or agent will receive payment for its services, such as from a budgeted amount in the Closure Fund. This provision is necessary to ensure the PRO establishes a plan for ensuring payment to the trustee or agent since a trustee or agent will likely need to be paid an agreed-upon amount to perform the duties assigned to it. The availability and contractual commitment of a trustee or agent to fulfill the statutory role is necessary to effectuate section 42056 of the PRC. Elsewhere in this Article, CalRecycle requests information when it is believed that the trustee is unwilling or unable to carry out its obligations; it is anticipated that non-payment is a significant, potential cause of trustee or escrow agent's unwillingness or unavailability. Background regarding the payment for services will assist CalRecycle in responding to instances of trustee or escrow agent's unwillingness or unavailability. If the PRO does not arrange for the continued availability of a trustee or agent and the Closure and Transfer 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's plan will continue to meet their obligations in the event of dissolution of the organization or revocation.

**Subsection (a)(2)**

The purpose of this subsection is to present a list of explanations that a PRO is required to include in its Closure and Transfer Plan to demonstrate that it is capable of being fully executed through a trustee or agent with direction from CalRecycle. This provision is necessary to implement sections 42051.1(f) and 42056 of the PRC, which describe some components of the trustee or agent's role in Closure and Transfer Plan implementation but do not provide necessary details. This subsection and those that follow ensure the PRO provides critical explanations of how the trustee or agent will fully execute the Closure and Transfer Plan in compliance with the Act and these regulations.

While CalRecycle can provide oversight of an entity carrying out a Closure and Transfer Plan, provide direction, and advise that entity, CalRecycle is not able to operate the program or to implement directly 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, such as the direction by CalRecycle discussed in section 42056(b)(2) of the PRC.

Listing all applicable requirements enables a PRO to go through the list to ensure it includes a Closure and Transfer Plan in its producer responsibility plan that contains all required components.

**Subsection (a)(2)(A)**

The purpose of this subsection is to ensure that a PRO suitably empowers the trustee or agent to carry out their obligations under 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 but does not specify its contents or how it operates. Similarly, section 42056 of the PRC introduces the role of the trustee or agent and provides some of their required actions but does not exhaustively describe the trustee or agent's actions necessary for implementing the Closure and Transfer Plan.

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 operate the program or to implement the Closure and Transfer Plan directly; thus, the plan must be capable of full execution by a trustee or agent. If the Closure and Transfer Plan is to be fully executed by the trustee or agent, it must be drafted by the PRO in a way that facilitates this.

**Subsection (a)(2)(B)**

The purpose of this subsection is to specify that a PRO must include in its Closure and Transfer Plan an explanation of how it will facilitate the trustee or agent's transfer of administration to a successor PRO or PROs. Pursuant to section 42056(d) of the PRC, a trustee or agent must transfer funds to a successor PRO with an approved plan upon direction from CalRecycle. This provision is necessary to implement section 42056(d) of the PRC by ensuring that a PRO enables the trustee or agent to transfer administration to a new PRO, thereby ensuring producers can meet their obligations under the Act.

**Subsection (a)(2)(C)**

One purpose of this subsection is to ensure that all PRO 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 satisfaction of 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 be assigned and to assume the PRO's contracts and, in turn, to assign them to the successor PRO.

Given that subsection (a)(2)(A) (above) explains that the Trustee of Agent assumes administration of the program and that section 42056(b) of the PRC requires the trustee or escrow agent to accept and make payments to implement the plan (e.g., payments related to the contracts that the PRO has with its service providers), the trustee or agent must have the ability to assume all necessary contracts and agreements with the PRO's service providers to facilitate the ongoing execution of the plan and to carry out of the contracts that make the plan operate. To accomplish this, the PRO must establish its contracts and agreements so that they are fully assignable to the trustee or agent.

Another purpose of this subsection is to ensure that the trustee or agent is empowered to assign contracts to a successor PRO or PROs and that they will be able to assume

such contracts. This is necessary to ensure that a trustee or agent can be relieved of its duties upon the approval of a successor PRO. Additionally, this provision ensures that a successor PRO has the option to utilize already developed infrastructure and contractors to facilitate a seamless transfer of program operations.

### **Subsection (a)(3)**

The purpose of this subsection is to specify that a PRO must provide documentation in its Closure and Transfer Plan to demonstrate it has properly established a Closure Fund as required by the Act and these regulations. This provision is necessary for CalRecycle to verify that a PRO complies with section 42056 of the PRC by setting up a trust or escrow account in California. Additionally, this provision introduces a list of further requirements pertaining to the Closure Fund. Listing all applicable requirements enables a PRO to go through the list to determine whether its Closure and Transfer Plan includes the required information and documentation to demonstrate it has appropriately established its Closure Fund.

If the moneys apportioned to the Closure Fund are commingled with other moneys, it will be impossible to verify that sufficient funds have been set aside to accomplish the work of the contingency plan. Thus, it is necessary for this account to be separate from the PRO's other accounts.

### **Subsection (a)(3)(A)**

The purpose of this subsection is to specify that a PRO's Closure Fund must contain enough money to fully fund at least six months of program expenses within thirty-six months of plan approval. This provision is necessary to clarify the amount of funds that must be maintained in a PRO's trust or escrow account that constitutes "sufficient reserve funds" as required by section 42051.1(f) of the PRC. Additionally, this subsection establishes a deadline for when a PRO needs to deposit the funds into the Closure Fund.

Producers will experience significant upfront costs associated with developing the new statewide program, including depositing a total of \$500,000,000 into the California Plastic Pollution Mitigation Fund. The rationale for allowing thirty-six months for a PRO to fund its Closure Fund is to minimize the financial burden on participating producers by allowing the funding to be spread out over multiple years. Additionally, within this initial implementation period, it is less likely that CalRecycle would have sufficient information from a PRO demonstrating it failed to implement its plan in a manner that effectuates the purposes of the Act to warrant plan revocation that could cause Closure and Transfer Plan execution. In other words, thirty-six months will allow for the maximum amount of time for this funding to be raised without pushing the time out so far that there may be a need to implement the Closure and Transfer Plan. Allowing more than thirty-six months for a PRO to fully fund the Closure Fund would increase the risk of needing to implement the Closure and Transfer Plan while the Closure Fund contains inadequate reserve funds to sustain program operations. Specifically, CalRecycle will have received at least two annual reports from the PRO that could demonstrate the PRO is not meeting the requirements of the Act and necessitate plan revocation leading to Closure and Transfer Plan execution. Instead, assurances for the

funding of the Closure and Transfer Plan would be provided by the letter of credit maintained by the PRO, as further detailed in subsection (a)(3)(A)(i), discussed below.

CalRecycle determined that the Closure Fund must contain sufficient reserve funds to fully fund activities during at least a six-month period. 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 not intended to support the producer's compliance in perpetuity but to serve as a temporary bridge until a new PRO is found. It is possible for a new PRO to be available as early as the six-month mark based on the statutory and regulatory timeline in which a successor PRO must develop a plan (30 days), receive advisory board comments (60 days), and obtain CalRecycle approval (90 days).

Even if a new PRO is not operational at six months, it is reasonable to expect producer payments to provide adequate funding for operation under the Closure and Transfer Plan. Anticipating that the transfer of the program to the trustee or agent may temporarily disrupt receipt of program funds and payment of the program's liabilities during the initial six-month period, the fund is available to ensure obligations are met.

No later than six months after the transfer of control, producer payments are expected to be back on-track and to support the program in the same manner that they did before the transfer.

Additionally, CalRecycle established that the Closure Fund must contain six months of funds within thirty-six months of plan approval in response to public comment during the previous rulemaking that advocated for these time periods.

Another purpose of this subsection is to make clear that moneys intended toward paragraphs (1) and (2) of subdivision (e) of section 42064 of the PRC concerning the annual surcharge are not included in the PRO's calculation of its six-month operational budget and are not required as part of the Closure Fund, trust fund, or escrow account. This provision is responsive to a request from public comment. Given the adequacy of other methods for ensuring that a satisfactory amount is available should the Closure and Transfer Plan be implemented and that neither the regulations nor statute clearly delineate how these moneys will be collected at which times, it is appropriate for the PRO to propose, as part of its Closure and Transfer Plan, its method for ensuring that adequate moneys will be available to address the PRO's annual surcharge obligations for any year in which the Closure and Transfer Plan is activated.

#### **Subsection (a)(3)(A)(i)**

The purpose of this subsection is to specify that a PRO include in its Closure and Transfer Plan documentation demonstrating that it maintains a letter of credit from a lending institution that would fully fund its Closure Fund if the Closure and Transfer Plan is executed within the first thirty-six months after plan approval. This provision is necessary to ensure that there will be bridge-funding available even if the Closure and Transfer Plan must execute prior to the full funding of the Closure Fund by PRO income at the 36-month mark.

**Subsection (a)(3)(B)**

The purpose of this subsection is to clarify that a PRO must continuously maintain its Closure Fund in a trust or escrow account that is solely dedicated to satisfying the PRO's obligations during implementation of a Closure and Transfer Plan. This provision is necessary to ensure a PRO always maintains sufficient reserve funds to satisfy its obligations in the event of dissolution, termination, or revocation. If a PRO commingles Closure Fund money with other funds intended for ongoing program implementation, the Closure Fund money could be expended, thus jeopardizing a PRO's ability to implement its Closure and Transfer Plan as required by the Act and these regulations.

**Subsection (a)(3)(C)**

The purpose of this subsection is to clarify that the Closure Fund will ultimately receive the PRO's moneys allocated to the payment of its obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code concerning the annual surcharge. Unlike the moneys discussed in subsection (a)(3)(A)(i) concerning the six month operational budget, the moneys intended to satisfy the annual surcharge might not be placed in the Closure Fund after the thirty-six month mark, but would ultimately be placed in the Closure Fund if the Closure and Transfer Plan is activated. This subsection is necessary to ensure that the surcharge funds are placed in the correct account at the appropriate time. This provision is responsive to public comment. Given that, prior to PRO plan approval, the PRO will need to present a feasible proposal for ensuring that adequate monies will be available for deposit at a later date and that neither the regulations nor statute clearly delineate how these moneys will be collected at which times, it is appropriate for the moneys related to the surcharge to be deposited at a later time.

**Subsection (a)(4)**

The purpose of this subsection is to require that the PRO commits to ensuring that adequate moneys are available for the surcharge payment and to depositing those funds at the appropriate time. Additionally, this subsection's purpose is to elicit an explanation of how the PRO will satisfy these obligations, including the PRO's description of its methodology for calculating the adequacy of the moneys. This provision is responsive to a request from public comment. For the reasons noted in CalRecycle's explanation of the matter in Subsection (a)(3)(A) above, CalRecycle cannot propose a more prescriptive requirement concerning the PRO's maintenance of the annual surcharge amount as it relates to closure and transfer and it is appropriate for the PRO to propose, as part of its Closure and Transfer Plan, its own method for ensuring that adequate moneys will be available to address the PRO's annual surcharge obligations for any year in which the Closure and Transfer Plan is activated. Nevertheless, if the program is to be effective under the administration of the trustee or agent, the PRO must actually collect and safeguard satisfactory funds during PRO operation and actually deposit them in order to be transferred.

This provision is necessary to ensure that the collection, safeguarding, and transfer actually occurs. The PRO's explanation is necessary to ensure that CalRecycle has

confidence that the PRO will be able to satisfy its obligations regarding the surcharge should the Closure and Transfer Plan be activated. If the PRO does not explain how it will assess that the moneys are adequate, CalRecycle will not be able to have confidence that the moneys placed in the account will be sufficient for the trustee or agent to meet the program's obligations. If the PRO does not explain how it will satisfy its obligations, CalRecycle will not be able to have confidence that the moneys will be available, safeguarded, and deposited at the appropriate time.

#### **Subsection (a)(5)**

The purpose of this subsection is to present a list of required explanations that a PRO must include in its Closure and Transfer Plan as part of its producer responsibility plan. This is necessary for compliance with the Act pursuant to sections 42051.1(f) and 42056 of the PRC. Listing all applicable Closure and Transfer Plan explanations enables a PRO to go through the list to ensure it includes a Closure and Transfer Plan in its producer responsibility plan that contains all required explanations.

#### **Subsection (a)(5)(A)**

The purpose of this subsection is to elicit a 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, the notice of dissolution requirement discussed in section 42051.1(f) of the PRC, to facilitate the trustee or agent's ability to carry out section 42056(b) of the PRC, and otherwise to ensure that the Closure and Transfer Plan provides the means of settling the affairs of the PRO. This ensures that producers who are participants of the PRO plan will continue to meet their obligations in the event of dissolution of the organization or termination or revocation. 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)(5)(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 six-month period. This is necessary for implementing Section 42051.1 and section 42056 of the PRC, which establishes various requirements related to the Closure and 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, termination, or revocation. By eliciting the PRO's methodology and calculations for ensuring fund solvency, these subsections will allow CalRecycle to verify that the PRO properly maintains an adequate reserve. Absent these specifics, the PRO might underfund the Closure Fund and render it inoperable or overfund it at the expense of other program operations.

Another purpose of this subsection is to make clear that moneys intended toward paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources

Code concerning the annual surcharge are not included in the PRO's calculation of its six-month operational budget. This provision is responsive to a request from public comment. Given the adequacy of other methods for ensuring that a satisfactory amount is available should the Closure and Transfer Plan be implemented and that neither the regulations nor statute clearly delineate how these moneys will be collected at which times, it is appropriate for the PRO to propose, as part of its Closure and Transfer Plan, its method for ensuring that adequate moneys will be available to address the PRO's annual surcharge obligations for any year in which the Closure and Transfer Plan is activated. Instead, the PRO's calculations regarding annual surcharge funds are addressed under subsection (a)(4), discussed above.

### **Subsection (a)(5)(C)**

The purpose of this subsection 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 this subsection are necessary to fulfill, in part, the notice of dissolution requirement of section 42051.1(f) of the PRC to facilitate the trustee or agent's ability to carry out section 42056(b) of the PRC, and otherwise to 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 PRO or termination. 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.

### **Subsections (a)(6), and (a)(6)(A) through (a)(6)(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 must describe the trustee or agent's scope of work, the process for revising a trustee or agent's scope 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 to perform the necessary activities 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 trustee or agent. Additionally, it would threaten participant producers' ability to continue to meet their obligations in the event of dissolution of the PRO or termination or revocation. To be assured that a trustee or agent will be in place and will have committed to the necessary duties to perform its role, the Closure and Transfer Plan needs to describe the trustee or agent's scope of work. Additionally, if at any time a PRO, trustee, agent, or CalRecycle determines the scope of work is inadequate, the Closure and Transfer Plan needs to describe how the scope of work would be revised. Additionally, this provision is necessary to ensure that the PRO and trustee or agent have agreed to a plan for ensuring payment to the trustee or agent since a trustee or agent will need to be paid an agreed-upon amount to perform the duties assigned to it.

### **Subsection (a)(7)**

The purpose of this subsection is to set the date on which the Closure and Transfer Plan will self-execute in the event of dissolution of a PRO, or termination or revocation. 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 the applicable start date for the various circumstances that may trigger execution of a Closure and Transfer Plan is necessary to ensure that the Act can be implemented and enforced. Without such a date, a PRO, trustee, agent, CalRecycle, and/or other key entities would not know when activities related to the closure or transfer of program operations would commence.

Where a PRO's plan is revoked, the Closure and Transfer Plan will be effective five days after actual revocation of the PRO plan. An effective date is necessary to allow all entities involved in the Closure and Transfer Plan clarity regarding when they will need to perform their tasks. Given that the PRO may become aware of actual revocation through an order issued by CalRecycle and will not know when the order will be issued, it is appropriate for the Closure and Transfer Plan to be activated at some point after actual revocation. However, given that the PRO plan would have been revoked for cause, it would be inappropriate for the PRO to continue to administer fully the program longer than five days after revocation. This ensures administration of the program moves from the PRO as rapidly as possible but also allows some time to make the required transitions. In its experience with other similar types of closure and transfer plans, CalRecycle has found that five days is a manageable time period for such a transfer.

In cases of plan termination or PRO dissolution, the plan becomes active on the date specified using the process identified in paragraph (7) of subdivision (b) of section 18980.8.2 of the regulations. Since termination or dissolution are at the initiative of the PRO and the PRO will be able to estimate in advance when it will have completed the necessary preparatory actions, it is appropriate for the plan to be activated on that date.

### **Subsection (a)(8)**

The purpose of this subsection is to provide clarity concerning the trustee or agent's adaptive management authority and to ensure consistency between the Closure and Transfer Plan and the rest of the PRO Plan on this subject. Specifically, this provision makes clear through the Closure and Transfer Plan that the trustee or agent has adaptive management authority when, during the effective period of the Closure and Transfer Plan, specific PRO Plan elements conflict with the achievement of the Act's requirements. In these circumstances and upon approval by CalRecycle, the trustee or agent will develop and carry out adaptive management strategies to resolve such conflicts, inclusive of making changes to the fee schedule, all to ensure that the PRO Plan operates in a manner that does not conflict with the requirements of the Act. This is necessary to avoid otherwise irreconcilable conflicts involving the trustee or agent's obligation to administer the program in compliance with the requirements of the Act and its responsibilities regarding the implementation of the PRO Plan it inherits. This

provision dovetails with the express inclusion of this authority in the other parts of the PRO Plan, as provided in subdivision (f) of section 18980.8.1 of the regulations. Given that the Closure and Transfer Plan will be a primary reference regarding the conduct of the trustee or agent, it is necessary for the express mention of this authority to be found in the Closure and Transfer Plan.

### **Subsection (b)**

The purpose of this subsection is to present a list of actions a PRO is required to take in support of its Closure and Transfer Plan. The necessity of each provision is specified in the appropriate subsection. Listing all applicable requirements enables a PRO to go through the list to ensure it complies with each required action to support its Closure and Transfer Plan.

