

SB 54 Advisory Board Comments on the Draft SB 54 Regulations

May 8, 2024 Advisory Board comments with notes based on October 14, 2024 revised regs

1. Topic – Environmental Justice and the plastic pollution mitigation fund

Original (from May 8) relevant section(s): PRC section 42064 J and K

Reviewer: **Tedd, Tom**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
1			
a.	189980.7.6 (p. 152)	Very partially. This section describes how an Independent Producer would pay into this fund.	
b.	18980.8(c)(7) (p. 156)	No/Partially. An assessment of potential technologies and their potential public health and enviro impacts on disadvantaged communities, low income communities or rural areas.	

Original (from May 8, 2024) Topic #1 Advisory Board Comments:

a. Comment 1a – Please provide more detail regarding how SB 54 mitigation fund resources will be distributed. Additional detail in advance will help local communities plan and prepare for accessing the funds in ways that maximize the benefit to disadvantaged communities and BIPOC people and organizations historically impacted by plastic pollution and underrepresented in public policy decision-making. Also consider a public workshop on this topic specifically, and dedicate a webpage to helping the public understand the mitigation fund. Please also explain how CalRecycle plans to work with other State agencies, including the California Department of Finance, to maximize coordination and positive impact for disadvantaged communities.

b. Comment 1b – Disadvantaged, rural, and minority communities should be explicitly

included in the SB 54 needs assessment process. Please articulate how disadvantaged and rural communities will be consulted as part of the needs assessment and reach out to community-based and other organizations to begin dialogue early in the process. Transparency is essential regarding how the needs assessment process is designed and how conclusions are made.

Board Notes:

- Tom noted that there is a process underway to do outreach related to needs assessment; want to make sure that the process includes appropriate groups
- Tedd noted that the process of developing the fund will be as part of the budget; Board should do outreach to appropriate state depts in advance
- Comment from Jennifer Fearing - Legislature adopts the budget, but the Jan 2027 Governor's budget is where initial articulation will occur. That process starts in early in '26. Engage Governor's office and relevant departments.

2. Topic – Reimbursements from producers to local jurisdictions

Original (from May 8) relevant section(s):

- PRC section 42060(a)(1) states that “costs incurred by a local jurisdiction or a local jurisdiction’s recycling service providers to implement this chapter, including, but not limited to, the cost of consumer education and of collection, including the cost of containers where relevant, as well as the processing, storage, and transportation of covered materials.”
- PRC section 42040(b)(2)(B) states, “It is the intent of the Legislature in enacting this chapter to ensure that local jurisdictions will be made financially whole for any new costs incurred associated with the implementation of this chapter and its implementing Regulations.”
- PRC section 45051.1(c)(2) requires that the PRO plan describe how the PRO “will support and achieve, and how the 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 this chapter.”

Reviewer: **Timothy**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
2			
a.	Article 1, Section 18980.1 (Definitions) (a)(2) - “alternative collection” (p. 2)	Partially	To ensure that local government collection programs are not disrupted, which could affect local government costs, alternative collection programs should not be implemented without approval of the relevant local government. Local governments should retain the right to be the primary sponsor of an alternative collection program, or to designate that responsibility, if desired.

b.	18980.8(g)	Partially	We appreciate CalRecycle adding clarification in section 18980.8(g) on the reimbursement timeline; however, consideration of costs only after January 1, 2023 is not reflective of actual system costs and therefore would not achieve SB 54's goal of shifting the burden of costs from local jurisdictions and RSPs to the producers. Regs do add a date before which costs would not need to be reimbursed. However, just adding a date without further context and clarification is seriously problematic and counter to the intent of SB 54 to make local governments whole. We do not expect the PRO to fund every cost that has ever been made. However, there are many instances in which existing/previous capital investments, such as in trucks, will need to be leveraged to implement new SB 54 requirements. A portion of the ongoing cost of a truck, for example, should be covered if that truck is transporting SB 54 materials. There are mechanisms to apportion such costs. If this is not addressed, early movers are penalized and actual costs related to covered material collection/transporting/sorting will not be reimbursed.
c	18980.8(g)(2)	Partially	This section attempts to provide clarity regarding what costs would be covered, but it is still ambiguous and additional detail is needed to avoid disputes and ensure intention of the law is met (i.e., local jurisdiction costs are covered). Add more specificity, such as by creating a clear list of the costs that would be considered approved (and also consider identifying cost reimbursement rates by region based on common investments).
d			Lack of clarity regarding payment mechanisms in the regs.
e	18980.8(h)		Dispute resolution process. Consider a panel of experts to review disputes (including local gov't expertise), rather than one arbitrator. Or, specify that the arbitrator should consult with CalRecycle when considering a dispute.

Original (from May 8, 2024) Topic #2 Advisory Board Comments:

a. Comment 2a – Statute makes it clear that the costs to collect and process covered materials throughout the supply chain are to shift from local jurisdictions, service providers, and ratepayers to the producers of covered materials. However, it is not clear what combination of existing and new costs will be covered. Please clarify in the regulations the types of existing and new costs to be covered, including a point in time at which that shift in cost responsibility is to occur. While the Advisory Board does not feel that producers should cover the cost of every investment ever made in the solid waste management system, the Board does feel that some combination of existing and new costs must be covered to make local governments whole.

b. Comment 2b – Add specificity to require the PRO plan to include a process for determining, verifying, and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter. The process should include a date by which payments shall begin, the frequency for payments moving forward, the form of payment to be used (e.g. electronic), and concurrence of costs by the party incurring costs.

Board Notes:

- Veronica noted that there will be a significant need for incremental costs
- Shane - Noted that the regulations start to provide the clarity to move forward; believes the current regs will provide clarity to help develop the PRO plan
- Shane - agrees that plan must be in place to provide reimbursement to local jurisdictions and other entities
- Doug - curbside collection are an ongoing cost; MRF and trucks are amortized over time, so there's a cost per ton; recommends a per ton cost based on ratio of covered materials
- Rachel - wants to make sure that local gov'ts are not transferring costs to the PRO that are not connected to SB 54 compliance/implementation
- Fred - asked if tribal communities are eligible for PRO funding
- Shane - amortized capital can be counted toward an incentive rate
- Public comments:
 - Mike Caprio - PRO has latitude to decide what's reimbursable; concern with arbitration; perhaps don't make it "binding arbitration," which leaves open options for other dispute resolution options
 - Jennifer Fearing - hopes our collective goal is to shift costs to producers and that we ultimately have less waste to be managed
 - Colleen Foster - want to make sure ratepayer costs are protected; would like to recommend that new costs are covered as of June 2022; amortized value of costs need to be covered; cost of dispute resolution process should be covered by PRO
 - Tori Romero - a more defined timeframe should be decided on during which local gov't should be made whole
 - Melissa Sparks-Kranz - CalCities - lack of clarity in the regs re: what is an eligible cost...needs to be better reflected in the regs
 - John Davis - Mojave Desert - use payment instead of reimbursement (which is one form of payment); don't want communities that have already invested to be at a disadvantage; use of term "nature" is not clear; all revenues that local gov't take in are subject to review/audits...this should give people

3. Topic – Date local jurisdictions must collect recyclable and compostable covered materials

Original (from May 8) Relevant section(s):

- PRC section 42060.5 states that "all local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material contained on the

[recyclable and compostable] lists.”

