

## Senate Bill No. 54

### CHAPTER 75

An act to amend Section 41821.5 of, to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30 of, and to repeal Section 42064 of, the Public Resources Code, relating to solid waste.

[Approved by Governor June 30, 2022. Filed with Secretary of State June 30, 2022.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 54, Allen. Solid waste: reporting, packaging, and plastic food service ware.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste. The act requires disposal facility operators to submit information to the department on the disposal tonnages that are disposed of at the disposal facility, and requires solid waste handlers and transfer station operators to provide information to disposal facility operators for purposes of that requirement. The act requires recycling and composting operations and facilities to submit periodic information to the department on the types and quantities of materials that are disposed of, sold, or transferred to other recycling or composting facilities or specified entities.

This bill would provide that these reporting requirements do not apply to materials that are used by facilities defined as end users pursuant to the regulations adopted by the department or that are otherwise exempt pursuant to those regulations. The bill would also clarify that recycling is not limited to the processing of materials that would otherwise become solid waste, but also includes processes applied to nonhazardous materials that have value principally as a feedstock for that processing, regardless of whether the materials have been discarded or constitute solid waste. The bill would further clarify that, regardless of whether a recycling operation or facility is required to register and report pursuant to specified regulations adopted by the department, that recycling operation or facility is not a solid waste handler unless the operation or facility is, in fact, handling solid waste.

(2) The California Integrated Waste Management Act of 1989 regulates the disposal, management, and recycling of, among other solid waste, plastic packaging containers and single-use foodware accessories.

The Sustainable Packaging for the State of California Act of 2018 prohibits a food service facility located in a state-owned facility, operating on or acting as a concessionaire on state property or under contract to provide food service to a state agency, from dispensing prepared food using a type of food service packaging unless the type of food service packaging is on

a list that the department publishes and maintains on its internet website that contains types of approved food service packaging that are reusable, recyclable, or compostable.

Existing law makes a legislative declaration that it is the policy goal of the state that, annually, not less than 75% of solid waste generated be source reduced, recycled, or composted.

This bill would establish the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which would cover certain single-use packaging and plastic single-use food service ware, as provided. As part of its comprehensive statutory scheme, the bill would require the producers, as defined, of these covered materials to source reduce plastic covered material, to ensure that covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable or compostable, and to ensure that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates. In particular, the bill would require not less than 65% of plastic covered material to be recycled on and after January 1, 2032, and would authorize the department to increase or decrease the specified recycling rates in certain circumstances. The bill would require certain material types and forms to be considered recyclable in the state, and would authorize those material types and forms to be labeled as recyclable, under certain circumstances.

The bill would prohibit a producer 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 producer responsibility organization (PRO), as prescribed, for the source reduction, collection, processing, and recycling of covered material. Alternatively, the bill would require a producer to comply with the act individually without participating in a PRO's plan. The bill would impose various requirements on PROs and producers in relation to the act, including registration, reporting, recordkeeping, and auditing requirements, and preparing a budget and annual report. The bill would require a PRO or producer to provide certain certifications under penalty of perjury. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would require a PRO to establish a charge for its participant producers sufficient to ensure the requirements of the act are met by the PRO, and would therefore impose a tax. The bill would specify the purposes for which the revenue from the charge may be spent, including the costs of the PRO, the costs of a producer responsibility advisory board that the bill would create, and other costs specified in the PRO's budget.

The bill would require a PRO, commencing in the 2027 calendar year, and until January 1, 2037, to remit a \$500,000,000 surcharge each year, as provided, to the California Department of Tax and Fee Administration (CDTFA) to be deposited into the California Plastic Pollution Mitigation Fund, which the bill would create, and would outline requirements applicable to the collection and administration of the surcharge. The bill would require the PRO to establish and impose on its participant producers an environmental mitigation surcharge in an amount sufficient to raise that

sum and to remit those moneys, and would authorize a PRO to collect up to \$150,000,000 from plastic resin manufacturers who sell plastic covered material to producers who are participants of the PRO, as prescribed. The bill would therefore impose a tax. The bill would require moneys in the California Plastic Pollution Mitigation Fund to be expended, upon appropriation by the Legislature, by specified state agencies on purposes relating to mitigating the environmental impacts of plastic. The bill would prohibit those appropriations from replacing or reducing funding for those purposes from any other source, including certain appropriations in the Budget Act of 2019.