### **Subsection (b)(1)**

The purpose of this subsection is to ensure that a PRO develops its contracts in a way that will enable the trustee or agent to fulfill its responsibilities under section 42056(b) of the PRC if the Closure and Transfer Plan is executed. Another purpose of this subsection is to facilitate the transfer of contracts and agreements from the trustee or agent to a successor PRO or PROs with an approved plan. If PRO contracts do not allow for assignment to the trustee or agent, the trustee or agent will be unable to fulfill its obligations under section 42056(b) of the PRC. If the trustee or agent cannot satisfy its obligations, the PRO's Closure and Transfer Plan cannot appropriately assist producers who are participants of the PRO's plan to continue to meet their obligations. Ensuring that contracts and agreements administered by the trustee or agent are assignable to successor PROs allows for a successor PRO to quickly implement an approved plan and build upon existing infrastructure. If contracts and agreements were not assignable and assumable, successor PROs would need to immediately solicit and evaluate proposals, negotiate numerous contracts and agreements, and recreate infrastructure prior to implementing its program, creating the potential for significant delays and resultant noncompliance. To ensure that the goals of the Act are met through successor PROs, it is necessary for contracts and agreements to be assigned by the trustee or agent to successor PROs.

### **Subsections (b)(2), (b)(2)(A), and (b)(2)(B)**

The purpose of these subsections is to specify that the PRO must provide evidence to CalRecycle substantiating its Closure Fund can fully satisfy the PRO's obligations during a six-month period. The required evidence includes financial modeling that assures fund solvency through Closure and Transfer Plan implementation, based on current program activity levels and most recent cost and revenue data. This information must be provided to CalRecycle in annual reports and at any time upon the request of CalRecycle.

In order to ensure that the Closure Fund will be able to meet the six-month operational funding required in subsection 18980.8.2(a)(3)(A) of these regulations, it is necessary for the PRO to provide evidence to CalRecycle demonstrating the sufficiency of its Closure Fund, to verify the PRO has sufficient reserve funds in the

trust fund or escrow account as required by section 42051.1(f) of the PRC and to ensure the Closure and Transfer Plan can be executed at any time necessary. Without sufficient funding, the Closure and Transfer Plan does not satisfy all PRO obligations and cannot ensure participant producers continue to meet their obligations if the PRO dissolves or its plan is terminated or revoked.

Since the Closure Fund is intended to enable future operations and the exact costs are not known and may change over time, subsection (b)(2)(A) specifies that the PRO provide CalRecycle with the modeling it used to determine the amount of money needed in its Closure Fund. It is necessary for the PRO to base its financial modeling on current program activity levels and its most recent cost and revenue data to ensure that the Closure Fund is sufficient to sustain the existing program operations if the Closure and Transfer Plan is executed. If the financial modeling used to determine the Closure Fund was based only on the PRO's initial budget projections, the Closure Fund may be underfunded, threatening the successful implementation of the Closure and Transfer Plan. Alternatively, it might be overfunded, causing participant producers to pay more than required for implementation.

The rationale for requiring this evidence in annual reports is that a PRO may require some time to prepare updates to its financial modeling and compile information to provide to CalRecycle. Additionally, providing this information within an existing document mandated by the Act is more convenient and efficient both for the PRO, which is already preparing the annual report, and CalRecycle, since it must already evaluate the compliance of the annual report.

In most, but not necessarily all instances, annual reporting will be adequate. However, this subsection also provides for providing this information upon the request of CalRecycle outside of the annual report. If CalRecycle becomes aware of financial hardship for the PRO between annual reports or if CalRecycle has information to suggest that there are problems with the funding of the Closure Fund, it will need this information prior to the submission of an annual report. If there are special circumstances that cause CalRecycle to be concerned about the adequacy of the Closure Fund, it is necessary for a PRO to provide evidence to CalRecycle at any time upon request.

Another purpose of this subsection is to make clear that moneys intended toward section 42064(e)(1) and (2) of the PRC concerning the annual surcharge are not included in the PRO's calculation of its six-month operational needs. This provision is responsive to a request from public comment. Given the adequacy of other methods for ensuring that a satisfactory amount is available should the Closure and Transfer Plan be implemented and that neither the regulations nor statute clearly specify how these moneys will be collected at which times, it is appropriate for the PRO to propose, as part of its Closure and Transfer Plan, its method for ensuring that adequate moneys will be available to address the PRO's annual surcharge obligations for any year in which the Closure and Transfer Plan is activated. Instead, the PRO's calculations regarding annual surcharge funds are addressed under subsection (a)(4), discussed above.

### **Subsections (b)(3) and (b)(4)**

The purpose of these subsections is to make explicit the PRO's obligations for keeping CalRecycle informed and obtaining approval for any proposed changes to the scope of work of the trustee or agent assigned to administer the Closure and Transfer Plan.

Additionally, the PRO must notify CalRecycle when changes to the scope of work are finalized. This is necessary to ensure CalRecycle understands at all times the duties the trustee or agent has committed to perform and can validate that the scope of work allows the trustee or agent to meet the requirements of the Act. If the PRO has not asked the trustee or agent to accomplish the full breadth of work necessary to comply with the Act, or the trustee or agent has not agreed to perform such work, the Closure and Transfer Plan will be insufficient to comply with sections 42051.1(f) and 42056 of the PRC. Additionally, if the scope of work is inadequate for the trustee or agent to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will the Closure and Transfer Plan, if executed, effectively ensure that participant producers will continue to meet their obligations. The rationale for CalRecycle approval is that CalRecycle will be able to deny 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 to CalRecycle when the changes are finalized; without this provision, CalRecycle would be unaware of whether a proposed change has been implemented.

### **Subsection (b)(5)**

The purpose of this subsection is to present a list of circumstances in which the PRO must notify CalRecycle. Listing all applicable requirements enables a PRO to go through the list to ensure it complies with each required notification if the specified circumstances arise.

#### **Subsection (b)(5)(A)**

The purpose of this subsection is to ensure that the PRO notifies CalRecycle immediately if it discovers that the current contents of the Closure Fund are insufficient to support the estimated cost to fulfill the PRO's obligations over the next six months. In order for CalRecycle to ensure that the PRO responds appropriately to deficient reserve funds, CalRecycle needs the PRO to inform it immediately when the PRO believes those circumstances are present. An inability to maintain the appropriate level of the Closure Fund may be indicative of PRO insolvency; given that PRO insolvency may be an important contributor to the triggering of the Closure and Transfer Plan (which in turn relies on an adequate Closure Fund), it is necessary for the notification to occur immediately. It is reasonable for the PRO to notify CalRecycle immediately because the information can be provided to CalRecycle by electronic means.

Additionally, this provision is complimentary to subsection (b)(6) that requires the PRO to deposit an amount to establish Closure Fund solvency immediately. Without notifying CalRecycle, a PRO could underfund its Closure Fund, and CalRecycle would not be aware of the amount that must be in the trust or escrow account to maintain

solvency.

**Subsection (b)(5)(B)**

The purpose of this subsection is to ensure that the PRO notifies CalRecycle no more than five calendar days after the PRO determines that the trustee or agent is temporarily or permanently unwilling or unable to carry out its obligations under the Closure and Transfer Plan. The availability and commitment of a trustee or agent is necessary to fulfill the requirements of section 42056 of the PRC. If the trustee or agent cannot fulfill its role, and the Closure and Transfer Plan is executed, there would 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. The rationale for requiring notification in five days is to allow the PRO and the trustee or agent some time to confer to determine if the Trustee's or Agent's unwillingness or inability to meet its obligations can be resolved, and to avoid overreporting problems that could be quickly cleared up. If the notification timespan exceeded five days, CalRecycle would be unaware of the issue with the trustee or agent and unable to coordinate with the PRO to ensure the successor trustee or agent takes over promptly to avoid a lapse in coverage. Any lapse in a trustee or agent in the role jeopardizes the ability to execute the Closure and Transfer Plan if the PRO dissolves or its plan is terminated or revoked.

**Subsection (b)(6)**

The purpose of this subsection is to specify that the PRO must immediately deposit an amount to establish Closure Fund solvency if the PRO or CalRecycle believe the trust fund or escrow account is underfunded. Additionally, this subsection prohibits the PRO from spending funds until it has replenished the Closure Fund, if directed by CalRecycle. This provision is necessary to fulfill the requirement of section 42051.1(f) of the PRC that mandates the PRO to maintain sufficient reserve funds in the event of PRO dissolution or plan termination or revocation. If the PRO continues to spend first in other areas without replenishing the Closure Fund, the PRO will be out of compliance with the Act and the participants of the PRO's plan may not be able to continue to meet their obligations in the event of the execution of the Closure and Transfer Plan. However, if the PRO promptly deposits sufficient funds into its Closure Fund to establish solvency, CalRecycle would not need to direct the PRO to cease spending on other activities. An inability to maintain the appropriate level of the Closure Fund may be indicative of PRO insolvency; given that PRO insolvency may be an important contributor to the triggering of the Closure and Transfer Plan (which in turn relies on an adequate Closure Fund), it is necessary for the PRO to immediately deposit funds to establish Closure Fund solvency. If the PRO funded other activities first and the PRO's funds are limited, the Closure Fund might never be adequately funded, which would jeopardize the effective implementation of the Closure and Transfer Plan if executed.

**Subsection (b)(7)**

The purpose of this subsection is to specify the PRO must submit to CalRecycle a written electronic notice of intent to dissolve or terminate its plan no fewer than 180

days prior to the proposed dissolution or plan termination date, and introduces a list of information that must be included in the notice.

In order to ensure that the PRO is actually proposing dissolution or termination and to ensure that all parties clearly understand the proposed date, it is necessary for a PRO to notify CalRecycle in writing to establish a record of the date of submission of the notice. If verbal notice were permitted, CalRecycle might misunderstand the nature of the request and initiate the process where no termination was actually requested, or fail to initiate the process where a termination was requested.

Specifying electronic submission is necessary because it facilitates near instantaneous transmittal to CalRecycle, thereby supporting the PRO in meeting submission timelines, enabling effective document retention by CalRecycle, allowing for the appropriate CalRecycle personnel to easily access the submission for review, and minimizing the cost and time burden associated with mailing.

Additionally, the notice must be at least 180 days prior to the PRO dissolving or terminating to allow the PRO, CalRecycle, and the trustee or agent sufficient time to prepare for the execution of the Closure and Transfer Plan, and to ensure the PRO fulfills its outstanding obligations. Allowing a PRO to submit a notice more than 180 days before dissolving or terminating its plan ensures that a PRO is not forced to satisfy all outstanding obligations in an unrealistic timeline. Requiring the notice at least 180 days prior to PRO dissolution or plan termination provides all parties sufficient time to prepare for the Closure and Transfer Plan execution maximizing the likelihood of effective implementation.

Without a provision explaining how the PRO will inform CalRecycle of its intended termination or 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.

#### **Subsection (b)(7)(A)**

The purpose of this subsection is to specify that the PRO must include in its written notice to CalRecycle its proposed effective date of dissolution or plan termination, and a description of why the effective date is appropriate. This provision is necessary to enable CalRecycle to verify the proposed date will allow the PRO to fulfill all outstanding obligations and is at least 180 days after the notice submission date.

Additionally, if approved by CalRecycle, the effective date triggers the execution of the Closure and Transfer Plan activities, so providing the proposed date in the notice provides transparency to the trustee or agent and other key entities concerning when specified actions would need to occur. The rationale for the PRO identifying their desired date of termination is that the PRO has unique insight into what it needs to accomplish prior to ending operations. Nevertheless, CalRecycle plays an important role in verifying that the PRO is aware of and can speak to all actions that are necessary for termination or dissolution. By eliciting the PRO's explanation of why the timeline is reasonable, CalRecycle will be better positioned to concur or to disagree with the PRO's proposal.

**Subsection (b)(7)(B)**

The purpose of this subsection is to specify that the PRO must include in its written notice to CalRecycle its reason for proposing to dissolve or terminate its plan. The basis for the termination may affect the reasonableness of proposed timeframe or may provide important context for the steps that need to be taken prior to the termination date; thus, it is necessary for CalRecycle to have this explanation at the time of this submission. Moreover, given the potential for transfer of program administration to disrupt the program, this provision is necessary to enable CalRecycle and the PRO to identify and consider any alternatives that do not entail executing the Closure and Transfer Plan. This ensures that there are no misunderstandings that cause premature execution of the Closure and Transfer Plan that might be avoided by discussion.

**Subsection (b)(7)(C)**

The purpose of this subsection is to specify that the PRO must include in its written notice to CalRecycle a detailed description of how it will implement its plan until the effective date of dissolution or plan termination, and then how the trustee or agent will meet the requirements of section 42051.1(f) of the PRC. This provision is necessary to enable CalRecycle to verify that the PRO understands the full extent of its obligations from the submission of its notice to CalRecycle to the transfer of administration to the trustee or agent to execute the Closure and Transfer Plan. Additionally, this provision ensures that the PRO has adequately prepared the trustee or agent to execute its responsibilities and CalRecycle understands how the trustee or agent will perform its duties under the Closure and Transfer Plan.

**Subsection (b)(7)(D)**

The purpose of this subsection is to specify that the PRO must include in its written notice to CalRecycle an explanation of its outstanding obligations to CalRecycle and key entities and how it will fulfill its obligations before dissolution or plan termination. This provision is necessary to enable CalRecycle to verify that the PRO understands the full extent of its remaining obligations and demonstrates it has an approach to satisfy all such obligations before dissolution or plan termination. In particular, identification of obligations prior to actual dissolution is particularly important in the case of proposed dissolution by the PRO. Additionally, the PRO will be able to go through its list to verify it accomplishes all necessary responsibilities within the timeframe necessary. Furthermore, CalRecycle will also be able to use the list to ensure the PRO fulfills its obligations to CalRecycle and can work with the PRO to address any shortcomings prior to the execution of the Closure and Transfer Plan.

**Subsection (b)(7)(E)**

The purpose of this subsection is to specify that the PRO can revise and resubmit its written notice of intent to dissolve or terminate its plan to address any deficiencies identified by CalRecycle. This provision is necessary to clarify that if CalRecycle does not approve the PRO's proposal, the PRO has the option to add the required additional information and submit its notice to CalRecycle again. This is necessary because the PRO may fail to address required information in its initial submission which would require amelioration by resubmission. Similarly, it is necessary because

the PRO may provide an unrealistic timeline or provide a description of its planned activities that is incongruous with the Closure and Transfer Plan or the needs demonstrated by its statement of remaining obligations. In such circumstances, CalRecycle would explain the defects with the intention that the PRO would cure them on resubmission.

### **Subsections (b)(8), and (b)(8)(A) through (b)(8)(C)**

The purpose of these subsections is to ensure that CalRecycle is immediately aware of the major steps a PRO might take toward corporate or organizational dissolution. Specifically, a PRO must immediately notify CalRecycle if its governing board or members take steps to dissolve the organization, if it seeks a waiver concerning dissolution from the applicable state's Attorney General, or if it files specified documents related to dissolution. These provisions are necessary because they specify the three major steps a 501(c)(3) nonprofit PRO would need to take to dissolve its organization, whether it was formed in California or elsewhere. To verify that the PRO does not dissolve without satisfying its obligations to CalRecycle and to ensure CalRecycle can be involved in relevant proceedings, if necessary, it is essential that the PRO notify CalRecycle of any of these circumstances. If a PRO is allowed to dissolve without properly satisfying its obligations to CalRecycle, it would create significant compliance and enforcement challenges and could compromise the trustee or agent's ability to effectively implement the Closure and Transfer Plan.

### **Subsections (b)(9), (b)(9)(A), and (b)(9)(B)**

The purpose of these subsections is to specify that the PRO must provide CalRecycle and the trustee or agent with all specified records necessary to implement the Closure and Transfer Plan within the applicable deadlines. It is necessary for the trustee or agent to have essential records to enable it to implement the Closure and Transfer Plan, including contracts and agreements, information pertaining to the Closure Fund and other PRO accounts, and contact information for key entities with whom it will interact. Additionally, CalRecycle will need this information to advise the trustee or agent and ensure that it is appropriately carrying out its responsibilities under the Closure and Transfer Plan. For the trustee or agent to assume its role, administer the fund, and implement the plan, at a minimum, it needs to understand the program's financial circumstances, review the contracts and agreements assigned to it, and communicate with key entities. This provision provides these examples of essential records that a trustee or agent and CalRecycle will certainly need to carry out their responsibilities under the Closure and Transfer Plan, but also requires the PRO to provide other necessary records that CalRecycle cannot be anticipated at this time.

This non-exclusive list is appropriate because CalRecycle cannot anticipate every record that a trustee or agent may need to implement the PRO's yet-to-be developed plan.

Additionally, this provision specifies that the PRO must provide the records to the trustee or agent and CalRecycle no later than five days after revocation of the PRO plan, or on the effective date of PRO dissolution or plan termination. Given that the

PRO may become aware of actual revocation through an order issued by CalRecycle and will not know when the order will be issued, it is appropriate for the PRO to have some amount of time after revocation to send the relevant documents. Nevertheless, notice of the intention to revoke gives the PRO awareness of the potential need to transfer its documents; thus, the timeframe does not need to be longer than five days. Additionally, a period longer than five days would adversely affect the trustee or agent's ability to fulfill its responsibilities under the plan.

Conversely, since a PRO must provide notice to CalRecycle at least 180 days prior to dissolution or plan termination, it has ample opportunity to prepare and provide necessary records to effectuate its Closure and Transfer Plan on the established termination date.

### **Subsection (b)(10)**

The purpose of this subsection is to present a list of specific actions the PRO must take immediately upon self-execution of the Closure and Transfer Plan, unless otherwise directed by CalRecycle in writing. Listing all applicable actions enables a PRO to go through the list to ensure it completes each required action, unless CalRecycle directs otherwise. The rationale for each requirement being immediate is addressed in the subsections below.

### **Subsections (b)(10)(A) and (b)(10)(B)**

One purpose of these subsections is to ensure that the PRO deposits any unexpended funds into the Closure Fund, along with the moneys that it has safeguarded for satisfaction of the surcharge, and transfers those moneys to the trustee or agent on the execution date of the Closure and Transfer Plan. The Closure Fund will already contain those moneys necessary to support six months of program operations. In response to public comment, CalRecycle has specified elsewhere in these regulations that the funds in satisfaction of the surcharge do not need to reside in the Closure Fund prior to the activation of the Closure and Transfer Plan, but that the moneys in satisfaction of the surcharge must be safeguarded and actually transferred. This provision is necessary to provide a mechanism for that transfer.