- PRC section 42061(c) and (d) state that CalRecycle shall publish the list of covered materials deemed recyclable and compostable by January 1, 2024. And section (e) of the same code states that the list shall be updated at least annually until January 1, 2032 and at least every two years after 2032.

Reviewer: **Timothy**

3	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
a.	18980.11(a)	Yes - however, not sure the approach allows enough time for compliance	We appreciate CalRecycle clarifying in section 18980.11 the date by which jurisdictions are required to collect materials on the CMC list and the timeline for compliance in response to future CMC updates. However, the timeline for when jurisdictions must begin collecting materials under the program (beginning when a PRO plan is approved) does not acknowledge that jurisdictions will need, and are entitled to under SB 54, funding to implement such changes. We recommend providing a one year phase in of the collection requirement, or at least the enforcement of it, to allow time for jurisdictions to adjust acceptability lists and add required messaging and infrastructure to sort those new materials. A one year phase in would align with Section 18980.11(c) which gives one year for jurisdictions and service providers to collect materials when there is a change to the CMC list.
b.	18980.2.5 (p. 66)		General question - updates to the CMC list will be made potentially annually, plus there are ongoing opportunities for exemptions. How will the PRO/RSPs/Local Gov'ts minimize community confusion re: changes to what's on the acceptability lists?
c.	18980.2.6(d)(2) (p. 69)		Local governments should be included in the list of stakeholders notified when the PRO or a producer recommends changes to the CMC list.
d.	18980.3.2(f) (p.85)		For CMCs introduced after 2024 and for which insufficient data exist, these would be “pending” a determination and assumed to meet recyclability requirements until 1 year of data is available. Local gov't requirements for accepting these materials should not apply when a designation is pending.

Original (from May 8, 2024) Topic #3 Advisory Board Comment:

a. Comment 3a – The main requirement of local jurisdictions under SB 54 is that they must collect all materials deemed to be recyclable or compostable. However, it is unclear when that requirement must be met. Please clarify in the regulations the date by which local jurisdictions or service providers must begin to collect covered materials determined to be recyclable or compostable, and when compliance must be achieved

when materials are added to the list in the future. The timelines should consider:

- The amount of time that local jurisdictions and service providers will need to establish new collection and processing infrastructure and update public education materials, and;
- The timing of an approved PRO plan and budget. Local jurisdictions and service providers should not be required to foot the bill for new costs before a system and budget is in place to cover those costs.

Board Notes:

- Veronica agrees with need to have some flexibility for jurisdictions to change their acceptability lists
- Christy - Acknowledged that there are costs to update acceptability lists
- Public comment -
 - Local gov't should not be held accountable for implementing requirements until they have received funding to do that implementation work

4. Topic – Enforcement, Compliance, and Corrective Actions

Original (from May 8) Relevant section(s):

- PRC 42060.5 articulates requirements on local governments
- PRC 42064.e

Reviewer: **Tedd & Timothy**

4	Relevant sections in revised regs (Include article / section #s and page #s)	Addressed as recommended? Yes / No / Partially	Suggested new Board comment (Write "N/A" if comment was sufficiently addressed)
a.	18980.13 (b) 18980.13.1 PRC 42081 (a)(1)	Partially. The expanded details of how Corrective Action Plans could be an additional pathway to compliance are very welcome.	The Advisory Board recommends that CalRecycle clarify that any fines to local jurisdictions would be graduated, meaning that the upper fine amount is the maximum that would be assessed and only after other compliance monitoring steps were taken by CalRecycle. Reiterate importance to CalRecycle that an enforcement provision of \$50,000/day for local jurisdictions goes against the intent of the law and is extreme in scale.
b.	18980.11(b) 189980.11.1	Partially. These sections describe	Final regulations should clarify re. how penalties could be associated with partial compliance (e.g. such as a

		the local jurisdiction obligations should the CMC list change, and the process for reviewing extensions or exemption applications from local jurisdictions.	jurisdiction collecting some but not all CMC's, or taking time to include all CMC's) Regulations still lack clarity on how compliance will be determined; would a jurisdiction be considered compliant if a website or brochure indicates acceptability but a cart/bin decal or graphic, which takes more resources and time to update, still shows the material as not accepted? Section 18980.11(b) simply states that a "covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or RSP <u>collects</u> the covered material and directs it to recycling at responsible end markets by transferring it to intermediate supply chain entities." How is "collects" defined?
c.	Section 18980.13.1 (page 204)	Yes	(confirm update was adequate)
d.	18980.5 18980.6.2(a) 18980.7.1(c) 18980.10(a) 18980.10.1 18980.13.1(b) 18980.3.3	(a) Yes. Producers required to register by July 2025. (b) Many regs provisions enable CalRecycle to take action to resolve issues with respect to data integrity, though the process for such assessment is not clear. (c) Enforcement with respect to improper labelling appear in different sections for reuse, recycling, and compostability (d) Reporting.. (e) Enforcement...	b) and c) remain unclear with respect to monitoring, assessment and enforcement with respect to data submittal and review or with respect to the process for reviewing the appropriateness or adequacy of labels.
e.	Statute Section 42080, Regulations Article 13	Yes	May not be applicable (?) I believe the enforcement sections in statute and regs Article 13 would also apply to any producers that are not contributing to the mitigation fund, as these sections cover compliance with the whole chapter/act.
f.	18980.13.2(a)	Not addressed It may be that Responsible End	The list of entities that may receive administrative penalties in section 18980.13.2(2) should be updated to include responsible end markets so that it is clear, these entities too are subject to penalties should they fail to meet the requirements as set forth upon

		Markets outside California would not be subject to CA law, so were not included.	Responsible End Markets.
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Original (from May 8, 2024) Topic #4 Advisory Board Comments:

a. Comment 4a – The proposed regulations subject local jurisdictions and recycling service providers to SB 54 enforcement, including penalties of up to \$50,000 per day for each of the covered material categories not included in a local collection program. The scale of proposed penalties is extreme – five times higher than those included in SB 1383 – and local jurisdictions are neither the target for responsibility nor enforcement under SB 54. This is in direct conflict with the intention of SB 54 to make jurisdictions whole for the costs to recycle and compost covered materials. If jurisdictions are subject to enforcement, the Advisory Board recommends that CalRecycle clarify that any fines to local jurisdictions would be graduated, meaning that the upper fine amount is the maximum that would be assessed and only after other compliance monitoring steps were taken by CalRecycle.