Furthermore, this is necessary to ensure compliance with section 42056 of the PRC, which requires a PRO to deposit all unexpended funds if the plan terminates or is revoked, but does not specify the exact timing. Thus, CalRecycle needs to specify the necessary details.

Immediate transfer of the fund is appropriate in both the case of closure due to revocation and termination/dissolution. In the latter case, the PRO will have proposed the transfer date and will be able to plan. In the case of revocation, the timespan between actual revocation and the activation of the Closure and Transfer Plan gives sufficient time for the PRO to prepare the transfer; nevertheless, because of the trustee or agent's need for access to the funds and the need to ensure that the PRO does not misallocate funds after the Closure and Transfer Plan has been activated, a longer period cannot be given.

Another purpose of these subsections is to specify that the PRO provide a complete accounting of the fund balance, along with accounts payable and receivable, and thereafter provide any additional financial information concerning the plan to the trustee or agent and CalRecycle. For the trustee or agent to effectively manage the plan and CalRecycle to oversee the implementation, they need a comprehensive understanding of the accounting related to the Closure Fund, including any money due to or from the Closure Fund. Given the diminished role of the PRO after self-execution of the Closure and Transfer Plan and the potential for PRO misuse of funds after PRO dissolution or plan termination or revocation, it is necessary for all fund-related information to be turned over immediately. Moreover, the PRO will have suitable notice to arrange all of this because of the timeline for self-execution identified elsewhere in the chapter. Further, after execution of the Closure and Transfer Plan, there may be a lag-period in which the PRO continues to receive financial information. This provision requires the PRO to provide such information to the trustee or agent and CalRecycle to ensure it can be appropriately addressed, such as ensuring service providers are paid or producers can remit payments.

**Subsection (b)(10)(C)**

The purpose of this subsection is to specify that the PRO must assign all third-party contracts to the trustee or agent contemporaneously with the transfer of the Closure Fund. For the trustee or agent to effectively implement the plan, it needs to assume the contracts that carry out the plan activities. Given the diminished role of the PRO after self-execution of the Closure and Transfer, it is necessary for the contracts to be assumed by the trustee or agent immediately. Moreover, the PRO will have suitable notice to arrange all of this because of the timeline for self-execution identified elsewhere in the chapter.

**Subsection (c)**

The purpose of this subsection is to establish a process for the PRO to confirm that the trustee or agent continues to possess the necessary skills and qualifications and is still willing and able to serve as trustee or agent if the Closure and Transfer Plan is executed. If the trustee or agent no longer has appropriate qualifications or is unwilling or unable to serve when the Closure and Transfer Plan must be executed, CalRecycle may not have sufficient time to obtain a replacement, nor will it be able to ensure that participant producers will continue to meet their obligations in the event of PRO dissolution or plan termination or revocation.

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 or ability of the trustee or agent to serve or its credentials, that require verification on a different timeframe. 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 for the PRO to instill confidence that the trustee or agent is available to assume its responsibilities.

Additionally, if a trustee or agent becomes unable or unwilling to serve, this provision ensures that CalRecycle and the PRO have time to take the necessary steps to obtain a new trustee or agent.

#### **Subsection (d)**

The purpose of this subsection is to present a list of the trustee or agent's responsibilities. Listing all required actions enables the trustee or agent to go through the list to ensure it completes each required action.

#### **Subsection (d)(1)**

The purpose of this subsection is to specify that the trustee or agent must notify CalRecycle within five calendar days if it believes that the PRO has breached its contract. This provision is necessary to ensure CalRecycle is aware of any disputes between the PRO and the trustee or agent that may impact the trustee or agent's willingness or ability to carry out its responsibilities under the Closure and Transfer Plan. If CalRecycle is unaware of any contractual breaches, it cannot ensure that the issues are resolved. If the Closure and Transfer Plan needs to be executed during a dispute between the PRO and trustee or agent, there may not be agreement as to the required actions that each party must take.

Additionally, notifying CalRecycle within five days is appropriate to ensure that CalRecycle has an early warning so that it can take corrective steps, if necessary, but still provides enough time for the trustee or agent and PRO to confer to resolve the contractual dispute prior to any CalRecycle intervention.

#### **Subsection (d)(2)**

The purpose of this subsection is to specify the trustee or agent must inform CalRecycle about any proposed changes to its scope of work and seek the approval of CalRecycle. This is necessary to ensure CalRecycle understands at all times the duties the trustee or agent has committed to perform and can validate that the scope of work allows the trustee or agent to meet the requirements of the Act. If the PRO has not asked the trustee or agent to accomplish the full breadth of work necessary to comply with the Act, or the trustee or agent has not agreed to perform such work, the Closure and Transfer Plan will be insufficient to comply with sections 42051.1(f) and 42056 of the PRC. Additionally, if the scope of work is inadequate for the trustee or agent to fulfill its role, there will not be sufficient time for CalRecycle to obtain a replacement, nor will the Closure and Transfer Plan, if executed, effectively ensure that participant producers will continue to meet their obligations. The rationale for CalRecycle having approval responsibility is that CalRecycle will be able to deny any inappropriate changes to the scope of work.

### **Subsections (d)(3) and (d)(4)**

The purpose of these subsections is to specify required activities of the trustee or agent if the Closure and Transfer Plan is executed: specifically, the receipt and administration of the Closure Fund, and the assumption of all PRO contracts and agreements. While section 42056 of the PRC introduces the role of the trustee or agent and provides some of the actions it must take, the Act does not describe the entirety of actions necessary for the Closure and Transfer Plan to be effectively implemented. It is necessary for CalRecycle to fill in these details to enable the proper implementation and enforcement of the Act.

Subsection (d)(3) is necessary to implement section 42056 of the PRC that requires the trustee or agent to accept and make payments from the trust fund or escrow account but does not identify the deadline for the trustee or agent to receive the Closure Fund.

It is necessary for CalRecycle to specify in subsection (d)(4) that the trustee or agent must, as appropriate, assume or accept the assignment of all PRO contracts and agreements to ensure the trustee or agent has the ability to implement the PRO's most recently approved plan.

### **Subsections (d)(5) and (d)(6)**

One purpose of these subsections is to clarify the trustee or agent's obligations regarding the PRO's most recently approved PRO plan. The regulations make clear that the trustee or agent is expected to implement the PRO's most recently approved plan, as augmented by approved adaptive management strategies. Specifying the trustee or agent's implementation responsibilities is necessary to clarify that the trustee or agent is the entity responsible for PRO plan implementation subsequent to the self-execution of the Closure and Transfer Plan. While CalRecycle can provide oversight of an entity carrying out a Closure and Transfer Plan, provide direction, and advise that entity, CalRecycle is not able to operate the program or to implement directly the Closure and Transfer Plan; thus, the trustee or agent is the entity best-suited to operate the program during the closure and transfer plan's active life.

As explained elsewhere in the regulations, the PRO Plan anticipates that the trustee or agent will develop and seek CalRecycle's approval of adaptive management strategies should specific PRO plan elements conflict with the achievement of the Act's requirements.

These subsections also make clear that the trustee or agent has a responsibility to develop, propose, and, if approved, implement those adaptive management strategies. The adaptive management provision is necessary to avoid otherwise irreconcilable conflicts involving the trustee or agent's obligation to administer the program in compliance with the requirements of the Act and its responsibilities regarding the implementation of the PRO Plan it inherits. Without such a provision, the reader might believe that the trustee or agent has no means of adapting a PRO plan that it inherits even if, for example, the trustee or agent becomes the administrator of the program precisely because the PRO plan conflicted with the

requirements of the Act and was revoked for that reason. If the trustee or agent did not have these powers (e.g., if it were unable to modify fees when warranted), the ability of the program to satisfy its obligations under the Act and to ensure participant producers continue to meet their obligations throughout the duration of the Closure and Transfer Plan would be jeopardized. Although the adaptive management obligations are apparent indirectly or implicitly from other sections of the regulations, stating these obligations directly to the trustee or agent in subsection (d) (the section that is addressed to the trustee or agent) ensures that the trustee or agent is aware of its duties and will carry them out appropriately.

### **Subsection (d)(7)**

One purpose of this subsection is to specify the trustee or agent must 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 program implementation and ensure it is being implemented as required by the Act.

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. 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 in a similar way as the PRO's documents are available to CalRecycle.

The rationale for requiring a written request is for consistency with CalRecycle's past practice in producer responsibility programs and with 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 PRO dissolution, or plan termination or revocation, as set forth under section 42051.1(f) of the PRC.

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 CalRecycle or other duly authorized regulatory agency with physical access during normal business hours or by electronically submitting the records to CalRecycle. This provision is necessary to provide clarity to the trustee or agent regarding when and how it will be required to provide records to CalRecycle. Business hours are a frequently used time of inspection for administrative warrantless searches. The rationale for ensuring access to another duly authorized agency is to facilitate timely access of documentation necessary for CalRecycle to determine compliance. This provision is necessary because, in some circumstances, records may be required from a trustee or agent that is more efficiently or effectively accessed by another agency, such as a local enforcement agency. Finally, allowing for electronic submission of records is necessary to maximize convenience and expediency to both CalRecycle and regulated entities and to allow an affordable and timely method for submission of required records when appropriate.

### **Subsection (d)(8)**

The purpose of this subsection is to specify that the trustee or agent must meet weekly, to receive advice on the administration of the Closure and Transfer Plan if meetings with that frequency are in fact needed to implement the program. The Act anticipates coordination between CalRecycle and the trustee or agent but does not make it clear how this will happen; this provision makes that coordination more concrete. To ensure compliance with the Act, CalRecycle and the trustee or agent need to meet regularly to discuss program implementation. Regular meetings provide a predictable venue for the trustee or agent to solicit guidance from CalRecycle and CalRecycle to provide the necessary advice to the trustee or agent. From the outset, the trustee or agent and CalRecycle need an understanding of the maximal frequency of meetings that might reasonably be anticipated in order to give this regularity and to ensure adequate time is allocated. As a maximal frequency of meetings, weekly meetings are an appropriate period of time. Neither the department nor the trustee or agent are likely to have sufficient staffing to meet more frequently, nor will the trustee or agent have sufficient time to implement the direction given in a daily meeting and provide meaningful updates at the next scheduled discussion. However, setting monthly meetings as the maximal frequency might prevent CalRecycle from becoming aware of problems that might be remedied with prompter advice.

The rationale for specifying weekly communication with the option of reducing the frequency of meetings is to ensure that adequate time is set aside for guidance opportunities while allowing the flexibility to reduce meeting obligations if it is found, during implementation, to be in excess of what is needed to administer the program sufficiently. This flexibility is necessary to avoid imposing an undue burden on CalRecycle or the Trustee or Agent to hold unnecessary meetings if enough time has not passed since the prior meeting.

### **Subsection (d)(9)**

The purpose of this subsection is to specify that the trustee or agent must submit an annual report to CalRecycle that contains the information required by section 42063 of the PRC and Article 9 of the chapter. This provision is necessary to enable the trustee or agent to demonstrate to CalRecycle that it is satisfying its obligations under the Act and these regulations. Additionally, since the Closure and Transfer Plan allows participant producers to maintain compliance contingent upon meeting their obligations, this provision provides a mechanism and the data and information necessary for CalRecycle to help verify producers are meeting their obligations. Finally, it is needed to make clear that the obligations of the Trustee and Agent regarding annual reporting are similar to the PRO's obligations under the Act.

### **Subsection (d)(10)**

The purpose of this subsection is to specify the trustee or agent must oversee the dissolution of the trust or escrow account and settle the obligations of the Closure Fund if the trustee or agent and CalRecycle concur that funds are insufficient to continue implementation or CalRecycle decides not to continue the Closure and Transfer Plan. Section 42056 of the PRC is primarily aimed toward transferring funds

and operations 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 (concerning the post-first year modifications that CalRecycle can make to the program) 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 the former PRO's dissolution, or plan termination or revocation. This regulation makes clear this statutory provision. Moreover, 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 address what should happen if the funds are insufficient to support the program during the life of the Closure and Transfer Plan. The program cannot continue to serve as a bridge if it is undercapitalized; given that the program might become insolvent during the life of the Closure and Transfer Plan, it is necessary to address this circumstance. The rationale for trustee/agent and CalRecycle concurrence is as follows: the trustee or agent will have primary awareness of the program's financial circumstances due to their direct handling of contracts and accounts, while CalRecycle can confirm the findings of the trustee or agent or identify other means that could restore solvency.

#### **Subsection (d)(11)**

The purpose of this subsection is to task the trustee or agent with transferring all responsibilities to the Successor PRO or PROs and assign all contracts and agreements to the appropriate entity if directed by CalRecycle. Pursuant to section 42051.1(f) of the PRC, the optimal result of the Closure and Transfer Plan is the transfer of program funds and operations to a successor PRO or PROs with an approved plan. For successor PROs to operate the program, it will need the trustee or agent to transfer responsibilities to it and assign all contracts or agreements to it or other appropriate entity. Requiring CalRecycle direction prior to these actions is necessary to avoid the unnecessary transfer of responsibilities or contracts and agreements that a successor PRO or PROs do not require to carry out their obligations under their approved plan.

#### **Subsection (e)**

The purpose of this subsection is to present a list of actions CalRecycle can take regarding the Closure and Transfer Plan. Listing all such actions clearly communicates how CalRecycle will determine when it is necessary to complete each action.

#### **Subsections (e)(1) through (e)(3)**

The purpose of these subsections is to clarify 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 CalRecycle to issue certain direction to the trustee

or agent. However, the Act does not explain other ways CalRecycle will interact with the trustee or agent, or address how CalRecycle should respond to a trustee or agent's failure or inability to serve appropriately. CalRecycle needs to fill-in these unspecified areas.

These provisions are necessary to ensure CalRecycle can advise the trustee or agent regarding effective implementation of its responsibilities under the Act, and can remove a trustee or agent that fails to perform as required. Additionally, if a trustee or agent is dismissed by CalRecycle or steps down from the role, subsection (e)(3) ensures that CalRecycle can appoint a successor trustee or agent to take over implementation of the Closure and Transfer Plan. This is necessary to ensure that participating producers continue to meet their obligations under the Closure and Transfer Plan and are not rendered noncompliant due to actions of the trustee or agent beyond their control.

#### **Subsection (e)(4)**

The purpose of this subsection is to clarify CalRecycle's role with regard to a trustee or agent's adaptive management proposals during the effective period of the Closure and Transfer Plan. As discussed elsewhere in the regulations, the PRO plan anticipates that the trustee or agent will seek CalRecycle's approval to implement adaptive management strategies if specific PRO plan elements conflict with the achievement of the Act's requirements. This provision is necessary to avoid otherwise irreconcilable conflicts involving the trustee or agent's obligation to administer the program in compliance with the requirements of the Act and its responsibilities regarding the implementation of the PRO Plan it inherits.

Specifically, this provision assigns the responsibility of reviewing and approving trustee or agent-proposed adaptive management strategies. In order to ensure that the strategy is best-poised to achieve the requirements of the Act and to confirm that there is a conflict with the achievement of the Act's requirements, it is necessary for CalRecycle to have a review and approval role. Although the review and approval role of CalRecycle with regard to such requests is apparent indirectly or implicitly from other sections of the regulations, stating these obligations explicitly in subsection (e) (the section that specifically addresses the activities of CalRecycle) ensures that the trustee, agent, or other affected party is aware of CalRecycle's purview regarding these requests.

## **ARTICLE 9. SOURCE REDUCTION BASELINE REPORT AND ANNUAL REPORTS**

### **§ 18980.9. SOURCE REDUCTION BASELINE REPORT**

#### **Subsection (a)**

The purpose of this subsection is to specify that reporting entities must submit a source reduction baseline report to CalRecycle by July 1, 2026, that includes the total amount of plastic covered material by weight and number of plastic components, for which they were the producer in the 2023 calendar year. This is necessary because section 42057(b) of the PRC requires CalRecycle, by January 1, 2025, to establish a

source reduction baseline based on the amount of plastic covered material that was sold, offered for sale, or distributed in the state in the 2023 calendar. Because CalRecycle had to establish that source reduction prior to receiving any data from producers, CalRecycle will update the source reduction baseline in future years to ensure it best represents available data. In order to do this, it is necessary that all producers report the total amount of plastic covered material for which they were the producer in the 2023 calendar year. It is necessary that all reporting entities submit this information so that the source reduction baseline captures plastic covered material of all producers.

Section 42051(b) of the PRC requires that upon approval of a plan or commencing January 1, 2026, whichever is sooner, a producer shall not sell, offer for sale, import, or distribute covered materials in the state unless that producer is covered by a PRO plan or is approved by CalRecycle as an Independent Producer. Therefore, by no later than January 1, 2026, producers should be complying with the Act and regulations.

This subsection requires the source reduction baseline report to be submitted to CalRecycle on or before July 1, 2026. That is six months after the latest possible date discussed above; therefore, it allows adequate time for all reporting entities to gather the necessary information for the report while also ensuring CalRecycle receives the information as expeditiously as possible to make any necessary updates to the source reduction baseline. The July 1, 2026, due date also aligns with the annual reporting dates in section 18980.6.5(a) and 18980.7.4(a).

This subsection also requires that the source reduction baseline report be submitted electronically. Requiring electronic submission of source reduction baseline reports is necessary to establish a consistent standard and format of submission. Electronic submission facilitates near-instantaneous transmittal to CalRecycle, which supports reporting entities in meeting submittal deadlines, enables effective document retention by CalRecycle, allows for the appropriate CalRecycle personnel to easily access reports for review, and minimizes the cost and time burden associated with mailing.

Additionally, requiring the weight of plastic covered material to be measured according to section 18980.1(a)(15) is necessary to ensure application of a consistent calculation method to enable comparability of the reported data.

#### **Subsection (b)**

The purpose of this subsection is to specify that the data reported by the PRO pursuant to subsection (a) of this section must be disaggregated by each participant producer. This is necessary because the source reduction plans and corresponding information in source reduction baseline reports are also disaggregated by participant producer. Disaggregation across the baseline, plans, and reports allows for CalRecycle and the PRO to assess individual producers' source reduction as required by the Act.

#### **Subsection (c)**

The purpose of this subsection is to specify that CalRecycle will use the information reported pursuant to subsections (a) and (b) of this section to update the 2023 source

reduction baseline. This provision is necessary to interpret section 42057(b) of the PRC that requires CalRecycle to establish a source reduction baseline by January 1, 2025, but does not specify that the baseline be updated when more complete or accurate information becomes available. This provision ensures the source reduction baseline and CalRecycle's and a PRO's evaluation of compliance with the baseline are based on the best available information, which the Department will use to update the source reduction baseline by November 1, 2026. Without this provision, compliance could be based on an inaccurate baseline that is not reflective of true 2023 data.

## **§ 18980.9.1. ANNUAL REPORTS**

### **Subsection (a)**

The purpose of this subsection is to specify that sections 42051.3(a)(2) and (a)(3) of the PRC, as well as section 18980.6.5 and subdivision (b) of this section, describe the information that a PRO and Independent Producer must include in their annual reports. It is necessary to reference the annual reporting requirements in the Act to ensure clarity to PROs and Independent Producers and for completeness.

Without specifying the relevant requirements in the Act, a PRO or Independent Producer may mistakenly believe it must include only the information specified in the chapter within its annual reports, which CalRecycle could not approve. Additionally, this provision clarifies that annual budgets must be included as a component of annual reports and are not separately submitted documents, consistent with section 42051.3(a)(3)(A) of the PRC, which specifies annual reports must include an "updated budget."

### **Subsection (b)**

The purpose of this subsection is to clarify that Independent Producer annual reports must meet the same requirements of PRO annual reports except the fee schedule specified in section 42051.3(a)(3)(A) of the PRC and the updated list of participant producers specified in section 42051.3(a)(3)(B) of the PRC. This provision is necessary because section 42051.3(a)(2) and (a)(3) only specifically refer to the PRO when listing the annual report requirements of these subsections; however, when an Independent Producer chooses to implement its own plan, its plan must meet all of the applicable requirements for PRO plans, subject to section 18980.8(b) of the regulations, and must meet the same requirements of the Act as the PRO. Accordingly, it is necessary to clarify that Independent Producers must also comply with these provisions of the PRC because they apply generally to annual reporting on compliance with the Act and are not unique to a PRO.

### **Subsection (c)**

The purpose of this subsection is to specify the information that a PRO and Independent Producer must include in their annual reports that is not specified in the Act. CalRecycle needs the information specified in subsections (c)(1) through (c)(3) to assess how PROs and Independent Producers are implementing critical requirements of the Act and these regulations.

### **Subsection (c)(1)**

The purpose of this subsection is to specify that PROs and Independent Producers must include applicable information in their annual reports on recyclability pursuant to section 18980.3(f). This provision is necessary to enable CalRecycle to verify that the covered materials that a PRO or Independent Producer considers recyclable meet the necessary standards of recyclability specified in the Act and these regulations.

#### **Subsection (c)(2)**

The purpose of this subsection is to specify that PROs and Independent Producers must include the recycling rate for all expanded polystyrene in their annual reports, if relevant to the PRO or Independent Producer. Another purpose of this subsection is to specify that the definition of “all expanded polystyrene” can be found in section 18980.3.2(h). This provision is necessary to enable CalRecycle to verify compliance with the recycling rates mandated by section 42057(i) of the PRC.

#### **Subsection (c)(3)**

The purpose of this subsection is to specify that PROs and Independent Producers must include information on responsible end market verification in their annual reports as specified by subdivisions (b) and (c) of section 18980.4.2. This subsection is necessary to enable CalRecycle to verify that PROs and Independent Producers conduct the necessary compliance audits and annually verify each end market they utilize satisfies the requirements to be a responsible end market as required by the Act.

#### **Subsection (d)**

The purpose of this subsection is to present a list of information that only a PRO must include in its annual report. These are items unique to a PRO and not applicable to Independent Producers due to the expanded statutory requirements placed on a PRO. This provision is necessary to ensure clarity to PROs regarding the required contents of their annual reports submitted to CalRecycle pursuant to section 42053 of the PRC. Listing all applicable requirements enables a PRO to go through the list to determine whether it has included all required components in its annual reports.

#### **Subsection (d)(1)**

The purpose of this subsection is to specify that in the second phase of the annual report, as described in subdivision (c) of section 18980.6.5 and 42053(e) of the PRC, a PRO must include fee schedule amendments and calculations for malus fees or credits in its annual reports.

Requiring annual reports to include changes to the PRO’s fee schedule pursuant to section 42053(e) of the PRC and further described in subdivision (c) of section 18980.6.5 is necessary so CalRecycle can verify that the fees a PRO charges its participant producers comply with the Act.

#### **Subsection (d)(2)**

The purpose of this subsection is to present a list of requirements pertaining to source reduction that a PRO must address in its first phase of the annual reports submitted to CalRecycle, as described in subdivision (b) of this section and pursuant to section

42051.3 of the PRC. This provision is necessary to ensure clarity to a PRO regarding the required annual report contents with respect to source reduction. Listing all applicable source reduction reporting requirements enables a PRO to go through the list to determine whether it has included all required components in its annual reports.

#### **Subsection (d)(2)(A)**

The purpose of this subsection is to specify that a PRO must include in its annual reports the percentage of source reduction across all participant producers. This provision is necessary for CalRecycle to assess a PRO's compliance with the source reduction requirements in the Act and regulations.

#### **Subsection (d)(2)(B)**

The purpose of this subsection is to specify that PRO annual reports must include a qualitative assessment of the successes and challenges in achieving source reduction goals, delineated by plastic covered material category, and rank the frequency of use of each source reduction strategy. A qualitative assessment is necessary to enable CalRecycle to assess a PRO's compliance with the source reduction requirements in the Act and these regulations. Having this assessment delineated by plastic covered material category allows CalRecycle to understand the successes and challenges of source reduction for each plastic covered material category, which will allow CalRecycle to better understand the unique source reduction problems and opportunities at a level that corresponds with how CalRecycle is also calculating recyclability of categories of covered materials. Additionally, this provision also supports CalRecycle's determination of whether the PRO is effectively implementing the components of its plan related to source reduction. Finally, a ranking of the relative frequency of each source reduction strategy will allow CalRecycle to understand which strategies are being utilized more or less frequently and how that frequency relates to the successes and challenges of achieving the source reduction goals for each plastic covered material category.

#### **Subsection (d)(2)(C)**

The purpose of this subsection is to specify that a PRO must include in its annual reports a quantitative assessment of source reduction achieved through reuse and refill strategies, including details on the reduction of single-use products and plastic components by shifting to reusables or refillables or eliminating plastic components. This provision is necessary to ensure that the source reduction annual reporting meets the requirements of section 42057(c) of the PRC and to enable CalRecycle to verify a PRO's compliance with the source reduction provisions of the Act and these regulations.

#### **Subsection (d)(2)(D)**

The purpose of this subsection is to specify that a PRO must include in its annual reports the source reduction percentage by weight achieved through an approved alternative compliance formula. This provision is necessary to enable CalRecycle to verify a PRO's compliance with section 42057(a)(2)(B)(i) of the PRC that specifies an eight-percent limit on source reduction achieved through an alternative compliance formula based on incorporation of postconsumer recycled content. This provision is

also necessary so that CalRecycle can evaluate any alternative compliance formula approved in the PRO's plan against the source reduction percentage by weight achieved by any such formula.

**Subsection (d)(3)**

The purpose of this subsection is to specify that a PRO include in the first phase of the annual reports information on its Closure and Transfer Plan required pursuant to sections 18980.8.2(b)(2) and (c). This provision is necessary to enable CalRecycle to verify that the Closure Fund contains sufficient reserve funds, and the PRO has confirmed the credentials of the trustee or agent and their willingness and ability to carry out all required duties. This information is necessary for CalRecycle to annually confirm to ensure that circumstances have not changed that would negatively impact the effective execution of the Closure and Transfer Plan, if necessary.

**Subsection (e)**

The purpose of this subsection is to specify a timeline for CalRecycle's completeness determination of the second phase of a PRO or Independent Producer's annual report. This is necessary as described in subdivision (c) of section 18980.6.5 and pursuant to the PRC references therein, within 90 days of receiving an annual report, review the report and notify the submitter of any deficiencies with the annual report. Because section 42051.3(b)(2) of the PRC goes on to state that CalRecycle's review of an annual report for compliance with the Act shall occur within 90 calendar days of receipt of an annual report deemed complete, it is logical to conclude that the 90 calendar days in section 42051.3(b)(1) for "deficiencies" is that completeness review. Accordingly, this subsection makes that clarification.

**Subsection (e)(1)**

The purpose of this subsection is to specify that CalRecycle will proceed with its compliance review of annual reports it deems complete as specified in sections 42051.3(b)(2) through (b)(5) of the PRC. This provision is necessary for a complete articulation of the review process pursuant to section 42051(b) of the PRC and specifies CalRecycle's next step in its annual report review process after its completeness review.

**ARTICLE 10. REGISTRATION AND DATA REPORTING REQUIREMENTS**

**§ 18980.10. REGISTRATION AND MAINTAINING ADDRESS ON FILE**

**Subsection (a)**

The purpose of this subsection is to establish and clarify the registration obligations of producers. This subsection provides that each producer, including those seeking an exemption under sections 18980.2.3, 18980.2.4, or 18980.5.2 of the regulations, must register electronically in a manner established by CalRecycle. This is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle, and to ensure that CalRecycle receives information necessary to implement and enforce the Act. To effectively oversee, implement, and enforce the Act, CalRecycle must have complete

and accurate information on file for all producers that are subject to the Act, including those that request an exemption. Furthermore, electronic registration is necessary for CalRecycle to efficiently receive, maintain, and organize the registration submission.

Another purpose of this subsection is to specify the registration obligation of retailers and wholesalers. This subsection provides that retailers and wholesalers are not subject to this requirement if they are not the producer pursuant to section 42041(w) of the PRC of any covered material used by goods they sell, offer to sell, or distribute. While section 42060(a)(2) of the PRC requires CalRecycle to establish a mandatory process for retailers and wholesalers to register with the Department, the relevant statutory provisions only govern the conduct of retailers and wholesalers that are producers of covered material used by goods they sell, offer for sale, or distribute. CalRecycle does not have any use or need for registration information pertaining to retailers or wholesalers that are not producers under the Act. This subsection is therefore necessary to interpret an ambiguous statutory provision and to avoid the unnecessary expense and burden of requiring all retailers and wholesalers in the state to register with CalRecycle.

#### **Subsections (a)(1), and (a)(1)(A) through (a)(1)(H)**

The purpose of these subsections is to identify the information that a producer must file with CalRecycle when it registers pursuant to subsection (a). This is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a mandatory process for producers to register with CalRecycle and to ensure that CalRecycle receives information necessary to oversee, implement, and enforce the Act. This information is necessary to ensure CalRecycle can identify producers and communicate with them as needed.

#### **Subsection (a)(2)**

The purpose of this subsection is to establish a PRO's registration obligation. This subsection requires a PRO to register on behalf of its participating producers who do not choose to be reporting entities themselves. This is necessary to ensure that the PRO and producers understand their respective obligations and because section 42060(a)(2) of the PRC requires a PRO operating on behalf of a participant producer to register with CalRecycle. Requiring a PRO to register on behalf of its participating producers is necessary to minimize the administrative burdens of the registration process and to ensure that CalRecycle is informed, at the time of producer registration, which producers are participating in the plan of an approved PRO and how those producers will be reporting data to CalRecycle moving forward.

#### **Subsection (a)(3)**

The purpose of this subsection is to establish a producer's obligation to update its registration information. This subsection requires a producer to ensure that all contact information on file with CalRecycle is current and accurate. To effectively oversee, implement, and enforce the Act, CalRecycle must have complete and accurate information on file for all producers that are subject to the Act. Current and accurate contact information is necessary to ensure CalRecycle can identify producers and communicate with them as necessary. Furthermore, this subsection is necessary to

clarify that it is the responsibility of a producer, and not a PRO, to ensure that such information is current and accurate. This is necessary because the producer will have more direct knowledge of any change to its contact information, and imposing this requirement on a PRO with respect to all of its participant producers would be unduly burdensome.

#### **Subsection (a)(3)(A)**

The purpose of this subsection is to clarify the scope of a producer's obligation under subsection (a)(3) and the effect of its failure to fulfill that obligation. This subsection provides that, 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 clarify the effect of a producer's failure to notify CalRecycle of a change in its primary business address within 30 days. This subsection provides that any such failure is a violation of section 42051(c) of the PRC, regardless of whether CalRecycle requests resubmittal or verification under subsection (a)(3)(A).

Stipulating 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 subsection (a)(3)(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 under subsection (a)(3)(B) 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 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 and timeline for an entity that becomes a producer and participates in the plan of a PRO after January 1,

2027. The PRO must register the producer with CalRecycle within 30 days of the producer being accepted as a participant producer. This requirement is necessary because the Act does not expressly provide the applicable time frame for such registrations. A 30-day time frame is necessary for consistency with the registration timeline for entities that become producers after July 1, 2025, pursuant to section 18980.5(a) of the regulations, and with the timeline for notifying CalRecycle of changes in a producer's address, as set forth in section 42051(c) of the PRC.

#### **Subsection (a)(5)**

The purpose of this subsection is to establish a registration process and timeline for an entity that becomes a producer after January 1, 2027, and seeks to comply with the Act as an Independent Producer. The producer must register with CalRecycle when it applies to be an Independent Producer pursuant to section 18980.5.1(a) of the regulations. This is necessary because the Act does not expressly provide the applicable time frame for such registrations. Requiring the producer to register at the time of the application is necessary for consistency with section 18980.5.1 and to avoid any unnecessary delay to an Independent Producer coming into compliance with the requirements of the Act.

#### **Subsection (b)**

The purpose of this subsection is to establish the process for inactivating the registration status of a producer that participates in a PRO. The specific conditions for the inactivation process are described in the following subsections. If a producer's activities have changed such that it is no longer subject to the reporting requirements of the Act, there needs to be a process to allow for the inactivation of its registration.

However, the Act does not provide for any inactivation process. Therefore, this subsection is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a process for producer registration and reporting, and to establish a clear and uniform process that governs the inactivation of a producer's registration status when appropriate. Moreover, this subsection is necessary to specify the inactivation process as it applies to participant producers, whether the producer itself is the reporting entity (subsection (b)(1)) or the PRO is the reporting entity (subsection (b)(2)). This is necessary to ensure that participant producers and PROs are informed of their respective obligations concerning the inactivation of a participant producer's registration status.

#### **Subsection (b)(1)**

The purpose of this subsection is to establish the inactivation process and timeline when the inactivated participant producer is a reporting entity. This subsection provides that the participant producer must submit a request to CalRecycle to inactivate its registration status within 30 days of the change to that producer's activities. A 30-day timeline is necessary to ensure CalRecycle receives timely notice of any significant change to a producer's activities such that it is no longer subject to the reporting requirements of the Act, while still providing a producer with sufficient time to prepare and submit the request. This subsection also provides that CalRecycle will inactivate the participant producer's registration if the request describes changed business

activities that render the producer no longer subject to reporting requirements under the Act. This is necessary to establish a clear and uniform standard for when CalRecycle will approve a participant producer's request for inactivation under this section. This standard is necessary because a producer has no obligation to maintain its registration status with CalRecycle if it is no longer subject to the reporting requirements of the Act.

### **Subsection (b)(2)**

The purpose of this subsection is to establish the inactivation process and timeline when the inactivated participant producer is not a reporting entity. The respective obligations for the participant producer and the PRO are described in subsections (b)(2)(A) and (b)(2)(B). This subsection is necessary to establish a clear and uniform process for inactivation of a participant producer's registration status when a PRO reports on behalf of the inactivated participant producer, and to ensure that participant producers and PROs are informed of their respective obligations concerning the inactivation process.

### **Subsection (b)(2)(A)**

The purpose of this subsection is to establish the participant producer's obligation to notify the PRO as part of the inactivation process when it is not the reporting entity. This subsection requires a participant producer that is not a reporting entity to notify the PRO within 30 days of the changed activities such that it is no longer subject to the reporting requirements of the Act. A 30-day timeline is necessary to ensure the PRO receives timely notice of any significant change to a producer's activities such that the producer is no longer subject to the reporting requirements of the Act, while still providing a producer with sufficient time to prepare and submit the notification. It is necessary for the participant producer to notify the PRO because the PRO, as the reporting entity, will submit the inactivation request to CalRecycle on behalf of the producer.

### **Subsection (b)(2)(B)**

The purpose of this subsection is to establish the PRO's obligation to submit an inactivation request to CalRecycle on behalf of the participant producer when it is the reporting entity for that producer. This subsection requires a PRO to submit the request to CalRecycle within 30 days of receiving notification from the participant producer under subsection (b)(2)(A). A 30-day timeline is necessary to ensure CalRecycle receives timely notice of any significant change to a producer's activities such that the producer is no longer subject to the reporting requirements of the Act, while still providing a PRO with sufficient time to prepare and submit the request for inactivation. Another purpose of this subsection is to establish the standard that CalRecycle will apply when evaluating an inactivation request. This subsection provides that CalRecycle will inactivate the registration if the request described business activities that render the producer no longer subject to reporting requirements under the Act. This is necessary to establish a clear and uniform standard for when CalRecycle will approve a PRO's request for inactivation on behalf of a participant producer. This standard is necessary because a PRO has no obligation to maintain the registration status of a participant producer that is no longer subject to the reporting requirements of

the Act.

### **Subsection (c)**

The purpose of this subsection is to establish the process and timeline for inactivating the registration status of an Independent Producer. If an Independent Producer's activities have changed such that it is no longer subject to the reporting requirements of the Act, there needs to be a process to allow for the inactivation of its registration.