b. Comment 4b – Should local jurisdictions be subject to enforcement, the regulations need to include a clear determination of when and how local jurisdictions are able to demonstrate compliance. Section 42060.5 of the Public Resources Code states, “local jurisdictions or recycling service providers shall include in their collection and recycling programs all covered material contained on the lists published pursuant to subdivisions (c) and (d) of Section 42061.” To allow for compliance pursuant to 42060.5, and to avoid administrative civil penalties detailed in section 18980.13.2(a) and PRC 42081(a), it is recommended that the regulations include a clear and straightforward process for how compliance will be evaluated on an ongoing basis. Also, we recommend that CalRecycle develop a follow-up process to communicate with local jurisdictions if they’ve been perceived to be in violation of section 42060.5. Include a method of communicating the perceived violation.

c. Comment 4c – Should local jurisdictions be subject to enforcement, a process to request a corrective action plan must be provided to local jurisdictions and service providers that receive a notice of violation under section 42060.5. As the regulations are currently written, only producers are entities that can violate Section 42081 and local jurisdictions may violate Section 42060.5 and compliance action plans are only granted for violations of Section 42081.

d. Comment 4d – Final regulations should provide more detail regarding procedures and timelines for enforcement with respect to a) producers’ registration, enrollment with a PRO or lack thereof, b) mechanisms for affirming data integrity of information provided by wholesalers, distributors, and virgin resin producers used as the basis for assessing compliance with waste reduction mandate, c) appropriate labeling

regarding recyclability, compostability or reusability, as well as d) mechanisms for reporting, summarizing, and assessing effectiveness of such outreach and enforcement actions, and e) mechanisms to enforce collections of fines or other assessed penalties on virgin resin producers, wholesalers, producers, non-compliant packaging distributors, etc.

e. Comment 4e – Article 13 is missing any enforcement on virgin plastic resin producers to comply with providing funding for the California Plastic Pollution Mitigation Fund. The appropriate state agency should have explicit authority to ensure that virgin plastic resin producers contribute to the Mitigation Fund.

f. Comment 4f – Responsible end markets should be included in the list of entities subject to administrative civil penalties included in 18980.13.2(a).

Board Notes:

- Veronica is concerned that there is actually no ability to provide a corrective action plan
 - Need more clarity on this
- Tedd believes that local gov'ts are not excluded from being able to use a corrective action plan; but we need to confirm
- Doug - perhaps we should narrow
- Public input:
 - Mike Caprio - covered materials considered included if they are directed to a REM...what if a REM doesn't exist? Are local gov'ts and service providers still responsible for collecting
 - Colleen Foster - HF&H - believes that it's unclear if corrective action plan is available for local jurisdictions; concerned that there penalties are harsh...penalties would be enforced on local gov't if not in compliance "regardless of the reason". Recommends removing this clause.
 - Also need more clarity re: which party would receive the penalty (RSP or local gov't), depending on scenario
 - Concerned that SB 54 has a new enforcement system; recommends that CR rely instead on existing enforcement systems; too severe as well
 - Peter Bierbaum - One World Resource - concerned that enforcement would not be applied to "free riders," only to "participating producers"...believes enforcement should apply to all producers not just some
 - Tori Romero - no later than date PRO plan approved is not a specific date; what if dept approves PRO plan before Jan 1, 2027; recommends a specific date
 - Melissa Sparks-Kranz - local jurisdiction enforcement is counter to intent of SB 54; not a clear path for corrective action plans; believes there should be multiple informational notices before a violation is deemed on a local gov't or RSP

5. Topic – Coordinated outreach and education for communities

Original (from May 8) Relevant section(s):

- Article 8 section 18980.8(c) of the draft regulations provides further guidance on Producer Responsibility Plan requirements including 1.) the requirement to include performance measures to evaluate the comprehensive education and outreach program, and 2.) direction to include materials in multiple languages consistent with section 7295 of the Government Code.

Reviewer: **Timothy**

5	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
a.	Section 18980.8(d)(3) (page 157)	Partially	We appreciate that the revised regulations include an added requirement that PRO plan must include "A process for coordinating education and promotional efforts between entities including, but not limited to, the PRO, Independent Producers, local jurisdictions, recycling service providers, and alternative collection systems." Note for discussion: the regs did not include the full recommended language, however, it may be okay for the remaining pieces to be addressed in the PRO Plan.

Original (from May 8, 2024) Topic #5 Advisory Board Comment:

a. Comment 5a – The regulations should direct the PRO to also include in their plan details about how they will engage with producers, jurisdictions, and service providers to ensure education and outreach programs for the general public, including disadvantaged communities, are coordinated and allow jurisdictions to review and provide input on new public messaging before it is disseminated. Potential conflicts with existing messaging, and strategies to mitigate public confusion, should be considered.

6. Topic – Reuse and refill

Original (from May 8) Relevant section(s):

- PRC section 42041.(2)(af) defines "reusable" or "refillable" or "reuse" or "refill" in the same definition. The regulations further define these terms in section 18980.1(a)(34). "Safely reused" is clarified in subsection (d).

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6	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>

a.	Section 18980.2.1 (5a); page 30	Partially	780 cycle for foodware is still in the regulations
b.	Section 18980.1. Definitions (25); pages 17 - 20	Yes	
c.	Section 18980.2.1 (a)(3)(A); pages 28 - 29	Partially	
d.			

Original (from May 8, 2024) Topic #6 Advisory Board Comments:

a. Comment 6a – The definition of “washable” refers to the CA Code for cleaning and sanitizing “equipment and utensils” in a food service environment, requiring 780 wash cycles with at least 160°F. This is not compatible with many reusable plastic containers and food ware. While 160 degrees makes sense for metal utensils and dish pans, it would melt many reusable food ware options. The Advisory Board recommends CalRecycle research other relevant standards established in other jurisdictions and consider revising the current draft regulations based on additional research.

b. Comment 6b – The Advisory Board agrees that reusable and refillable products must be safely reused, however the inclusion of “chemical leaching” and “microplastics shedding” as example disqualifiers for a determination of “safe use” only for reusable packaging must be removed from the regulations § 18980.1. (34) (D) (i) & (ii). Reusable packaging should be held to the same consumer safety standards for chemical migration as are required for single-use packaging, but not be subject to stricter requirements. Further, reusable packaging should not be subject to life cycle analysis requirements currently articulated in the regulations – § 18980.1. (34) (E) (ii) as it would be creating a prohibitive barrier to market.

c. Comment 6c – The regulations must distinguish between reuse and refill systems. A system in the context of refill refers to making products available for customers to bring containers back to refill (e.g. bulk detergent refill at a grocery store). A system in the context of reuse puts the onus on producers to take back returnable packaging or food ware, clean it, and offer it back to customers to achieve multiple uses (e.g. a returnable cup provided to customers at a coffee shop with a return system in place). In either case, the emphasis is on systems to ensure materials are truly reused, not simply called “reusable.” Emphasis on systems helps to clarify, for example, the difference between a cup sold or provided to a consumer for their personal reuse rather than as part of a coordinated system for collection, cleaning, and reuse of the item by the vendor or producer.

d. Comment 6d – When reusable and refillable containers reach the end of their useful life, they will become part of the waste stream. The Advisory Board expresses support for making reusable containers and packaging recyclable or compostable at end of life, in a manner that does not inhibit the growth of the reusable packaging industry.