However, the Act does not provide for any inactivation process. Therefore, this subsection is necessary to implement section 42060(a)(2) of the PRC, which requires CalRecycle to establish a process for producer registration and reporting, and to establish a clear and uniform process that governs the inactivation of an Independent Producer's registration status when appropriate. This subsection provides that the Independent Producer must submit a request to CalRecycle to inactivate its registration status within 30 days of the change to that producer's activities. A 30-day timeline is necessary to ensure CalRecycle receives timely notice of any significant change to an Independent Producer's activities such that it is no longer subject to the reporting requirements of the Act, while still providing an Independent Producer with sufficient time to prepare and submit the request. This subsection also provides that CalRecycle will inactivate the Independent Producer's registration if the request describes changed business activities that render the Independent Producer no longer subject to reporting requirements under the Act. This is necessary to establish a clear and uniform standard for when CalRecycle will approve an Independent Producer's request for inactivation under this section. This standard is necessary because an Independent Producer has no obligation to maintain its registration status with CalRecycle if it is no longer subject to the reporting requirements of the Act.

### **Subsection (d)**

The purpose of this subsection is to establish the reporting condition for an inactivation under section 18980.10(b) or (c). This subsection specifies that CalRecycle will not approve a request for inactivation unless the requesting entity has submitted all outstanding reports to CalRecycle, including a report for activities conducted by the producer during the partial year preceding the date on which the producer's activities changed such that the producer is no longer subject to the reporting requirements of the Act. This is necessary to ensure that CalRecycle is provided with all information that may be relevant and necessary for its evaluation of a request for inactivation and that CalRecycle has the opportunity, prior to its determination on the inactivation request, to verify whether the report describes changed business activities that render the producer no longer subject to the reporting requirements.

### **Subsection (e)**

The purpose of this subsection is to establish the effective date of an approved inactivation request. Once approved, the effective date of inactivation is the date on which the producer's activities changed such that it became no longer subject to the reporting requirements of the Act. This is necessary to offer producers and PROs clear and uniform guidance as to their compliance obligations when a producer's registration status has been inactivated, and the date the activities changed is the most logical

effective date for inactivation.

### **Subsection (f)**

The purpose of this subsection is to establish the obligation of a producer or PRO to notify CalRecycle if an inactivated producer's activities have changed such that it is again subject to the reporting requirements of the Act, and to specify the process and timeline that will govern such notifications. This subsection provides that the producer or PRO must notify CalRecycle within 30 days of the change, and CalRecycle will reactivate the producer's registration status upon receipt of the notice. This is necessary to implement section 42060(a)(2) of the PRC and to establish a clear and uniform process for the reactivation of producers that are obligated to be registered and report to CalRecycle. A 30-day timeline is necessary to ensure CalRecycle receives timely notice of any change to a producer's activities such that it is again subject to the reporting requirements of the Act, while still providing a producer or PRO with sufficient time to prepare and submit the notification.

Another purpose of this subsection is to establish the reporting obligations of a reactivated producer. This subsection provides that, following reactivation, the producer or PRO must resume reporting to CalRecycle by July 1 of the following calendar year. This is necessary to offer clear guidance to reactivated producers and PROs as to their reporting obligations once reactivated and to ensure that the reporting entity begins reporting again according to the regular reporting schedule. This subsection further provides that the first report after reactivation must include all applicable data pertaining to the calendar year in which the activities changed such that the producer became subject to the reporting requirements, beginning as of the date of that change. This is necessary to ensure that CalRecycle receives complete and updated data as part of the report for all relevant times at which the reactivated producer was subject to the reporting requirements of the Act, while allowing the producer and PRO sufficient time to produce, compile, and submit the data.

### **Subsection (g)**

The purpose of this subsection is to clarify the effect of exemptions from other requirements of the Act on the requirements set forth in section 18980.10. This subsection specifies that no exemption from any other requirement of the Act shall be construed as an exemption from the requirements of section 18980.10. In other words, the requirements set forth in section 18980.10, including the registration requirements and the requirement to maintain an address on file with CalRecycle, apply regardless of whether a producer is exempted from any or all other requirements of the Act. This requirement is necessary to give effect to CalRecycle's implementation and enforcement authorities. To effectively oversee, implement, and enforce the Act, CalRecycle must have complete and accurate information on file for all producers that are subject to the Act, including those that are otherwise exempted from the requirements of the Act. This subsection is necessary to offer clear guidance to all producers, including those who are exempted from other requirements of the Act, as to their obligations under this section.

## **§ 18980.10.1. DATA REPORTING SUBMISSION**

### **Subsection (a)**

The purpose of this subsection is to establish the process, timeline, and requirements for reporting entities' annual submission of data reports to CalRecycle. This subsection requires the annual submission of data reports to start in 2026. This is necessary because, while section 42052 of the PRC requires producers to annually report data to CalRecycle, that section does not specify when this data reporting must begin. Because producers are not required to register with CalRecycle until July 1, 2025, an initial reporting date in 2026 is necessary to ensure producers have sufficient time after registration to compile and organize data prior to the initial data reporting submission deadline. Moreover, an initial reporting date in 2026 is necessary for consistency with the timeline for compliance for other provisions set forth in statute, including, for example, the requirement set forth in section 42062(a) that CalRecycle must begin reviewing relevant data in 2026 to assess whether the recycling rate established in section 42050(c) should be adjusted. This subsection also requires a reporting entity to certify that the information it submits is accurate and complete. This is necessary to ensure that CalRecycle receives all information necessary to administer, implement, and enforce the Act, and to provide assurance to CalRecycle that such information is accurate and in compliance with the requirements of subsection (a)(1).

### **Subsection (a)(1)**

The purpose of this subsection is to specify the information that must be used by a reporting entity for data reports under subsection (a). The subsection provides that a reporting entity must use the most current information available at the time the report is due. This is necessary to ensure that reporting entities do not provide CalRecycle with information that is inaccurate or outdated and to ensure that CalRecycle can implement and enforce the Act based on the most complete and accurate information with respect to the report that is available at the time of the report's submission. This is also necessary to establish a clear and uniform standard for the contents of data reports and to offer clear guidance to reporting entities as to their reporting obligations under the Act.

### **Subsection (a)(2)**

The purpose of this subsection is to establish the obligation of a reporting entity that identifies an error in its previously submitted report to notify CalRecycle and correct the error. This subsection requires a reporting entity that has identified such an error to notify CalRecycle and correct the error within 14 calendar days. 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 depend on the integrity of the data reported to CalRecycle. The 14-day period is necessary to accommodate the reasonable time the reporting entity may need to notify CalRecycle and make corrections. It allows the reporting entity time to notify CalRecycle and to correct errors without letting so 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 obligation of a reporting entity that has been notified by CalRecycle of an error in its previously submitted report to revise the report to correct the error. This subsection requires a reporting entity to revise the report to correct such an error within 14 calendar days of receiving notification from CalRecycle. 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 depend on the integrity of the data reported to CalRecycle. This is also necessary to ensure that there is an established, uniform process for correcting any reporting errors when those errors are identified by CalRecycle. The 14-day period is necessary to accommodate the reasonable time the reporting entity may need to make corrections after receiving notification of the error from CalRecycle. It allows the reporting entity time to correct errors without letting so much time lapse that the errors in reporting will impact the data used by CalRecycle from those reports.

#### **Subsection (a)(4)**

The purpose of this subsection is to specify that a reporting entity may receive additional time for revising reports to correct errors if necessary. This subsection provides that a reporting entity may notify CalRecycle of the reasons why resolving an error cannot be completed within 14 calendar days, and CalRecycle must extend the deadline up to an additional 14 calendar days if necessary to accommodate such reasons. This is responsive to public input and is necessary to ensure that reporting entities are afforded sufficient flexibility, if necessary, to adequately revise their reports to correct any errors. There may be scenarios in which the reporting entity cannot revise a report within 14 calendar days. The 14-day extension period is necessary to allow additional time, if necessary, to correct any errors without letting so much time lapse that the errors in reporting will impact the data used by CalRecycle from those reports.

Moreover, the reporting entity must notify CalRecycle of the reasons why resolving the error cannot be completed within 14 calendar days to ensure CalRecycle has the opportunity, before granting an extension, to evaluate the reasons and verify whether an extension is proper. This ensures that extensions will only be granted when necessary.

#### **Subsection (b)**

The purpose of this subsection is to establish the obligation of a participant producer to notify the PRO of any reportable activities that the producer has reported or will report to CalRecycle. This subsection provides that the PRO is not required to report such activities to CalRecycle. This is necessary to prevent duplication of reporting to CalRecycle, which will simplify both reporting for the PRO and the usage of data from reports by CalRecycle.

#### **Subsections (c), and (c)(1) through (c)(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 July 1, except for the PRO's initial report, which must be submitted with its producer responsibility plan as

required under 18980.6.1(a) or (b). The subsections further provide that a report's data must pertain to the previous calendar year and must use the CMC list that was current as of January 1 of the previous calendar year. These subsections are necessary to establish a clear and uniform process that all reporting entities will be able to understand and follow. An electronic application process is necessary for CalRecycle to efficiently receive, evaluate, organize, and maintain the reported data, ensuring it receives reports in a manner that will best enable it to implement and enforce the Act. July 1 was chosen as the due date in response to public comments submitted to CalRecycle during the rulemaking process because it provides reporting entities with sufficient time to compile data from the previous calendar year and to prepare a report in compliance with this section, while still ensuring that CalRecycle will receive the data reports regarding the previous calendar year without unreasonable delay. It is necessary to specify that reports shall use data pertaining to the previous calendar year because that is the most recent, complete, and accurate data that will be available. Finally, it is necessary to rely on the CMC list that was current as of January 1 of the previous calendar year because the reporting entity is required to report data for the entire year, and the list that was current as of January 1 is the list on which a reporting entity will have based its decisions at the outset of the calendar year.

However, because the PRO must submit its plan either by April 1, 2026, pursuant to 18980.6.1(a) or by some later date (but no later than June 15, 2026) pursuant to 18980.6.1(b), this subsection ties the due date for the PRO's initial report to the date of the plan submission. This is necessary to ensure that the initial plan is accompanied by the critical information identified in section 42051.3(a) of the PRC. That information logically must relate to the plan itself, so it is reasonable and logical to require that the initial report be submitted with the plan.

#### **Subsection (d)**

The purpose of this subsection is to establish the obligation of a producer that has requested inactivation of its reporting system to provide information for activities conducted by the producer during the partial year preceding the date on which the producer's activities changed such that the producer is no longer subject to the reporting requirements of the Act. This subsection requires a producer that is a reporting entity to submit a report to CalRecycle for all such activities and a producer that is not a reporting entity to provide the PRO with all information necessary for the PRO to report such activities. This subsection is necessary to ensure CalRecycle receives producer data for the entire time during which the producer is subject to the reporting requirements of the Act.

#### **Subsection (e)**

The purpose of this subsection is to specify the required contents of the report submitted under this section. This subsection provides that the report must contain all the elements specified in section 18980.10.2. This is necessary to establish a clear and consistent standard for the submission and evaluation of data reports for compliance with the Act. This subsection is necessary for completeness and to avoid any uncertainty as to whether the subsections of section 18980.10.2 apply to data

reports submitted under this section, including those submitted pursuant to subsection (d).

## **§ 18980.10.2. DATA REPORT CONTENTS**

### **Subsection (a)**

The purpose of this subsection is to specify the required scope and contents for producer data reports that are submitted to CalRecycle pursuant to section 42052(a) of the PRC. The following subsections specify each discrete requirement that data reports must include. This is necessary to establish clear and uniform requirements that all reporting entities must follow when reporting data to CalRecycle. This is necessary to ensure CalRecycle receives all information that may be necessary to effectively assess producers' compliance with the requirements of the Act.

### **Subsection (a)(1)**

The purpose of this subsection is to establish the first set of data that is required to be reported under this section and to specify the relevant time range that applies to the data. This subsection requires reporting entities to submit the information specified in subsections (a)(1)(A) through (D) by covered material category for the previous calendar year. Clarifying that data must be submitted for each covered material category is necessary because sections 42052(a)(1) and (a)(2) explicitly require reporting by covered material category. Furthermore, this data will be used to estimate recycling rates, and the Act and regulations provide that recycling rates are calculated for each covered material category. Clarifying that data must be reported for the prior calendar year 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.

### **Subsections (a)(1)(A) and (a)(1)(B)**

The purpose of these subsections is to identify the information that reporting entities must provide in their reports for each covered material category for the previous calendar year. These subsections require the data reports to include information, by total weight and total number of plastic components, on material sold, distributed, or imported in or into the state. These subsections are necessary for several reasons. First, the subsections inform entities as to the type of data they must report to CalRecycle. Second, the information specified in the subsections is explicitly required to be reported under section 42052(a)(1) of the PRC. Third, this information is necessary to ensure CalRecycle can effectively implement and enforce the provisions of the Act, including, for example, the source reduction requirements under section 42057(a) of the PRC, which require source reduction by both weight and by plastic component.

### **Subsection (a)(1)(C)**

The purpose of this subsection is to identify the information that entities must provide in their reports for each covered material category for the previous calendar year. This subsection requires the data reports to include information on the total weight of material disposed of. This subsection is necessary for a few reasons. First, the subsection informs entities as to the type of data they must report to CalRecycle. Second, this information is necessary to ensure that CalRecycle can effectively implement and enforce the provisions of the Act, including the recycling rate requirements under section 42050(c) of the PRC.

#### **Subsection (a)(1)(D)**

The purpose of this subsection is to identify the information that entities must provide in their reports for each covered material category for the previous calendar year. This subsection requires the data reports to include information on the total weight of material recycled. This subsection is necessary for a few reasons. First, the subsection informs entities as to the type of data they must report to CalRecycle. Second, the information specified in the subsection is explicitly required to be reported under section 42052(a)(2) of the PRC. Third, the required data are necessary to ensure CalRecycle can effectively implement and enforce the provisions of the Act, including the recycling rate requirements under section 42050(c) of the PRC.

#### **Subsections (a)(2), and (a)(2)(A) through (a)(2)(C)**

The purpose of subsection (a)(2) and all subsections within it is to establish the second set of data that is required to be reported under this section. These subsections specify the data that must be reported with respect to covered material that is collected and recycled through an alternative collection program. These subsections are necessary to inform reporting entities as to their reporting requirements for such programs. While section 42052(a)(3) of the PRC requires reports to include data concerning alternative collection programs, statute does not fully and explicitly list all required components of such submission. Thus, the proposed subsections list the specific information required. The required information is also necessary to ensure that CalRecycle can effectively implement and enforce the provisions of the Act, including the recycling rate requirements under section 42050(c) of the PRC. For instance, the total weight of covered material that is collected and recycled by each alternative collection program, required by these subsections, will necessarily factor into the recycling rate calculation for that covered material.

#### **Subsection (b)**

The purpose of this subsection is to specify that data must be reported in annual increments. This is necessary to establish a uniform reporting practice that avoids undue burden and is most likely harmonized with how businesses typically maintain data for other purposes, including pursuant to obligations under other states' laws.

#### **Subsection (c)**

The purpose of this subsection is to explain how the weight of material recycled must be determined when reporting pursuant to this article. The method to determine the weight of material recycled is established in section 18980.3.2(b)(2) of the regulations. This is

necessary because statute does not specify when or how specific material should be considered “recycled,” and section 18980.3.2 provides the necessary guidance and clarification. Thus, the weight of material recycled must be calculated as described in section 18980.3.2(b)(2), the reference to which is included in this subsection for clarity and completeness.

**Subsection (d)**

The purpose of this subsection is to explain how the weight of material disposed of must be determined when reporting pursuant to this article. The method to determine the weight of material disposed is established in section 18980.3.2(b)(3) of the regulations. This is necessary because statute does not specify when or how specific material should be considered disposed of. Thus, the weight of material disposed must be calculated as described in section 18980.3.2(b)(3), the reference to which is included in this subsection for clarity and completeness.

**ARTICLE 11. REQUIREMENTS FOR LOCAL JURISDICTION AND RECYCLING SERVICE PROVIDERS**

**§ 18980.11. REQUIREMENTS FOR LOCAL JURISDICTIONS AND RECYCLING SERVICE PROVIDERS**

**Subsection (a)**

The purpose of this subsection is to establish when the requirement of section 42060.5 of the PRC takes effect and to clarify that the term “recycling programs” encompasses compost-related activities. Section 42060.5(a) of the PRC does not state when its requirements take effect, but, in the context of the Act, it cannot reasonably be interpreted to take effect before any PRO producer responsibility plan has been approved. Until then, there is no statewide program in place to support the collection and recycling of covered material. Also, compost operations are considered “recycling” under section 42041(aa)(1) but are not ordinarily referred to as such. This subsection provides necessary clarification of both points.

**Subsection (b)**

The purpose of this subsection is to interpret what it means under section 42060.5(a) of the PRC for local jurisdictions or recycling service providers to “include in their collection and recycling programs” certain covered material. This is necessary because the statutory text does not explain the meaning of that phrase in the context of the Act, so it may be subject to multiple interpretations. For the requirement of section 42060.5(a) to serve a meaningful purpose in the context of the Act, covered material must not be considered “included” in a program unless it is collected and transferred for the purpose of recycling, not disposal. This subsection further clarifies that that it is not the responsibility or a requirement of a local jurisdiction or recycling service provider to establish a responsible end market to ultimately recycle the covered material, and as such, if a responsible end market is not available to ultimately receive and recycle the covered material, this would render inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this

chapter. Thus, this subsection requires that the programs must transfer materials to responsible end markets or otherwise into the supply chain leading to responsible end markets, and the absence of a responsible end market to ultimately receive a covered material would render said covered material impracticable for inclusion in the program.

### **Subsection (c)**

The purpose of this subsection is to establish how changes to the CMC list affect local jurisdictions and recycling service providers that submit requests for exemptions or extensions pursuant to section 42060.5(b) within the one-year period before the changes otherwise would take effect. Delaying the effectiveness of section 42060.5(a) during the pendency of the request is necessary to ensure that the statutory exemption or extension serves its express purpose of preventing imposition of additional obligations caused by the change to the CMC list that are impossible to fulfill. Without the delay, a local jurisdiction or recycling service provider might otherwise be deemed in violation of section 42060.5(a) even though it submitted a request establishing that compliance is impossible with respect to the additional obligations caused by changes to the CMC list.

## **§ 18980.11.1. EXTENSION OR EXEMPTIONS FOR LOCAL JURISDICTIONS AND RECYCLING SERVICE PROVIDERS**

### **Subsection (a)**

The purpose of this subsection is to establish that the exemption from (or extension of) the requirement in section 42060.5(a) of the PRC requires an application, the process for which is detailed in subsequent subsections. This is necessary because section 42060.5(b) of the PRC requires CalRecycle to grant extensions or exemptions when certain criteria are met, but it does not specify any process for doing so. Further, this subsection clarifies that an application may be submitted regardless of whether a notice of violation has been issued to alleviate concerns expressed by interested parties by making it expressly clear that a notice of violation is not a requirement prior to applying for an exemption or exception.

### **Subsection (b)**

One purpose of this subsection is to clarify the terms “exemption” and “extension.” This is necessary because section 42060.5(b) of the PRC uses both of those terms, but only the term “exemption” has an easily understood, plain meaning. Because section 42060.5(b) uses the terms relative to the same result (section 42060.5(a) not applying to some covered material), this regulation interprets the terms to have similar meanings, the only difference being the timing relative to section 42060.5(a) taking effect. Because an “extension” typically refers to deadlines, it is appropriate to interpret it to refer to that effective date, such that “extension” refers to delaying that date, whereas “exemption” refers to non-application of section 42060.5(a) after it already has been in effect. Because statute calls for the same result regardless of the terminology used, this subsection refers to both circumstances as “exemptions.” This avoids potential confusion over the meaning of the regulations.

Another purpose of this subsection is to establish that exemptions or extensions are

effective for two years. This is necessary to give effect to the requirement in section 42060.5(b) that CalRecycle must review granted exemptions and extensions every two years. As a practical matter, CalRecycle can only determine that an exemption or extension should remain in place if it receives updated information in a renewal request, as detailed in subsection (g), so that the lack of such an update must result in the exemption or extension ending.

### **Subsection (c)**

The purpose of this subsection is to set forth, via (c)(1) through (5), the information that applications for exemptions must include. Because CalRecycle will base approvals and rejections on the content of the applications, describing the required content with specificity is necessary for applicants to understand how their applications will be evaluated and for CalRecycle to evaluate applications fairly and consistently.

### **Subsection (c)(1) and (c)(1)(A) through (C)**

The purpose of this subsection is to specify contact information that applications must include. This is necessary for CalRecycle to efficiently administer the application process.

### **Subsections (c)(2)**

The purpose of this subsection is to establish procedural requirements specific to recycling service providers. When a recycling service provider is the applicant, they must notify the local jurisdictions relevant to the exemption sought. This is necessary because exemptions necessarily relate to conditions in those local jurisdictions and the services provided to them, and local jurisdictions are likely to have an interest in the outcome and possess information necessary to demonstrate the impracticability of compliance with section 42060.5(a) of the PRC. It is also necessary as a practical matter because a recycling service provider is only relevant under the act with respect to the services they provide to local jurisdictions, and the exemption might only be relevant to a subset of those jurisdictions.

### **Subsection (c)(2)(A)**

The purpose of this subsection is to establish the specific obligation to provide contact information for a person authorized by a local jurisdiction to receive all communications related to the application. This is necessary for the same reasons that notice is required, as explained above with respect to subsection (c)(2) generally. It also ensures that CalRecycle can efficiently process applications because it may need to contact local jurisdictions to obtain information relevant to its evaluation of the applications.

### **Subsection (c)(2)(B)**

The purpose of this subsection is to ensure that the applicant has provided notice to the relevant local jurisdictions before submitting the application and require that the application disclose the extent to which the jurisdictions participated in preparation of the application. The exemptions necessarily relate to conditions in those jurisdictions and the services provided to them. The notice and information about jurisdictions' involvement are therefore necessary as a practical matter and to enable CalRecycle to assess whether applications rely on the most complete, accurate information available.

**Subsection (c)(3)**

The purpose of this subsection is to state the basic requirement for applications: They must identify the covered material or covered material category for which they request an exemption. This is necessary as a practical matter. Also, section 42060.5(b) of the PRC does not expressly state that exemptions may cover entire covered material categories, but that logically must be the case because the requirement of section 42060.5(a) depends on the lists published under section 42061(c) and (d), which are lists of covered material categories. This subsection, therefore, explains that the exemption can concern covered material categories, not just specific covered materials.

**Subsection (c)(4)**

The purpose of this subsection is to establish the information that applications must contain to justify the exemption. The overall requirement is that the application must establish impracticability of complying with section 42060.5(a) of the PRC with respect to local conditions, circumstances, or challenges, which is necessary because it is the express statutory requirement for exemptions. This subsection also sets forth specific topics related to that requirement. Taken together, the topics cover the most likely reasons that compliance might be impracticable. Because applicants might otherwise not consider certain factors relevant to impracticability, requiring applications to address each topic ensures that applications will provide the full context relevant to the requested application. The topics also help clarify what “impracticability” means in the context of section 42060.5(b), which does not expressly state that it is not limited to, for example, technological limitations. Rather, impracticability might relate to the impossibility of compliance due to conflicting legal, safety, and economic factors.

**Subsection (c)(5)**

The purpose of this subsection is to establish the obligation to include information related to submissions that the applicant receives pursuant to subsection (d). This is necessary to give that subsection its intended effect, as described below, and ensure that CalRecycle has information highly relevant to its evaluation of the exemption request.

**Subsection (d)**

The purpose of this subsection is to establish a mandatory process for applicants to consider comments from PROs and Independent Producers. Requiring a 90-day period for receiving comments on initial applications and a 30-day period for renewal requests ensures PROs and Independent Producers have adequate time to consider the exemption and prepare comments. Requiring the applicant to consider those comments is necessary because PROs and Independent Producers may have information relevant to practicability that is not otherwise available to the local jurisdiction, and they may have a strong interest in submitting such information for consideration because exemptions may negatively affect them. For example, the direct effect of an exemption is that certain covered materials will be disposed of rather than, for example, positively contribute to recycling rates and spur investment in recycling infrastructure. That outcome may, in turn, affect the ability of PROs and Independent Producers to fulfill

their statutory obligations. Given this context, the procedure for consideration of comments ensures that applications present as much information as possible, including challenges to claims that compliance is impracticable. Moreover, section 42060.5(b) of the PRC provides that a PRO that objects to the exemption has the responsibility to arrange for the handling of the covered materials at issue. This subsection gives reasonable effect to that statutory provision by ensuring that a PRO has information about the exemption to begin with.

### **Subsection (d)(1) through (d)(3)**

The purpose of these subsections are to establish the details of the comment process. Subsection (d)(1) requires comments to concern the stated justification for the objection, thus ensuring that the comments are relevant and avoiding unnecessary burden on the applicant, which must consider all comments. Subsection (d)(2) requires each PRO and Independent Producer to notify the applicant in writing if they object to the exemption or extension. This is necessary as an exemption or exception may have direct implications for how such parties comply with the Act, and having a written record establishes a tangible and process and clear record of any objection while removing any possible ambiguities or misinterpretations which may result from alternative methods such as providing verbal objections.

Lastly, subsection (d)(3) provides that the applicant, PROs, and Independent Producers can extend the comment period by agreement or reach an agreement concerning the covered materials or covered material categories at issue. This is necessary to maximize the usefulness of the comment process and, because such an agreement necessarily demonstrates that the challenges identified by the applicant could be overcome, ensure that CalRecycle does not grant unjustified exemptions.

### **Subsection (e)**

This subsection states the core requirement that applications must establish impracticability. Statute expressly sets forth this requirement, so CalRecycle may only grant exemptions when it is met.

### **Subsection (f)**

The purpose of this subsection is to further establish and clarify the process and requirements upon the Department's denial of an application for an extension or exemption. This subsection establishes that if the Department denies an application, a new application for the same material shall not be submitted within 90 days of the denial determination. This avoids undue burden on CalRecycle by preventing submission of duplicative applications within that period. Further, this subsection provides that a new application may only be submitted after the 90-day period if there have been changes to the local conditions, circumstances, or challenges since submission of the previous application. This further promotes the efficiency of CalRecycle's review of applications by preventing submission of duplicative or unjustified applications.

### **Subsection (g)**

The purpose of this subsection is to establish that all exemptions are conditioned on their justification, as stated in the application, remaining valid. This is the logical

application of section 42060.5(b) of the PRC because CalRecycle only has the authority to exempt covered materials based on the showing of impracticability. Where that impracticability no longer exists, there is no longer any justification for further delay before the local jurisdiction or recycling service provider must comply with their obligations. Setting forth this interpretation is also necessary because section 42060.5(b) sets the period for when CalRecycle may renew exemptions, but it does not expressly state the conditions under which the exemption must terminate. This subsection resolves that ambiguity in a manner consistent with the Act and CalRecycle's mandate to ensure its effective implementation.

### **Subsection (h)**

The purpose of this subsection is to set forth the period during which extension or exemption renewal requests may be submitted, with the detailed requirements for those requests set forth in subdivisions (g)(1) through (3). Allowing renewal requests only as early as 120 days before the extension or exemption expires is necessary to prevent applicants from requesting renewal unreasonably early, which would result in CalRecycle considering requests based on conditions that may no longer be relevant by the time renewal would take effect. Allowing renewal requests only as late as 90 days before expiration is necessary to allow CalRecycle sufficient time to consider the request and decide whether to grant it.

### **Subsection (h)(1)**

The purpose of this subsection is to require that renewal requests contain the same information and justification as required for initial applications when the initial application is insufficient to show that compliance with section 42060.5(a) remains impracticable.

This is necessary because there is no substantive difference between a renewal request and an initial application under those circumstances.

### **Subsection (h)(2)**

The purpose of this subsection is to establish that a new application is not required when the previously submitted information and justification remain sufficient to demonstrate the impracticability of compliance. This is necessary because, under those circumstances, a new application could simply reiterate the initial application, so there would be no utility in repeating the entire application process.

### **Subsection (h)(2)(A) and (B)**

The purpose of these subsections is to establish the steps that an applicant must take in connection with renewal requests that do not require a completely new application. The required process is to provide notice to all PROs and Independent Producers and undertake the same notice and comment process as was required for initial applications, except that the purpose of the process is to confirm whether the substance of the original application remains accurate and sufficient to support the extension or exemption. This is necessary for the same reasons stated with respect to subdivision (d), including (d)(1) through (d)(3).

### **Subsection (h)(2)(C)**

The purpose of this subsection is to set forth the substantive requirements for renewal requests after the local jurisdiction or recycling service provider determines that the original application remains accurate and continues to justify the extension or exemption. Rather than reiterating the previously provided justification, the requestor needs to only submit a letter certifying that all information in the original application remains accurate as well as the original circumstances continue to render compliance impracticable, along with any updated information and all comments received with an explanation of why the comments do not affect that conclusion. This is necessary to provide CalRecycle sufficient context, including objections or contrary factual assertions, for its evaluation of whether to grant the renewal request. This subsection is necessary as it alleviates unnecessary burdens on both the Department and local jurisdiction or recycling service provider by simplifying the renewal requirements and reducing duplicative and unnecessary applications. For administrative efficiency purposes, this subsection also requires contact information updates, if any.

**Subsection (h)(2)(D)**

The purpose of this subsection is to specify that a local jurisdiction or recycling service provider must submit a revised application satisfying the requirements of subsection (c) if the original application is no longer sufficient to establish impracticability. This is necessary for the same reason provided with respect to subsection (g)(1).

**Subsection (h)(3)**

This subsection provides that CalRecycle will grant renewal unless it determines that the previously approved application no longer establishes impracticability. This is necessary to implement the basic standard stated in section 42060.5(b) of the PRC.

**§ 18980.11.2. 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 requires it to know which counties and jurisdictions claim to be exempt from its requirements.

**Subsection (b)**

The purpose of this subsection is to establish that if CalRecycle finds that the county or jurisdiction that adopted a resolution pursuant to section 42060.5(c) of the PRC does not meet the definition of "rural county" or "rural jurisdiction" pursuant to section 42649.8, the county or jurisdiction will not be exempt from the requirements of section 42060.5(a). This is necessary for CalRecycle to implement and enforce section of 42060.5(c) of the PRC and to ensure that only counties and jurisdictions that are eligible for the exemption are exempt from the requirements of section 42060.5(a) of the PRC.

## **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 section 42070(b) of the PRC specifies that the director appoints members to the advisory board but does not specify when membership starts. It is the most sensible, straightforward interpretation of statute for an individual's membership to commence upon their acceptance of the appointment unless CalRecycle specifies some other date. That flexibility is necessary for practical purposes. For example, setting a future effective date may be necessary to avoid vacancies on the board, such as when the appointed member will be replacing a current member once that member's term expires.

#### **Subsection (b)**

The purpose of this subsection is to interpret the statutory language establishing that the director appoints advisory board members for "staggered three-year terms." Section 42070(b) of the PRC does not specify whether that phrase means that the same calendar day must be the only expiration date in each year or that each member's term expires three years after their membership commenced. The latter interpretation is impractical because CalRecycle cannot control when circumstances other than term expiration require memberships to end, so it is not reasonably possible to ensure that board memberships expire or renew according to exact, staggered annual periods beginning on the same calendar day in different years. The only way CalRecycle could achieve that regularity would be by not filling vacancies until a certain future calendar day, whereas filling vacancies immediately would result in up to thirteen terms expiring on different days throughout any given year. Either outcome would unreasonably impair the advisory board's ability to perform its duties. For example, the advisory board must review plan amendments and offer comments, with only 60 days to do so. Vacancies persisting during that period would marginalize the interests represented on the board under section 42070(a), but avoiding that outcome could result in membership expirations being scattered across that period, which would repeatedly require the advisory board to dedicate meeting time to onboarding new members. Either scenario would excessively strain the advisory board's ability to perform its statutory duties. In contrast, this subsection ensures that membership terms always begin on a certain calendar day each year, so that they necessarily expire on that same calendar day three years later. This approach significantly, if not completely, mitigates the problems described above, lessens CalRecycle's administrative burden, and ensures that the advisory board can perform its functions fully and fairly.

#### **Subsection (c)**

The purpose of this subsection is to establish when the reappointment of an individual to the advisory board becomes effective. This provision is necessary to interpret section 42070(b) of the PRC, which specifies that CalRecycle may reappoint advisory

board members for additional terms but does not establish when additional terms begin. Each subsequent term reasonably must commence upon the expiration date of the previous one to give effect to the requirement of three-year terms and to avoid vacancies.

**Subsection (d)**

The purpose of this subsection is to establish the grounds on which the director may revoke a member’s appointment. This is necessary because section 42070 of the PRC does not expressly state when an appointee’s membership may end other than upon completion of their three-year term, and it would be unreasonable for statute to absolutely prohibit the director from otherwise removing appointees. Under that interpretation, CalRecycle would be unable to remove members from the advisory board even if they engaged in gross misconduct, ceased participating in advisory board business, or no longer represented a category specified in section 42070(a) of the PRC and thus became ineligible to serve. Statute cannot reasonably have been intended to require that result, which would degrade the effectiveness of the advisory board and contravene the composition requirements under section 42070(a). As such, CalRecycle’s authority to appoint members necessarily includes the discretion to revoke appointments as set forth in this subsection.

**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, inspections, and related assessments of compliance. The Act itself, including the enforcement provisions of sections 42080 through 42084 of the PRC, does 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 the premises of entities subject to the Act and to examine their operations and records. 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.

This provision gives a non-exclusive list of requirements pertaining to investigations and their methodology, such as the review and copying of records. This is necessary to help regulated entities understand how investigations may be conducted. The rationale for

providing an exemplary list, and not an exclusive list, is that CalRecycle cannot predict in advance every method that might be utilized in its investigation. The rationale for specifying a notice of violation as a means of making a mandatory records request is that regulated entities need to understand the mandatory nature of their compliance with such requests and the applicability of subsection (e) of this section regarding penalties for a failure to provide records. Moreover, the placement of a records request in a notice of violation is often used in CalRecycle's practice for other Extended Producer Responsibility programs; this provision continues CalRecycle's past practice and ensures consistency with other extended producer responsibility programs.

Another purpose of this provision is to explain when Department employees or agents are allowed to enter the premises to conduct inspections. If regulated entities are to comply with this requirement, they need to know when access to the premises must be provided. Normal working hours is a typical, reasonable requirement that does not impose an undue burden.

#### **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, violating a discrete requirement of the Act, this chapter, or a producer responsibility 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 provides a consistent expectation of how penalties will be assessed.

#### **Subsection (d)**

The purpose of this subsection and its subparts is to address the 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 subsection is therefore necessary for CalRecycle's implementation and enforcement of the Act.

#### **Subsection (d)(1)**

The purpose of this subsection is to address the 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 subsequent day the actions are committed, beginning with the thirtieth day after CalRecycle issues notice of violation for the initial violation. 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) of the PRC. 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 the 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 following 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 the 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), (e)(1), and (e)(2)**

The purpose of these subsections is to address the 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 subsection (e)(2), 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 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. Subsection (e)(1) 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 also violating 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 whose 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 it.

### **Subsection (g)**

The purpose of this subsection is to address a scenario that is similar to the one addressed in subsection (f) but must be addressed separately to avoid confusion as to the proper application of statute. In particular, it addresses requirements that apply generally to participants in a PRO plan. For example, when a PRO, through its actions and the collective actions of all or some of its participants, fails to achieve the requirements set forth in sections 42050 and 42057(i) of the PRC, statute does not expressly address how to identify the number of violations that have occurred and the entities that 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 clarification is necessary to ensure that the scope of the violations deemed to have been committed by the PRO is in proportion to 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 covered material used by a product. This is necessary because section 42081(a)(2) of the PRC 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 using noncompliant covered material. 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 using noncompliant covered material from other products. For example, section 42081(a)(2) of the PRC 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, in addition to the characteristics identified in section 42081(a)(2) of the PRC, it is necessary for CalRecycle to be able to rely on more specific or unique characteristics that, taken together, will uniquely identify the relevant products. In

particular, the 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.