Board Notes:

- Board may want to recommend streamlining the reuse/refill requirements re: 780 cycles and other requirements
 - Perhaps recommend reevaluating the reuse/refill thresholds at some point
- May want to look at LCA implications and who would decide if a reusable item creates risk
- End of life management of reuse/refill - wasn't addressed
- Miho and Pat could propose some language for next round to ensure reuse can be implemented
- Christy - if the reuse/refill materials go to a MRF, they are not covered materials, correct?
- Public input:
 - Shira Lane: Calculation of source reduction is complex, need a simple formula; also wants data on reuse/refill materials even if they are not covered material
 - Adrian Colsbery - Buoy LLC?; Uses HDPE recycled plastic only in their bottles; 780 uses would eliminate reuse containers other than stainless steel
 - Drew Rak - mentioned transport packaging/shipping; said that the section does not address this use

7. Topic – Clarification on definition of “recycling”

Original (from May 8) Relevant section(s):

- SB 54 specifically states that recycling does not include incineration or combustion of plastic waste (Section 42041(aa)(2)) and requires the regulations to exclude from recycling the technologies that generate significant hazardous waste (Section 42041(aa)(5)).

Reviewer: **Patrick, Tom**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
7			
a.	Section 18980.3.6. Review of Certain Technologies	Discuss	

This section of the Public Resources Code outlines the criteria for classifying a chemical plastic-processing technology as "recycling" in California. It mandates that before such a technology can be considered recycling, an independent, peer-reviewed scientific study must

demonstrate it doesn't produce a significant amount of hazardous waste, as defined by the Health and Safety Code and relevant regulations.

The study must rigorously compare the technology's hazardous waste generation to that of other existing recycling technologies, considering factors like the types of plastic processed, methodologies for measuring waste, and the accuracy of its projections. The study must be reviewed by an independent panel of experts who will determine if the evidence clearly and consistently shows insignificant hazardous waste generation. Only if the panel confirms the study's conclusion will the technology be considered recycling, and this approval may be reviewed every five years or if the Department finds evidence of negligence or fraud in the original study.

A "significant amount of hazardous waste," in the context of the provided text, means that a chemical plastic-processing technology consistently generates a greater amount of hazardous waste, by weight, per unit of plastic processed and returned to manufacturing, than other currently used recycling technologies in California. The comparison is made on a weight basis, comparing the amount of hazardous waste produced relative to the amount of plastic successfully recycled and reused. If a technology only processes certain types of plastic, the comparison is limited to those types. If comparable technologies aren't used at a sufficient scale in California for a meaningful comparison, the comparison may include data from outside the state.

Original (from May 8, 2024) Topic #7 Advisory Board Comment:

a. Comment 7a – In addition to the considerations articulated in Senator Ben Allen's June 30, 2022, letter to the journal regarding implementation of SB 54 and the definition of "recycling," in which Senator Allen states that, "Pursuant to proposed California Public Resources Code Section 42041 (aa) in SB 54, "recycling" is intended to only include technologies that return or maintain plastic materials within the circular economy," please provide clarity in the regulations regarding what is included in the definition of "recycling" for covered materials. While it's clear from the definition of "recycle" or "recycling" that technologies that would turn covered materials/waste to fuel are not allowed, it is unclear whether other recycling technologies that do NOT turn waste to fuel are allowed and could be called "recycling."

Board Notes:

- Tedd - producing additional flake and calling it recycling is not accurate; same concern with any form of chemical recycling
- Patrick - any new technology must be compared to existing technology
- Wes - CR edits did a good job...may give a pathway for certain technologies to be evaluated. Pyrolysis - most such processes may have low yields; would a recycler get credit for the portion of the material that did produce post consumer plastic, even if the remainder was turned into fuel?

- Shane - Regulations should align with the statute and include the criteria in the regs themselves; needs assessment study could incorporate consideration of certain technologies rather than this being an additional requirement in the PRO Plan.
- Pat - based on Shane's input, perhaps the Board states that the regs should include the criteria, but if further study is required it should be part of the NA study
- Miho - perhaps CR should develop and maintain an FAQ page as new info and studies come about...there is not a recycling definition on the regs?
- Veronica - is there a conflict with SB 1383 based on definition of recycling? Biomass conversion is allowed under 1383 but not under SB 54, potentially
- Doug - if you compare a chemical process to mechanical, than very few new technologies will create less haz waste
- Tom - agrees with the process as laid out by CR; still not a set definition of recycling, but appreciates that the new regs do help to clarify what is not recycling; feels that, in line with Sen. Allen's letter, pyrolysis, solvolysis, solvent-based technologies, incineration, and gasification should be explicitly defined as not being recycling; feels that air pollution would count as hazardous waste
- Ajit - end product of what chemical recycling produces is quite different from product of mechanical recycling...thinks it may be unfair to compare the two; hazardous waste is defined
- Tedd - recycling rate is calculated as defined on p. 82. Recommends that recycling rate should be calculated based on each material type, rather than grouping different materials together
- Christy - flake and pellet is not a final product; it's feedstock; once it's sold, it should be counted as recycling
- Public input
 - Resynergi (company) - if there were a study, they would want to be a case study; would welcome an independent study; thinks there is a lot of demand for feedstock; yield can be as high as 75%, other output is gas that powers facility; have done assessments in order to get air and use permits; this pyrolysis is additional/additive to mechanical recycling, not replacement of
 - Caroline DeLoach - Atlantic Packaging - recycling is defined in statute; also waste to energy and to fuel is prohibited in statute; previous version of the reg made it sound like only end market for plastic was the entity turning plastic into a new product - no reason that a recycler would stockpile flake/pellet
 - John Davis - There are varieties of chemical recycling processes; mass balance accounting would make it difficult to ascertain a covered material recycling rate
 - Mike Caprio - regs should implement statute as written - processing is meant to create flake to then sell to a REM; a MRF is meant to create feedstock for sale to an end market

8. Topic - Compost and Compostability

Reviewers: Neil Edgar and Erin Levine

8	Relevant sections in	Addressed as recommended?	Suggested new Board comment (Write "N/A" if comment was sufficiently addressed)
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	revised regs (Include article / section #s and page #s)	Yes / No / Partially	
a.	18980.1 (29)	yes	n/a
b.	18980.4 (a)(4)(B)	Partially	See below
c.	Chapter 11.5 Article 1	Yes	n/a
d.	18980.3.3 (5) (1) (A)	Yes	n/a
e.	18980.3.3 (b) (1) (2)	Yes	n/a
f.	18980 3.3 (e)	Yes	n/a
g.	18980.4.2	No	Not addressed.

Original (from May 8, 2024) Topic #8 Advisory Board Comments:

a. Comment 8a - Compost or digestate for land application must meet Title 14 requirements for pathogen reduction, metals content and physical contaminants and should not be characterized as “raw.” In section 18980.1(a)(29), which defines “recycled organic product,” please remove the term “raw.”

b. Comment 8b - Setting impossible standards for responsible end markets is not a benefit to successful implementation of the program. In section 18980.4(a)(4), please reconsider the use of 100 percent as a conversion metric that would serve as a criterion for a compost facility to be a Responsible End Market. Very few organic feedstocks are converted fully, nor could feedstocks meet a 100 percent conversion rate. Rely on the needs assessment to determine an appropriate level of material conversion.

c. Comment 8c - Please review and revise the regulations related to identifying 3rd party entities that can provide verification that compostable products meet applicable standards. See section 18981. The process of identifying 3rd party certifiers should absolutely ensure that there is not financial conflict of interest between certifiers and the products they are certifying, but the current regulations set other standards that will make it difficult to actually approve any 3rd party certifiers, which are an integral part of providing assurance that compostable products sold in California will meet the requirements of AB 1201, specifically those found in PRC 42357, and that will be key in establishing labeling standards that help to set a level playing field not only in California, but across the U.S.

d. Comment 8d – Clearly defining “desirable organic wastes,” which is referenced in 18980.3.3, is critical to understanding which compostable products will be allowed for sale in California and

ultimately included in the covered materials list. CalRecycle must clearly define which organic wastes are desired by composters for receipt and processing, then make a determination which covered compostable products can be reasonably associated with their collection and recovery.

e. Comment 8e - The Advisory Board closely reviewed the draft language in section 18980.3.3 of the draft regulations that would require compostable covered materials to be accepted by at least 50% of compost facilities prior 2026 and 75% after January 1, 2026. Ultimately, several board members felt that CalRecycle exceeded its statutory authority by including these acceptance rates in the regulations, and that CalRecycle should instead rely on AB 1201 to define compostability, which was a negotiated piece of legislation and already provides criteria for composability. Other board members, however, felt that it's important for composters to have a mechanism to minimize contamination and reduce uncertainty about their ability to produce high-quality compost. The Advisory Board recommends that CalRecycle do additional work and stakeholder engagement to land on an appropriate approach in the regulations.

f. Comment 8f – The definition of compost in the draft regulations excludes home compostable products. The draft regulations do not provide a pathway for home compostable products to have a responsible end market. Please clarify how products that are labeled as home compostable are treated in the regulations.

g. Comment 8g – The Advisory Board recommends that for compost facilities, the compliance monitoring and audits that will occur related to ensuring that a facility is operating as a responsible end market should be integrated into existing audit and investigation processes, such as through existing local enforcement and organics certification processes of CDFA, OMRI, and STA, rather than creating a new redundant set of audits and investigations.

Board Notes:

- If fiber product does not include a polymer/plastic, then it is exempt from 3rd party testing - consider commenting to clarify how “fiber” is defined and what tests are needed to verify this

8	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
	h. 18980.1 (20)	n/a	
	i. 18980.3.5	n/a	
	j. 18980.4 (a)(4)(A)	n/a	
	k. 18980.4(a)(4)(B)	n/a	

I.	18980.3.3.(c) (4) (A) (ii.)	n/a	
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Comment 8(h). - **Clarity is needed regarding the definition of recycling. Composting should not be equated with recycling, as in 18980.1 (20) where composting is identified as a subset of recycling, as defined in 42041.**

PRC 42041 (aa) (1) “Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.

18980.1. (20) “Recycled organic product” means compost, digestate for land application, or biogas. To be considered a recycled organic product, the process producing it must be recycling, as defined in the Act.

- A. “Biogas” has the same meaning as provided in paragraph (3) of subdivision (a) of section 17896.2 of this division.
- B. “Compost” has the same meaning as provided in paragraph (4) of subdivision (a) of section 17896.2 of this division.
- C. “Digestate for land application” means digestate, as defined in paragraph (13.5) of subdivision (a) of section 17852(a)(13.5) of this division, that meets the requirements of paragraph (24.5) of subdivision (a) of section 17852(a)(24.5) of this division.

Comment 8(i). - **Defining compost use as disposal, if it contains any amount covered materials or derivative materials, will preclude composters from providing a responsible end market – and is in direct conflict with the goals of both SB 54 and SB 1383 – nearly eliminating the potential use of “compostable” alternatives to disposable packaging.**

Section 18980.3.5. Disposal of Covered Material

For the purposes of this chapter, any amount of material, such as covered material, derivative material, recycled organic product, used in any of the following activities in or outside of the state, shall be considered disposed.

- a) Final deposition at a landfill.
- b) Used as alternative daily cover as specified in section 20690 of Title 27 of the California Code of Regulations or intermediate cover as specified in section 20700 of Title 27 of the California Code of Regulations.

- c) Energy generation or fuel production, except for anaerobic digestion of source separated organic materials.
- d) Other activities that involve directly depositing the material onto land, into the atmosphere, or into the waters, including but not limited to, littering, open burning, or illegal dumping.

Section 18980.4. Responsible End Market Criteria

Comment 8(j). - Clarity is needed on how compostable covered materials will meet the requirements for measuring, monitoring, tracking and reporting in 18980.4 (a)(4)(A). Many covered materials are collected, compacted and entrained with food material with which it is commingled throughout the composting or digestion process. Guidance is needed on how that material will need to be separated, how moisture content will be assessed, and the points in the “chain of custody” where measurement activity should occur.

Comment 8(k). - The below language (in 18980.4 (a)(4)(B) - sets an unachievable standard for the processing of many compostable materials - will prevent any composters from being responsible end markets for covered materials deemed compostable. Setting this standard is unachievable for the paper, fiber, wood or other organic covered materials; residual lignins and cellulose will always be present in finished compost produced from those types of materials.

The updated language either needs to be stricken or rewritten with some clarification, specifically for “biologically decomposed”. Most compostable feedstock materials nor covered compostable products will fully, biologically decompose. Lignins and cellulosic materials inherent within green materials, paper, fiber, wood and other organic covered materials, which do not “biologically decompose” are the bulk of any compost or digestate material.

If covered materials cannot be screened out, along with other contaminants and larger particles of woody substrates, no composters will qualify as responsible end markets and their viability could be compromised if there are delays in their production process.

Suggested edits:

(B) The recycled organic product generated by the entity which receives and processes covered materials or derivative materials will do so in a manner consistent with the management of other feedstocks to produce a marketable product.