### **Subsection (h)(2)**

The purpose of this subsection is to establish the duration during which violations based on products using non-compliant covered material will be deemed to occur. Such violations are deemed to occur every day the products using non-compliant covered material are offered for sale or are in distribution in the state. This is necessary because section 42050 of the PRC expressly states that violations occur when items are “offered for sale” or “distributed,” not just when they are actually sold. 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 covered material. 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 using a covered material that falls within a covered material category that does not satisfy the applicable threshold in section 42050(c) of the PRC, it may nonetheless be able to prove to CalRecycle that its specific covered material 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) of the PRC, even though products using a covered material in the same covered material category might otherwise be the basis for noncompliance. This subsection is necessary to ensure that entities subject to the Act understand how CalRecycle will apply section 42050(c) of the PRC 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. It is necessary to cite sections 18980.11.1 and 18980.11.2 to clarify the applicability of extensions and exemptions.

**Subsection (i)(3)**

The purpose of this subsection is to clarify and establish that no penalty may be imposed against a local jurisdiction during the pendency of a request for an extension or exemption regarding the requirement of subdivision (a) of section 42060.5 of the PRC. This is necessary as the Act, and in particular subdivision (a) of section 42060.5 of the PRC does not clearly establish how penalties will be imposed against a local jurisdiction during the pendency of a request for an extension for, or exemption from, subdivision (a) of section 42060.5 of the PRC when there is a pending claim that it is not practicable for a specific identified covered material to be collected by a local jurisdiction.

**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 applies 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) of the PRC.

**Subsection (k)**

The purpose of this subsection is to establish that CalRecycle will apply the preponderance of the evidence standard (i.e., that evidence establishes that facts are more likely than not to be true) when making factual determinations, unless otherwise provided in the regulations. Given that other provisions in the proposed regulations

interpret statute to authorize application of a “clear and convincing standard,” this subsection is necessary to clarify that, in all other circumstances, the default burden of proof applicable in civil proceedings applies (see Evidence Code sections 115 and 500). That burden must be the default in administrative proceedings because, unless there is a legal basis for applying a different standard, courts will apply it in matters addressing CalRecycle’s enforcement actions.

### **§ 18980.13.1. CORRECTIVE ACTION PLAN**

#### **Subsection (a)**

The purpose of this subsection is to clarify that nothing in this section affects CalRecycle’s authority to enter into agreements regarding violations of the Act. This subsection is necessary because this section might otherwise be interpreted as setting forth the only option for CalRecycle to resolve violations by agreement. That interpretation would contravene Government Code section 11415.60, which generally authorizes agencies to enter into settlement agreements.

#### **Subsection (b)**

The purpose of this subsection is to establish the means through which a PRO or producer may be granted permission to propose a corrective action plan and the factors that CalRecycle will consider when deciding whether to grant such permission. This is necessary because section 42081(b) of the PRC expressly authorizes CalRecycle to allow corrective action plans but does not specify any related procedural or substantive requirements for doing so. Tying CalRecycle’s consideration of whether to allow corrective action plan proposals to the issuance of notices of violation is appropriate because that is when CalRecycle formally identifies violations and notifies the PRO or producers of them. The specific factors set forth for CalRecycle’s decision on whether to allow a proposal are appropriate because they enable CalRecycle to avoid the burden of reviewing corrective action plans that it necessarily would not approve according to the standards set forth elsewhere in this section (subsection (c)(6)).

#### **Subsection (c)**

The purpose of this subsection is to establish specific procedural and substantive requirements of corrective action plan proposals. First, CalRecycle will identify, in its notice of violation, the specific elements that the proposal must address, and it will not review a proposal if it does not contain those elements. This procedure is necessary for CalRecycle to avoid the burden of reviewing corrective action plans that are insufficient on their face because they do not address issues that CalRecycle will consider when evaluating whether a plan is appropriate. Moreover, section 42081(b) affords CalRecycle broad discretion concerning whether to approve corrective action plans, and there is no limit concerning the types of violations that corrective action plans may address. Therefore, a flexible, case-by-case approach is necessary for identifying the relevant issues. To provide greater clarity, this subsection provides examples of elements that may be relevant.

#### **Subsection (c)(1)**

The overall purpose of this subsection is to set forth the minimum content required in corrective action plan proposals. Including express minimum requirements is necessary to enable CalRecycle to avoid the burden of reviewing proposals that are insufficient on their face. Subsections (c)(1)(A) through (E) set forth the requirements.

#### **Subsections (c)(1)(A) and (c)(1)(B)**

The purpose of these subsections is to provide information that, as a practical matter, CalRecycle must receive to evaluate a corrective action plan. CalRecycle can only evaluate a corrective action plan if the proposal identifies who is submitting it and the specific violations that the proposal addresses.

#### **Subsection (c)(1)(C)**

The purpose of this subsection is to require the proposal to describe the specific corrective actions that the corrective action plan will prescribe. This is necessary because the corrective action plan fundamentally requires the PRO or producer to take action that will resolve their violations of the Act. Specifically requiring inclusion of timelines, milestones, and an end date is necessary because section 42081(b)(2) of the PRC expressly limits the duration of corrective action plans, and such details are necessary to enable CalRecycle to assess the feasibility and likely effectiveness of corrective action plans.

This subsection also establishes that the description of corrective actions must be sufficiently detailed for CalRecycle to evaluate the feasibility of the actions and whether they will ultimately correct the violations at issue. This requirement logically must apply for the proposal to reasonably serve the purpose of section 42081(b) and enable CalRecycle to evaluate it according to the standards set forth in subsection (c)(6).

#### **Subsection (c)(1)(D)**

The purpose of this subsection is to require the requester to state whether it consents to penalties without an administrative hearing for violations that have already occurred or for violations that may persist despite the corrective action plan. Requiring this information is necessary because such consent would support the likelihood that a corrective action plan will be successful and promote efficient and effective enforcement of the Act. For example, such consent would facilitate enforcement of the Act by limiting or eliminating the need for CalRecycle to undertake more formal legal action. The consent also would suggest general good faith cooperation with CalRecycle's enforcement efforts, indicate the PRO's or producer's confidence in the feasibility of the proposed plan, and establish a strong incentive for complying with the plan.

#### **Subsection (c)(2)**

The purpose of this subsection is to prevent the mere decision to allow submission of a proposed corrective action plan from being construed as affecting whether CalRecycle may impose penalties for violations. This clarity avoids confusion among regulated entities. It also supports effective enforcement of the Act by making clear that bad-faith or haphazard proposals will not secure any benefit with respect to

penalties.

### **Subsection (c)(3)**

The purpose of this subsection is to establish the legal effect of submitting a corrective action plan proposal. It is necessary for the submission to bind the PRO or producer to the plan when approved because, without that effect, there would be no consequences for proposals that, while meritorious, are submitted in bad faith. Even if a proposal is submitted in good faith, CalRecycle's review of it would risk merely impairing its enforcement of the Act if the PRO or producer could ultimately renege on its own proposal.

This subsection also provides that CalRecycle may add reasonable conditions to a proposed corrective action plan related to how the PRO or producer must demonstrate compliance with it. This requirement is necessary to ensure that CalRecycle can, as part of its mandate to enforce the Act, monitor and enforce corrective action plans themselves. Also, the requirement is consonant with the PRO's or producer's obligation to substantiate their compliance with the Act in any event. In other words, because non-compliance with the corrective action plan necessarily would render the PRO or producer in violation of the Act, compliance with the Act logically encompasses obligations for demonstrating compliance with the corrective action plan. Lastly, unless the PRO or producer were required to consent in advance to the addition of such conditions, CalRecycle would likely need to reject proposals or terminate plans based on minor details, such as documentation and reporting requirements, that the PRO or producer could not reasonably refuse to accept as part of the plan. The result would risk imposing an unreasonable administrative burden on CalRecycle and undermining its enforcement of the Act.

### **Subsection (c)(4)**

The purpose of this subsection is to establish how CalRecycle will give notice of approval and the effect of such notice. 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 to eliminate uncertainty as to the official terms of the corrective action plan.

### **Subsections (c)(5) and (c)(5)(A) through (c)(5)(C)**

The purpose of subsection (c)(6) is to establish the standard that CalRecycle will apply when deciding whether to approve a corrective action plan. Explaining how CalRecycle will make such a decision is necessary because section 42081(b) authorizes corrective action plans but does not specify conditions under which CalRecycle should approve them. The factors set forth in (A) through (C) encompass three provisions of the Act that, collectively, establish the purpose and intent of the Act (sections 42040, 42050, and 41780.01 of the PRC). Assessing proposals in consideration of those factors is necessary for ensuring that the requirements of the Act are fulfilled, and section 42060(a) of the PRC expressly mandates that these regulations serve that purpose.

### **Subsections (c)(6)**

The purpose of this subsection is to prevent corrective action plan submission and

approval from being construed as exempting or excusing a PRO or producer from any requirements of the Act or affecting penalties for any violations not covered by it. Avoiding that interpretation 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.

### **Subsections (d)**

The purpose of this subsection is to clarify the process for extending corrective action plans. This is necessary because section 41081(b)(2) of the PRC expressly authorizes CalRecycle to grant extensions in such scenarios but does not provide a specific process for requesting them. Requests must be submitted in writing and will be subject to the same evaluation as initial proposals. This subsection also incorporates the terms of subsections (b)(2) through (b)(7), which concern initial submissions and approvals of corrective action plans. This is necessary for the same reasons stated in those subsections.

### **Subsections (d)(1)**

The purpose of this subsection is to require that extension requests include descriptions of efforts taken to comply with the corrective action plan and those that will be taken if the extension is granted. Describing previous substantial efforts is an express requirement under section 42081(b)(2)(A), and describing future efforts is necessary to enable CalRecycle to assess the appropriateness of an extension and the additional steps that might be required pursuant to one.

### **Subsections (d)(2)**

The purpose of this subsection is to require extension requests to explain how extenuating circumstances prevented compliance. This is necessary because, under section 42081(b)(2) of the PRC, an extension is only appropriate if extenuating circumstances caused the failure of the corrective action plan. For clarity, this subsection identifies the minimum factual issues that the explanation of extenuating circumstances must address. That clarification ensures that the PRO or producer properly interprets and applies the concept of “extenuating circumstances” according to that term’s plain meaning.

### **Subsections (d)(3)**

The purpose of this subsection is to explain that the extension request may include updates to the content of the original corrective action plan proposal. Such updates may be necessary for the reasons underlying the requirements for the initial proposal, as explained above with respect to subsections (c)(1)(A) through (c)(1)(E), and because CalRecycle logically cannot approve an extension of a corrective action plan that is not justified at least to the same extent as required for approval of a newly proposed one.

### **Subsections (e), (e)(1) and (e)(2)**

The purpose of this subsection is to clarify how a corrective action plan relates to the accrual of penalties. Except as provided in subsection (f) (discussed below), accrual of

penalties is paused upon submission of the proposal and remain paused until CalRecycle rejects it without allowing an amended one (the condition stated in (e)(1)) or upon violation of the approved corrective action plan (the condition stated in (e)(2)). Such a rule is necessary for multiple reasons.

First, section 42081(b) of the PRC expressly provides that CalRecycle shall not assess penalties as long as the PRO or producer complies with the corrective action plan, but it does not make clear whether penalty “accrual” is distinct from penalty “assessment.” In other words, statute is not clear on its face whether the potential penalties that can be imposed upon failure of a corrective action plan become progressively greater throughout the term of the plan. This subsection interprets the statute to mean that penalties do not accrue in that manner, which is consistent with a commonsense understanding of what it means to “assess” a penalty.

Second, it is necessary for the accrual of penalties to be paused upon submission of the proposal because, without giving such effect to the submission, the requester would accrue penalties based on the duration of CalRecycle’s review. That outcome would contradict the purpose of corrective action plans and necessarily subject the requester to increasing, indefinite penalties for reasons outside its control.

#### **Subsection (f) and (f)(1)**

The purpose of these provisions is to establish that violations of a corrective action plan are violations of the Act and may be the subject of notices of violation and penalties, even when the corrective action plan remains in effect. Interpreting statute with respect to that scenario is necessary because, while statute provides that CalRecycle will not assess penalties for violations to be cured by the corrective action plan if the PRO or producer complies with the plan, it does not address whether a producer may be penalized for violating the plan itself. Such a scenario has important implications where a producer fails to adhere to a corrective action plan that, despite that failure, might ultimately still succeed in achieving compliance with the Act. If a PRO or producer in that scenario would face no penalty while the plan remained in effect, the only consequence CalRecycle could impose would be termination of the plan. Terminating the plan would be counterproductive, however, when there remains a significant likelihood for the plan to succeed if the violation were to be remedied, and interpreting section 42081(b) as requiring that harsh result would contradict the clear purpose of that section and unnecessarily impair CalRecycle’s enforcement of the Act. Therefore, (f) and (f)(1) establish that not adhering to a corrective action plan is a violation subject to penalties, thereby incentivizing compliance with the plan and protecting its function of the corrective action plan as the CalRecycle-approved manner of correcting the underlying violations of the Act.

#### **Subsection (f)(2)**

The purpose of this subsection is to explain how violating corrective action plans relates to penalties for the violations of the Act underlying the corrective action plan. In combination with subsection (f)(1), this subsection establishes that when a violation pertains to specific underlying violations that the corrective action plan was intended to resolve, penalties for those underlying violations will accrue, even if the corrective action

plan otherwise remains in effect. This is the logical extension of subdivision (d) and section 42081(d) of the PRC, which provide that penalties do not accrue if the PRO or producer complies with the corrective action plan. Also, under a contrary interpretation, penalties could not accrue only for certain underlying violations, and the only way for CalRecycle to penalize any of them would be to terminate the entire plan. That harsh result would contradict the clear purpose of section 42081(b) and unnecessarily impair CalRecycle's enforcement of the Act. Moreover, that interpretation would be merely structural, because CalRecycle would be able to work around it by approving a separate corrective action plan for each violation at issue. This subsection avoids such unnecessary ministerial burden on CalRecycle.

### **Subsections (f)(2)(A) and (f)(2)(B)**

The purpose of these subsections is to clarify and limit the effects of subsection (f)(2). Subsection (f)(2)(A) provides a 30-day cure period for the PRO or producer to resolve a violation of their corrective action plan before CalRecycle may deem it no longer in effect and impose penalties. For the violation to be considered "resolved," it must not have diminished the likelihood that the corrective action plan will resolve the underlying violation. That restriction is necessary because the justification for a corrective action plan in lieu of penalty accrual was that it ensured such resolution. If that outcome becomes less likely than when CalRecycle approved the corrective action plan, then the corrective action plan has necessarily failed to serve its purpose.

Subsection (f)(2)(B) clarifies that corrective action plan termination and subsequent accrual are only for the underlying violations that have been rendered less likely to be resolved. The corrective action plan will remain in effect for the other underlying violations. These provisions establish reasonable safeguards for PROs and producers and are consistent with the restriction on penalty assessment described in section 42081(d) of the PRC and the delay in accrual required under section 42081(a)(3). The safeguards are necessary to ensure that the statute's corrective action plan provisions can serve their purpose. Without the safeguards, the potential harsh consequences of not complying with a corrective action plan would disincentivize PROs and producers from proposing a plan to begin with.

## **§ 18980.13.2. ADMINISTRATIVE CIVIL PENALTIES**

The purpose of this section is to make specific the provisions in the Act concerning the imposition of administrative civil penalties. This section establishes how accusations initiating administrative proceedings shall be served and how statute will be applied. This is necessary for clarity because sections 42080 and 42081 of the PRC do not address certain details regarding the 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 regulations. 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 was 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 of the PRC, 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) of the PRC 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 when 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) of the PRC 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) of the PRC 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, applying the factors outlined in section 42081(c) of the PRC to the facts proven. 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.

#### **Subsections (a), and (a)(1) through (a)(3)**

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 subsections (a)(1) through (a)(3) are customary and reasonable methods of delivering documents and include email communication to the entity's on-file address or, for those entities known by the Department to have failed to maintain an up-to-date email address on file, to another email address under certain specified circumstances.

To provide added assurance that electronic communications to entities that have not maintained up-to-date addresses will be sent to an email account the entity actually monitors, written consent or written acknowledgment of receipt is required for notice given to such entities at an e-mail address other than the one maintained on file.

Utilizing one or more of these customary and reasonable methods of communicating is necessary for CalRecycle's effective implementation and enforcement of the Act. This subsection also gives effect to the requirement under section 42051(c) of the PRC that producers maintain an address on file with CalRecycle, so that it establishes the physical address to which all notices may be delivered. This effect is necessary for effective implementation and enforcement of the Act and is consistent with CalRecycle's authority under sections 11440.20 and 11505(c) of the Government Code, which authorize service of notices and accusations at such an address by mail in connection with administrative proceedings.

#### **Subsections (b), and (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 are not required to maintain an address on file pursuant to section 42051(c) of the PRC. The methods identified in subsections (b)(1) through (b)(4) are reasonable and customary methods of delivering documents. To provide added assurance that electronic communication will be sent to a monitored email account, subsection (b)(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.

### **Subsections (c), and (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 subsection (c)(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. Subsections (c)(2) and (c)(3) specify that, for all other entities, service may be provided pursuant to provisions of the Code of Civil Procedure or by any other means if the recipient subsequently files a notice of defense or appears in the proceeding. 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. Providing 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 to be five days (for in-state notices) or ten days (for out-of-state notices) 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 the 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, unless CalRecycle notifies a noncompliant party otherwise, 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, in every matter, sections 11505 and 11506 of the Government Code will apply. This is necessary because the specific procedures applicable to such proceedings are established through these regulations. Also, 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 sections 11505 and 11506 of the Government Code establishes uniform rules pertaining to the service of accusations and responses to them. Such rules are necessary for the 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 sections 11505 and 11506 of the Government Code related to Accusations and Notices of Defense. By including this subsection, CalRecycle provides clarity to the regulated public as to a critical timeline for objecting to an accusation and preserving due process rights afforded by subsection (a).

**Subsection (c)**

The purpose of this subsection is to ensure that respondents receive notice as to how the presiding officer will conduct the hearing, thereby allowing the respondent to prepare its case. This approach (i.e., for the hearing officer to establish specific procedures tailored to each matter) was selected because of its consistency with Administrative Procedure Act provisions for informal hearings. This regulation specifies that notice of the procedure will be given within fifteen days of receipt of a respondent's written request for a hearing. A period of fifteen days was selected because it is consistent with other settings where notice is reasonable for similar types of hearings, and it is a timeframe that, in CalRecycle's experience, is practical.