~~(B) The recycled organic product generated by the entity contains no covered materials or derivative materials that have not been biologically decomposed. If any covered material or derivative material intentionally included in the process used to generate the recycled organic product fails to biologically decompose, the entity must neither dispose the undecomposed material nor send it to another entity that subsequently disposes it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted by the entity or by subsequent entities to which the material is transferred. Covered material and derivative~~

~~material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).~~

Comment 8(l). - Eligibility to be Labeled Compostable: 18980.3.3.(c) (4) (A) (ii.) - Fiber Exemption from 3rd party certification

Further clarification on fiber and on the test methodology for producers to demonstrate the fiber has no plastic present.

If it does the covered material items do not satisfy the requirements of paragraph (3), the covered material they must be exempt from the certification requirement pursuant to subdivision (d) of section 42356. **1(d) of the Public Resources Code because it comprises they comprise fiber and does not incorporate any plastics or polymers, as defined in paragraph (16) of subdivision (a) of section 18980.1(a)(27).**

Applicability of this exemption shall be demonstrated as follows:

(A) Independent Producers and a PRO acting on behalf of producers shall maintain documentation demonstrating that this exemption applies while the covered material is offered for sale, sold, or distributed and for three years thereafter.

The documentation must be provided to the Department upon request and must include: (i) **A complete listing of all substances present in the covered material items, including those that are used as ingredients to produce the items or are adhered to the items. Upon request by the Department, the Independent Producer, PRO, or producers of the covered material shall provide a written description of any substance identified pursuant to this paragraph. The description shall demonstrate that the substance does not constitute plastic. (ii) Laboratory test results demonstrating that the items contain no plastic other than plastic present due to contamination that was not caused by equipment or processes used in manufacturing.** The laboratory test must have been conducted by a laboratory having an ISO/IEC 17025:2017 accreditation issued by an accrediting body described in paragraph (1) of subdivision (b) of section 18981. (B) The proof described in subparagraph (A) applies to all covered material items comprising only the substances disclosed pursuant to clause (i) of that subparagraph and manufactured using the same materials and processes used to manufacture the items tested pursuant to clause (ii) of that subparagraph

Suggested edits:

3) d) 1) d) Instead of “they comprise of fiber” say: “Products that are made entirely from a fiber-based substrate”

(i.) Demonstration that the fiber product meets an independent standard that verifies a product does not contain polymers or plastic. The standard shall include sufficient tests and formulation disclosures to prove the absence of such materials

(ii.) Amend “Laboratory test” to ensure there is one specific test method (i.e. FTIR and/or ASTM D6866 Biobased test) to ensure no plastic components are present and producers are all held to the same standard.

Board Notes:

- Public input

- Garen Kazanjian - Recology - organics certification from the USDA is important not to disrupt
- Octavio Victal - Recycles PET thermoforms; concerned about how end markets for plastic are defined

9. Topic – Data gathering, recycling rates, and baselines

Original (from May 8) Relevant section(s):

- Section 18980.3.2 (methodology for recycling rate determination); 18980.9 (source reduction baseline reporting)

Reviewer: **Tedd**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
9			
a.			

Original (from May 8, 2024) Topic #9 Advisory Board Comment:

- a. Comment 9a - It is imperative to the success of SB 54 to collect reliable data to monitor producer compliance and to establish the source reduction baseline. The Advisory Board has several questions related to these topics that it requests that CalRecycle consider:
- How will the recycling rate calculation be affected when some jurisdictions are exempted from the collection requirements?
 - What steps will CalRecycle take to ensure that proprietary data are protected?
 - Can CalRecycle provide additional guidance regarding how a Material Recovery Facility (MRF) will track and report total weight of covered materials not recycled, including but not limited to covered material disposed by processors and end markets?
 - How does contamination, such as food contamination in foodware, affect the recycling rate for a given material, given that recycling rate will be calculated by weight?

Board Notes:

- Ai. above was not addressed in 2nd round of the regs
- 18980.4(b)(4) - p. 109; p. 82 refers to point material is sold
- Tedd and Ajit to work on draft proposed comments on behalf of Board

10. Topic – Oversight of the PRO/producers

Reviewer: **Tedd**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
10			

	page #s)		
a.			
b.			

Original (from May 8, 2024) Topic #10 Advisory Board Comments:

a. Comment 10a – In the spirit of minimizing any future risk of disruption to SB 54 implementation, additional details including the process and timeline for how CalRecycle would provide oversight and accountability in the unlikely event that the PRO Plan is revoked or if the PRO is not meeting required targets, would be helpful for CalRecycle to provide in the regulations.

b. Comment 10b – In the regulations, please direct that in the PRO Plan, the PRO articulate specific responses to comments on the PRO Plan made by the SB 54 Advisory Board, including recommendations that were accepted/incorporated into the PRO Plan as well as recommendations that were not accepted/incorporated into the PRO Plan and why such recommendations were not accepted.

Board Notes:

- If comments were addressed, include appreciation for that in the board comments

11. Topic – Source reduction

Original (from May 8) Relevant section(s):

- PRC 42057

Reviewer: **Patrick**

	Relevant sections in revised regs (Include article / section #s and page #s)	Addressed as recommended? Yes / No / Partially	Suggested new Board comment (Write "N/A" if comment was sufficiently addressed)
11			
a.	Article 9 & Section 18980.8.3. Source Reduction Adjustments	See note below & discuss. Addressed in original Draft Regs. PRO responsible	
b.	Section 18980.8.3. Source Reduction Adjustments B (2)	Mostly addressed in original regs. Update includes new language that Allows for adjustment &	

		update	
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The document describes source reduction calculations within the context of a Producer Responsibility Organization (PRO) plan and an Independent Producer plan. The calculations are complex and involve several steps and considerations. Here's a summary based on the provided text:

General Principles:

- **Baseline:** A baseline is established by the Department, representing the amount of covered material sold, offered for sale, or distributed in the state in a reference year (2023).
- **Reduction:** Source reduction is calculated as the difference between the baseline and the amount of covered material sold, offered for sale, or distributed in subsequent years. This difference is then expressed as a percentage.
- **Adjustment Factors:** The Department allows for adjustment factors to account for economic fluctuations and changes in the number of producers participating in a PRO plan. These factors are designed to prevent bias in the measurement of source reduction. Specific methodologies for applying these factors are detailed in the plan.

Specific Calculations:

The exact calculation depends on whether the PRO or Independent Producer uses the standard methodology or an alternative approved by the Department. The document does not provide a single, simple formula. However, key elements include:

- **Weight:** Calculations are based on the weight of covered materials, not the volume or number of items.
- **Data Sources:** Data comes from various sources, including PRO reports, facilities registered with the Recycling and Disposal Reporting System, local jurisdictions, and other entities.
- **Recycled Material:** The weight of recycled material is calculated at the point it's sold or transferred by a responsible end market as feedstock for new products. The calculation excludes feedstock from other materials.
- **Disposed Material:** The weight of disposed material includes material sent to non-responsible end markets, derivative materials, and recycled organic products.
- **Alternative Methodologies:** PROs and Independent Producers may propose alternative methodologies for calculating recycling rates, subject to Department approval. These alternatives must be justified and demonstrate accuracy.