**Subsection (d)**

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**

**Subsections (a), and (a)(1) through (a)(3)**

The purpose of this subsection is to list potential disciplinary actions subsequent to administrative enforcement proceedings against a PRO or Independent Producer. These actions include revocation of a previously approved plan, revocation of the PRO, or requiring additional reporting. The Act explicitly contemplates the revocation of a previously approved plan due to a failure to comply with the Act (e.g., section 42080(a) of the PRC) and the revocation of CalRecycle's approval of the PRO (e.g., section 42061.5(c) of the PRC) but does not explain how these disciplinary actions relate to administrative enforcement proceedings or when, in relation to such proceedings, such revocation might occur. These provisions explain that relationship and help articulate the associated timing. Implicit in the authority to penalize and the authority to revoke, and consistent with CalRecycle's authority to obtain information from the PRO and Independent Producers, additional compliance reporting is specifically named as a disciplinary action that might result from administrative enforcement proceedings. Additional compliance reporting might be an important means of documenting that a PRO or Independent Producer has complied with its penalty; it also may provide an intermediate remedy aimed at resolving deficiencies without taking the more drastic disciplinary measure of revoking the plan or the PRO's status.

**Subsection (b)**

The purpose of this subsection is to make clear the relationship between enforcement proceedings and the triggering of the PRO's obligation to implement the transfer and

closure plan. As explained in subsection 18980.8.2 of these regulations, actual revocation is the trigger for self-execution of the Closure and Transfer Plan. This provision makes clear that actual revocation occurs as a result of disciplinary actions specified in subsections (a)(1) and (a)(2) of this subsection and is thus subsequent to administrative enforcement proceedings. If CalRecycle did not make this clarification, the PRO, trustee or agent, and affected parties might not understand when the Closure and Transfer Plan self-executes. The timeframe identified in this subsection (five days after actual revocation) was selected to ensure consistency with the timeframe identified in section 18980.8.2 of these regulations; the rationale for that timeframe is found in the discussion of that subsection, above. It is necessary to cite section 42056(b) of the PRC to clarify the timing of implementation. It is necessary to cite section 42051.1(f) of the PRC and section 18980.8.2 to clarify how implementation of the Closure and Transfer Plan will occur.

## **ARTICLE 14. PUBLIC RECORDS**

### **§ 18980.14. 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 approach is appropriate because it is congruous with CalRecycle's public records policy, explained at 14 CCR section 17042. By specifically applying that policy to the records that might be contemplated to enter CalRecycle's possession under the Act, the reader is better able to understand the access CalRecycle will provide to these records.

#### **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.

#### **Subsections (c), (c)(1) and (c)(2)**

The purpose of these subsections is to explain the steps that are required of a submitter for the prohibition on disclosures of trade secret information to apply. Subsection (c) recognizes that a portion of a document may be asserted as confidential, and in such a case, the person must clearly identify the portion and provide

a legal basis for exemption from disclosure. The rationale for requiring information on portions, and not just the entirety, of the document is that the public has an interest in seeing those portions of a document to which the trade secret protections do not apply. Moreover, if CalRecycle is to perform the role with which it is tasked under section 40062(c) of the PRC and assess whether the information has been properly identified as a trade secret, it needs to know the legal basis on which the submitter relies in claiming such information as exempt. Furthermore, in CalRecycle's experience, blanket claims of confidentiality are frequently overly broad and encompass portions that do not contain trade secrets.

Subsection (c)(1) explains the requirement and describes methods for satisfying it: The specific portions claimed to contain trade secrets must be expressly designated as such by direct labeling or, where direct labeling is impractical, by providing a written explanation clearly describing the trade secret information. Section 40062(b) of the PRC requires that the information be identified, but does not specify how it should be identified. Thus, this subsection provides details necessary for those submitting information to understand how to do so. Direct labelling is most likely to explain clearly which information is claimed as a trade secret, so it is appropriate as the default approach. However, recognizing that there may be some circumstances in which direct labelling is impracticable, allowance is given for a written explanation. As specifically required by regulation, the explanation must clearly identify the information in question. By requiring the foregoing, this subsection ensures that affected parties will understand how to identify the information appropriately.

Subsection (c)(2) sets forth the additional requirement that CalRecycle be provided with 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 40062(c) of the PRC when it receives requests for disclosure of records identified in the manner required under subsection (c)(1). Prior to resolving a claim, CalRecycle often needs to be in dialogue with the submitter; thus, it is appropriate that the submitter provide a phone number.

#### **Subsection (d)**

The purpose of this subsection is to make explicit the consequences 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)**

One purpose of this subsection is to point the reader to section 40062(c) of the PRC. This is necessary because section 40062(c) of the PRC 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.

Another purpose of this subsection is to make clear that the process for addressing trade secret claims under section 40062 remains the same regardless of the form in which the information is maintained by CalRecycle. Given that the form in which CalRecycle maintains the information may differ from the original submission, this provision is needed to make clear that 40062 still applies to those subsequent forms.

Finally, this section makes clear that, for the purpose of addressing information claimed as a trade secret submitted pursuant to the Act, the procedures required under these regulations regarding trade secrets displace preexisting regulations found in 14 CCR sections 17044 through the end of that article. Given that those sections overlap with the issues addressed in this section, this is necessary for avoiding 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 ENTITY CERTIFICATION 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.

**Subsections (a), and (a)(1) through (a)(3)**

The purpose of these subsections is to define the term “Department” to refer to the California Department of Resources Recycling and Recovery and to incorporate the technical documents referred to as “ISO/IEC 17025:2017” and “ISO/IEC 17065:2012,” which establish substantive standards applicable under this section. The meaning assigned to “Department” is expressly required by statute, and reproducing the text of those documents into the regulations themselves would be impractical and cumbersome because they are lengthy and may be subject to duplication and distribution limitations under copyright law. As a result, 1 CCR section 20 requires incorporation of the documents by reference.

**Subsection (b)**

The purpose of this subsection is to provide further detail related to section 42357(g)(1)(A) of the PRC and list the criteria for CalRecycle’s approval of third-party certification entities. 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. Listing the criteria is necessary for transparency to present 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 entity must hold an accreditation under the standard known as “ISO/IEC 17065:2012,” and its product certifications must rely on test results from an independent laboratory holding accreditation under “ISO/IEC 17025:2017,” which imposes general requirements for

the competence of testing laboratories. Each accreditation must be provided by an accrediting body that is a member of, or recognized by, at least one internationally recognized accreditation organization. These requirements are necessary because statute does not specify the criteria for CalRecycle to apply in evaluating whether entities have the requisite expertise for evaluating and certifying products. Determining 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, and certifying products accordingly requires expertise applying uniform standards for evaluating products. It is appropriate to require certifying entities to be ISO/IEC 17065:2012 accredited and receive test results from an independent laboratory that is ISO/IEC 17025:2017 accredited because those standards are internationally accepted and ensure uniform, scientifically sound product assessments. Furthermore, specifying criteria for which bodies issue the accreditation is necessary because accreditation is also a technical matter requiring special expertise in evaluating the abilities of scientific testing laboratories and certification entities. 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.

#### **Subsections (b)(2), (b)(2)(A), and (b)(2)(B)**

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) and (b)(2)(B) expound on that requirement by identifying specific circumstances that would necessarily disqualify an entity from meeting this requirement. The criteria are necessary for implementing the third-party certification requirement because certifications must be reliable and trustworthy to satisfy various statutory purposes stated in sections 42355 and 42355.5 of the PRC, but statute does not provide specific standards for achieving such reliability and trustworthiness.

Independence, impartiality, and lack of conflict of interest are traditional factors for ensuring that a party performs its duties without bias or the appearance of bias. Therefore, they serve the express statutory purposes stated in sections 42355 and 42355.5: that consumers have accurate information supported by competent and reliable evidence. Moreover, even if all certification entities could perform their duties competently and without prejudice despite not being independent or without conflicts of interest, the requirements of these subsections would still be necessary to promote public trust in the certifications issued for products and the related claims that they are compostable. That public trust serves the express statutory purposes stated in section 42355.5 by increasing the likelihood that consumers will rely on the certifications when deciding how to properly discard items (e.g., into bins for materials sent to composting operations as opposed to bins for materials destined for landfills). Establishing that the specific circumstances identified included in subsections (b)(2)(A) and (b)(2)(B) are disqualifying is appropriate because an entity's business interests are necessarily

intertwined with those of its subsidiaries and the businesses with which the entity has an ongoing relationship beyond mere purchasing of items in the marketplace.

### **Subsections (c), and (c)(1) through (c)(3)**

The purpose of these subsections is to specify the information and documentation that entities must submit to CalRecycle to request approval or renewal 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) and (c)(2) 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)(3) 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 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 expires or 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 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 reapprovals. 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 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) of the PRC 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 a 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 that 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 of \$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 \$457,114 annually for all regulated producers. The average annual cost for non-regulated businesses is estimated to be \$4,806. Producers eligible for an exemption incur a nominal annual cost of approximately \$155 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 (DOF) California Household Projections Data Table) and the total cost of implementation, CalRecycle estimates that the direct cost per household after full implementation may be as high as \$190 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 the 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 \$21.0 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 input into the 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 Direct Cost section of the SRIA.

#### **1. Creation or Elimination of Jobs Within the State.**

REMI can provide insights into potential impacts by analyzing changes in jobs. CalRecycle estimates that 219,950 jobs may be created in the manufacturing of recyclable plastics, paper, glass, and 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 California Employment Impacts section of the SRIA.

## **2. 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 15 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 8 large, 4 medium, and 2 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 that 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 Creation or Elimination of Businesses section of the SRIA.

## **3. 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.

## **4. Increase or Decrease in Investments in the State**

The relative changes in private investment growth attributable to the proposed regulations indicate an initial rise in private investment of approximately \$49 million in 2024, followed by a positive trajectory, peaking at an increase of \$952 million in 2030. These shifts in investment do not surpass 0.15 percent of the baseline investment figures throughout the implementation period. 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 details regarding increased or decreased investments in the state and the change in gross domestic investment, refer to the Impacts on Investments in California section of the SRIA.

## **5. 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 costs 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.

#### **6. Anticipated Benefits to the Health 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 \$53.3 billion in avoided costs. Impact categories quantified in the SRIA include Per- and Polyfluorinated Substances, litter clean up, double handling material, carbon dioxide emitted (CO<sub>2</sub> equivalents), ozone depletion, ground level smog formation, eutrophication, respiratory diseases, and cancer.

The source reduction of approximately 716,000 tons of plastic material is expected to decrease greenhouse gas emissions of approximately 13.1 million metric tons of CO<sub>2</sub> equivalents. To meet the recycling rate requirement, approximately 1.5 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, and environmental well-being. The proposed 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 reusable and refillable packaging, and a decrease in litter pollution, enhancing the social and environmental conditions for California residents. Reduced material generation and increased recycling reduce the potential for both existing and new covered materials to pose harm to society and the environment in the future. For additional details regarding environmental, social, health, safety, and welfare benefits, refer to the Benefits section of 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 the Act. Each workshop was designed to solicit robust feedback on draft regulatory concepts, alternatives, and other CalRecycle deliverables required by the Act. 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 the Act 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 the Act 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 the Act 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 the Act, including related events, a legislative timeline, infographics, and a fact sheet. The web page also provides links to:

- Pages about the producer responsibility organization (PRO), the Advisory Board, and the PRO application;
- A needs assessment study that CalRecycle is required to perform;
- The Covered Material Categories List with recyclability and compostability determinations CalRecycle is required to update annually; and
- Presentation slides and discussion documents for all past and upcoming public meetings and workshops.

CalRecycle provides information on the Act through multiple listservs, with the Packaging Program's listserv, totaling 7,868 recipients. Additionally, CalRecycle monitors and responds to a Packaging email inbox to which the public can send input regarding the proposed regulations for the Act.

CalRecycle's Office of Public Affairs has developed an informative video to educate interested parties and the public about the new law and presented it 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 public workshops. All advisories are also posted to CalRecycle's website. CalRecycle posts content related to the Act on its multiple social media channels. 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-andMaterials-Market-Report\\_2021.pdf](https://textileexchange.org/app/uploads/2021/08/Textile-Exchange_Preferred-Fiber-andMaterials-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>

Attachment 3: An Analysis of Life Cycle Assessment in Packaging for Food and Beverage Applications, 2013, 08/14/2023, <https://www.lifecycleinitiative.org/library/an-analysis-of-life-cycle-assessment-in-packaging-for-food-and-beverage-applications/>

Attachment 4: Economic and Fiscal Impact Statement (STD 399)

Attachment 5: STD 399 Appendix

Attachment 6: Standardized Regulatory Impact Assessment

## Attachment 7: Standardized Regulatory Impact Assessment Addendum

## Attachment 8: Direct Impacts Model

- GaBi database Impacts Workbook, CalRecycle, December 21, 2023
- Impact modeling for the Waste Impact Calculator, Oregon Department of Environmental Quality, April 2023
- Economic Damage Cost for Nine Human Health and Environmental Impacts Report, Oregon Department of Environmental Quality and Oregon Metro, July 2020
- Source Reduction Baseline Model Workbook, CalRecycle, December 2024
- The International Chemical Secretariat Per- and polyfluoroalkyl substances (PFAS) Workbook, CalRecycle, May 2023
- Natural Resources Defense Council (NRDC) Waterway Pollution Brief, Leila Monroe, Senior Attorney, Oceans Program, August 2013
- EPA Social Cost of Greenhouse Gases Report, National Center for Environmental Economics, Office of Policy; Climate Change Division, Office of Air and Radiation; U.S. Environmental Protection Agency, Washington, DC 20460, September 2022
- Department of Finance (DOF) California State Age Demographics Data Table, Demographic Research Unit, Department of Finance, July 19, 2023
- Department of Finance (DOF) California County Population Data Table, Demographic Research Unit, Department of Finance, July 19, 2023
- Department of Finance (DOF) California Household Projections Data Table, Walter Schwarm, Department of Finance, June 10, 2020
- Department of Finance (DOF) California State Population Data Table, Demographic Research Unit, Department of Finance, July 19, 2023
- CalRecycle Inspection Costs Workbook – Automotive Trends, United States Environmental Protection Agency (EPA), December 20, 2023
- CalRecycle Inspection Costs Workbook, CalRecycle, August 28, 2023
- SB 54 Budget Change Proposal, CalRecycle, August 4, 2022
- CalRecycle Inspection Costs Workbook – Incidentals, California Department of Human Resources (CALHR), Human Resources Manual, 2024, 7/15/2025, <https://hrmanual.calhr.ca.gov/Home/ManualItem/1/2203>
- CalRecycle Inspection Costs Workbook – Lodging Costs, Sara Thomas, Hotel Chantelle, May 25, 2023, 7/15/2025, <https://hotelchantelle.com/what-is-the-hotel-tax-in-california/>
- CalRecycle Inspection Costs Workbook – Parking Costs, Joe Cortright, City Commentary, October 18, 2016, 7/30/2025, <https://cityobservatory.org/the-price-of-parking/>

- State of CA Civil Service Pay Scales Data Tables, California Department of Human Resources (CALHR), June 5, 2023
- CalRecycle Composting Facility Workbook, CalRecycle, September 26, 2017
- 2021 Disposal Facility-Based Waste Characterization Data Tables, CalRecycle, November 2022
- City of San Diego Organics Processing Facility Bid Proposal, Sukut Construction, LLC, April 12, 2022
- Recycling Markets Secondary Materials Market Data, Recycling Markets.net, September 15, 2023
- Materials Recovery Facility (MRF) Feasibility Study, Metro Waste Authority, June 2018
- Resource Recycling Sortation by the Numbers Article, Resource Recycling, October 2018, August 31, 2023
- Cascadia Workbook 1 – Model – Base Tons, Jessica Branom-Zwick and Carolina Paez Jimenez of Cascadia Consulting Group, Inc., May 30, 2023
- Cascadia Workbook 2 – Model – New Tons, Jessica Branom-Zwick and Carolina Paez Jimenez of Cascadia Consulting Group, Inc., May 30, 2023
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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 single-use plastic food service ware in the state are compostable or recyclable by 2032 and that such materials are 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 section 42357(g)(1)(A) of the PRC, 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 statewide;

- Increased revenue for businesses from the sale of recycled material products;
- Decreased public health concerns, such as cancer, asthma, and birth defects;
- Encouragement of packaging innovation;
- Reduced exposure to chemicals and microplastics from shifts to plastic alternatives;
- Ensuring that refillable or reusable materials can be used 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 increased 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 Benefits section of the SRIA.

## **REASONABLE ALTERNATIVES TO THE REGULATIONS AND CALRECYCLE’S REASON FOR REJECTING THOSE ALTERNATIVES**

CalRecycle has evaluated two alternative scenarios: a lower cost scenario that results in fewer benefits than the proposed regulations, and a higher cost scenario that results in similar benefits to the proposed regulations. Set forth below are the reasonable alternatives considered and the reasons the alternatives were rejected. For a more detailed discussion of the alternatives, refer to the Alternatives section of 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 \$20.5 billion, approximately \$516 million lower than the proposed regulations.

Alternative 1 would result in 1,138 tons fewer material being categorized as plastic covered material and 62,000 fewer metric tons of CO<sub>2</sub> equivalent greenhouse gas reductions than the proposed regulations would.

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 that are not producers from \$4,806 to \$4,688. 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 the proposed regulations. Alternative 2 would result in direct costs of \$21.2 billion, approximately \$218 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 would be for 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 has been identified to the regulatory proposal within this Initial Statement of Reasons 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. That section

also provides that packaging for food and agricultural products will be deemed not regulated by the Act if it is impossible to comply with both the Act and federal laws concerning such packaging. Lastly, the proposed regulations further account for potential conflicts with federal regulations by considering legal obstacles to compliance to be a possible basis to exempt materials from requirements of the Act pursuant to section 42060(a)(3) of the PRC.

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 required under the Act (see section 42060 of the PRC) and section 42357(g)(1) of the PRC.