In short: The document provides a framework for calculating source reduction, but the precise calculation is highly dependent on the specific PRO or Independent Producer plan, the data available, and any approved adjustment factors. The details are complex and require careful review of the relevant sections of the document

Original (from May 8, 2024) Topic #11 Advisory Board Comment:

a. Comment 11a – Please clarify how the regulations affect packaging that has already undergone significant or maximum light-weighting. Also, how will the regulations prevent producers from creating a new product that is not yet light-weighted in order to create opportunities to light-weight the product in the future? In order to accurately measure the actual 25% source reduction requirement, the draft regulations must outline how products that have already been source-reduced to the fullest extent possible will be held to additional source reduction rates and how new products entering the marketplace will be assessed.

b. Comment 11b - Source Reduction targets in SB 54 require a reduction in both the weight and number of plastic components placed on the market in California in 2027, 2030 and 2032 compared to the baseline year of 2023. CalRecycle has proposed that all producers be required to include in their 2027 annual report the total amount of plastic covered material by weight and number of plastic components for which they were the producer in 2023. Many producers did not have the systems in place to capture the weight and number of plastic components they supplied to the California market in 2023, and CMC categories will not be finalized until July 2024. To ensure data accuracy, the regulations should allow producers to provide either 2023 calendar year data or 2025 calendar year data as a proxy for the 2023 baseline year.

Board Notes:

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12. Topic – Material and local jurisdiction exemptions

Original (from May 8) Relevant section(s):

- 18980.2.3. and 18980.2.6(c)

Reviewer: **Patrick**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
12			
a.	ARTICLE 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers	Yes	
b.	Section 18980.2.34. Exemptions for	Yes	

	Certain Covered Materials		
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Re: a.

- **Exemption Application:** Local jurisdictions and recycling service providers can apply for an exemption from including specific covered materials in their collection and recycling programs (Section 42060.5(b) of the Public Resources Code).
- **Application Requirements:** The application must include:
 - Specific covered materials (or categories).
 - Detailed explanation and supporting documentation demonstrating why inclusion is impracticable, considering program efficacy, environmental impacts, and public health and safety.
 - Contact information for relevant individuals and entities.
- **Review Process:** The application is sent to PROs and Independent Producers for review and comment before submission to the Department.
- **Exemption Validity:** Approved exemptions are valid for two years and can be renewed by demonstrating continued impracticability.
- **Exemption Repeal:** The Department can repeal exemptions if circumstances change.
- **Rural Jurisdictions:** A separate process exists for rural counties and jurisdictions to obtain exemptions.

Re b.

- **Application Requirements:** The application must include:
 - Contact information.
 - Unique identification of the covered material.
 - Justification for the exemption, addressing unique challenges in complying with the Act or demonstrating that compliance is impractical or unreasonable. This may include a phase-in plan.
- **Department Review:** The Department reviews the application and may supplement or modify the description of the covered material.
- **Exemption Validity:** Approved exemptions are valid for one year and may be renewed. The Department may extend the exemption if it determines the justification remains valid.
- **Class-Wide Exemptions:** The Department may apply an exemption to an entire class of products or covered materials if the justification applies to the whole class.

Original (from May 8, 2024) Topic #12 Advisory Board Comments:

a. Comment 12a – Like CalRecycle, the Advisory Board wants to help ensure that the process for CalRecycle to consider and provide a decision on proposed material exemptions is transparent and subject to public input. The regulations do not include sufficient detail regarding how CalRecycle will identify products to be exempted, track exempted products, or timelines associated with how long products may be exempted. In order for SB 54 to be effective, the regulations must ensure that covered materials

are included in its EPR system to the extent practicable. Please consider updating section 18980.2.3. to say that CalRecycle will review and provide a preliminary decision on a material exemption, but that the list of proposed exemptions would be available for public input, such as through a meeting(s) of the Advisory Board.

b. Comment 12b – The regulations should specify a high and well-defined threshold above which producers can claim that alternative materials are not feasible (see 18980.2.3 (c)(5)(A)(iv) and 18980.2.3 (c)(5)(A)(iv)).

Board input:

- If an entity is pursuing an exemption, not subject to immediate enforcement?

13. Topic - Expanded polystyrene (EPS)

Relevant section(s):

- PRC section 42041(k) defines EPS
- PRC 42057(i) articulates the recycling rates required by specific dates
- 18980.6.8(a)(6) requires the PRO to report the “Total weight of expanded polystyrene food service ware, by covered material category, sold, distributed, or imported in or into the state.”
- 18980.7.7(a)(6), Section 18980.9.1(b)(2) requires the PRO to include in their annual report “Pursuant to section 42057(i) of the Public Resources Code, provide the recycling rate for all expanded polystyrene by covered material category.”, but does not explicitly identify food service ware EPS.
- Section 18980.10.2(e) requires “Producers of expanded polystyrene food service ware shall provide the total weight of expanded polystyrene food service ware sold, distributed, or imported in or into the state by covered material category.”

Reviewer: **Tedd, Miho**

	Relevant sections in revised regs (Include article / section #s and page #s)	Addressed as recommended? Yes / No / Partially	Suggested new Board comment (Write “N/A” if comment was sufficiently addressed)
13			
a.	Section 18980.3.2. Methodology for Recycling Rate Determination p. 85	Yes: Section 18980.3.2. (h) added	This section clarifies only covered material uses for expanded polystyrene will be considered in determining the reported recycling rate under SB 54. (TW)
b.		Yes: See CalRecycle’s notice sent on 9/11/24 (ML)	This section includes a reference to 18980.3.2 (i) which does not exist. This section should be revised to “...as defined in subdivision (h) of section 18980.3.2,...” (TW)

c.		Yes. First section clarifies that under PRC 42080 that CalRecycle may enforce against PRO or producers for not meeting recycling mandates. Second section describes the Hearing Process. (TW)	

Original (from May 8, 2024) Topic #13 Advisory Board Comments:

a. Comment 13a – The statute and draft regulations seem to only address EPS related to food service ware. EPS is also frequently used in transport and other packaging to protect products from damage during transport and handling. Can CalRecycle please clarify whether the regulations only address EPS food service ware or do they address other forms of EPS packaging as well? If other forms of packaging, such as block EPS, is included in the regulations, how will the PRO and CalRecycle differentiate recycling rates for EPS foodware vs. block EPS for transport packaging and other uses?

b. Comment 13b – Neither the required EPS recycling rates stated in PRC 42057(i) nor the draft regulations articulate how the required recycling rates will be calculated. Can CalRecycle please clarify how EPS recycling rates will be calculated? What data will be collected and analyzed to establish the recycling rate and how is that data verified? Also, how does contamination, such as food contamination, affect the recycling rate for EPS, given that recycling rate will be calculated in part by weight.

CalRecycle sent a notice on 9/11/24

Compliance will be determined based on the statutory requirements. Public Resource Code Section 42041 (ab) requires that the recycling rate be calculated in the following manner:

Mass of EPS covered material recycled

Mass of all EPS covered material recycled + Mass of all EPS covered material disposed
of

The demonstration needs to be received before or on January 1, 2025. Thank you for your attention to this matter.

c. Comment 13c – Please clarify what will happen and by when, if recycling rates for EPS are not achieved. PRC section 42057(i) explicitly prohibits producers from sale, distribution or import of expanded polystyrene food service ware that does not meet those targets. CalRecycle should adopt regulations describing monitoring and enforcement mechanisms that will enforce those prohibitions starting as early as 2025.

Board Notes:

- Our comments were addressed, however we may have questions about ongoing enforcement
- Tedd and Miho to add a recommended comment

14. Topic - Responsible End Markets and Market Development

Original (from May 8) Relevant section(s):

- 18980.1.a(17), 18980.4(a), 18980.4.1(b)(4)

Reviewer: **Tedd, Tom**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write "N/A" if comment was sufficiently addressed)</i>
14			
a.			
b.			
c.	ARTICLE 8: Producer Responsibility Plan Requirements	Partial: how end markets outside the State of California will be regulated to	

	Section 18980.8. Producer Responsibility Plan (f)	ensure compliance with responsible end market requirements/standards was NOT addressed. A process was established as to how community members, inside and outside California, may express questions and concerns about end market facilities, as well as what role CalRecycle will play, in addition to the PRO, to review and respond to such questions and concerns.	
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Original (from May 8, 2024) Topic #14 Advisory Board Comments:

a. Comment 14a – The Advisory Board acknowledges and understands that there is a distinction in the statute and in the draft regulations between “intermediate supply chain entities” and “responsible end markets.” For example, Section 18980.1.a(17) defines an “intermediate supply chain entity” as a recycling service provider, processor, broker, or materials recovery facility that is part of the process before covered materials are transferred to end markets. Given this distinction, the Advisory Board requests that CalRecycle clarify if or how “intermediate supply chain entities” for covered material made of plastic are required to operate in a way that benefits the environment and minimizes risks to public health and worker health and safety.

b. Comment 14b – For all covered materials, more clarification is needed about how the entities that handle covered materials between the bale and the end market are regulated and impacted by responsible end market criteria and related SB 54 requirements.

c. Comment 14c – More clarity is needed in section 18980.4.1(b) regarding how end markets outside the State of California will be regulated to ensure compliance with responsible end market requirements/standards. Also, clarify how community members, inside and outside California, may express questions and concerns about end market facilities. Finally, please also clarify what role CalRecycle will play, in addition to the PRO, to review and respond to such questions and concerns.

Board Notes:

- Veronica noted some new end market categories, including C&D facilities
- Ajit - end market references on p. 109 - we may want to ask for clarification if end market is the same as “responsible end market”

15. Topic - Defining microplastics

Reviewer: *Tedd*

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
15			
a.		Not really. The term ‘microplastic’ no longer appears in the revised regs.	
b.	18980.1(a)(15)	Yes	

Original (from May 8, 2024) Topic #15 Advisory Board Comments:

a. Comment 15a – The Advisory Board recommends that CalRecycle define “microplastics” within the regulations in coordination with other state agencies that are developing or have already developed such a definition, such as the State Water Resources Control Board.

b. Comment 15b – Consider amending the definition of “plastic” in Article 1, paragraph 24 of the regulations to clarify what is meant by “made partially of or contains plastic.”

16. Topic - Defining and registering producers

Reviewer: **Patrick**

	Relevant sections in revised regs <i>(Include article / section #s and page #s)</i>	Addressed as recommended? <i>Yes / No / Partially</i>	Suggested new Board comment <i>(Write “N/A” if comment was sufficiently addressed)</i>
2			
a.	ARTICLE 1: Definitions Section 18980.1. Definitions	No	Confusion on licensee. Help from CAA

b.	ARTICLE 5: Requirements for Producers Section 18980.5. Producer Compliance (a)	No but improved- July 1, 2025	Comments from CAA?
c.	Requirements for Producers Section 18980.5. Producer Compliance (a)	Producers are required to register in July 2025 with plan to April 2026. Yes?	Comments from CAA?

Original (from May 8, 2024) Topic #16 Advisory Board Comments:

a. Comment 16a – There should be no question about who a producer is in the supply chain. Please clarify the definition of “producer” in the regulations.

b. Comment 16b – In order to register all producers as expeditiously as possible, the regulations should include a producer registration deadline, no later than April 1, 2025. Principally, the Advisory Board encourages and supports producer registration as soon as possible in 2024, however the Board recognizes that the regulations will not be adopted until January 1, 2025, and so the Board recommends a regulatory backstop of April 1, 2025, as a deadline for producer registration. Ensuring that all existing producers are registered as soon as possible will enable effective PRO Plan development and implementation.

c. Comment 16c – Currently, the deadline for the PRO plan and the deadline for producers to report data are on April 1, 2026. This timing issue needs to be addressed in the regulations so that there is a practical sequencing of these milestones to enable the PRO to produce a data-driven plan.

Board Notes:

- Definition of producer requires more clarity; and definition of product also needs more clarity
- Deadline for producer registration is useful, and Shane working on additional comments for Board review
- Is there an opportunity within the regulatory process to consider an extension on the PRO planning process?

17. Topic – Outreach to restaurants

Reviewer: **Tedd**

2	Relevant sections in	Addressed as recommended?	Suggested new Board comment (Write “N/A” if comment was sufficiently addressed)
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	revised regs <i>(Include article / section #s and page #s)</i>	<i>Yes / No / Partially</i>	
a.	18980.10(a)	Partially. This section clarifies that retailers and wholesalers and distributors (like restaurants) are not producers	

Original (from May 8, 2024) Advisory Board Comment:

a. Comment 17a – Many restaurants rely on to-go food service ware as an important means for serving their customers. Specific and intentional outreach for this sector will be required to help guide the transition to reusable, recyclable and compostable food service ware, consistent with SB 54. Further, in areas where programs for the collection of covered materials from restaurants does not already exist, the PRO will need to coordinate with local governments and service providers to develop programs that not only enable collection and processing of covered materials, but also education for restaurants and consumers regarding which types of to-go foodware meet the requirements of SB 54. Supporting restaurants to be successful as well as compliant with the requirements of SB 54 should be a component of the needs assessment. Producers of foodware must actively connect the foodware sold to the outreach, collections and processing systems managing those in each community, understanding that most existing municipal mixed materials recycling and composting systems are not currently fit for this task.

Board Notes:

- Tedd recommended additional comments that he will develop for Board consideration