The bill would require the department to adopt regulations to implement the act, as prescribed, and would require the department to publish certain information and lists on its internet website. The bill would require that local jurisdictions and recycling service providers include in their collection and recycling programs covered material contained on the lists published by the department, except as specified. By imposing additional requirements on local jurisdictions, the bill would impose a state-mandated local program. The bill would require the department to prepare, or to select an independent third-party contractor to complete, one or more initial statewide needs assessments designed to determine the necessary steps and investment needed for covered material to achieve the requirements of the act. The bill would require the PRO to reimburse the department for the cost of developing the needs assessments, thereby imposing a tax.

The bill would require a PRO to pay a charge named the “California circular economy administrative fee” to the department and would require the department to set the charge at an amount adequate to cover the department’s and any other state agency’s costs of implementing and enforcing the comprehensive statutory scheme. The bill would require the administrative fees to be deposited into the California Circular Economy Fund, which the bill would create. The bill would make moneys in the fund available upon appropriation by the Legislature to the department for the department’s activities pursuant to the act and to reimburse any outstanding loans made from other funds used to finance the initial costs of the department’s activities. The bill would require the department and agencies receiving funding under the act to report specified information to the Legislature concerning the act’s implementation. The bill would require, if the department determines that a PRO or producer has not achieved specified targets established pursuant to the act, the department to adopt regulations that contain certain provisions of the act, as prescribed.

The bill would provide for its enforcement, including authorizing the department to impose an administrative civil penalty in an amount not to exceed \$50,000 per day per violation, except as specified, on any entity that is not in compliance with the act’s requirements. The bill would require the department to deposit collected penalties into the Circular Economy Penalty Account, which the bill would create. The bill would make moneys in the account available upon appropriation by the Legislature for purposes that further the act.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

*The people of the State of California do enact as follows:*

SECTION 1. Section 41821.5 of the Public Resources Code is amended to read:

41821.5. (a) Disposal facility operators shall submit information on the disposal tonnages by jurisdiction or region of origin that are disposed of at each disposal facility to the department, and to counties that request the information, in a form prescribed by the department. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) (1) Recycling and composting operations and facilities shall submit periodic information to the department on the types and quantities of materials that are disposed of, sold, or transferred to other recycling or composting facilities, end users inside of the state or outside of the state, or exporters, brokers, or transporters for sale inside of the state or outside of the state.

(2) Exporters, brokers, self-haulers, and transporters of recyclables or compost shall submit periodic information to the department on the types, quantities, and destinations of materials that are disposed of, sold, or transferred. The department shall develop regulations implementing this section that define "self-hauler" to include, at a minimum, a person or entity that generates and transports, utilizing its own employees and equipment, more than one cubic yard per week of its own food waste to a location or facility that is not owned and operated by that person or entity.

(3) The information in the reports submitted pursuant to this subdivision may be provided to the department on an aggregated facilitywide basis and may exclude financial data, such as contract terms and conditions (including information on pricing, credit terms, volume discounts, and other proprietary business terms), the jurisdiction of the origin of the materials, or information on the entities from which the materials are received. The department may provide this information to jurisdictions, aggregated by company, upon request. The aggregated information, other than that aggregated by company, is public information.

(4) (A) Notwithstanding paragraph (3), the information in the report submitted pursuant to this subdivision shall include the jurisdiction or region of origin for exported materials that are a mixture of plastic wastes. This subparagraph does not apply to plastic waste consisting of only plastic resin 1, 2, or 5, as assigned to resin types under Section 18015, or a mixture of plastic waste consisting only of a combination of those resins.

(B) The department shall make publicly available information on the jurisdiction or region of origin and tonnage information for exported materials that are a mixture of plastic wastes.

(C) For purposes of this subdivision, “export” has the same definition as set forth in Section 41781.4.

(5) The reporting requirements imposed pursuant to this section do not apply to materials that are used by facilities defined as end users pursuant to the regulations adopted by the department pursuant to this section or that are otherwise exempt pursuant to those regulations.

(c) The department shall adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to implement this section, and that provide a representative accounting of solid wastes and recyclable materials that are handled, processed, or disposed. Those regulations approved by the department shall not impose an unreasonable burden on waste and recycling handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste and recyclables. The department shall include in those regulations both of the following:

(1) Procedures to ensure that an opportunity to comply is provided prior to initiation of enforcement authorized by Section 41821.7.

(2) Factors to be considered in determining penalty amounts that are similar to those provided in Section 45016.

(d) Any person who refuses or fails to submit information required by regulations adopted pursuant to this section is liable for a civil penalty of not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(e) Any person who knowingly or willfully files a false report, or any person who refuses to permit the department or any of its representatives to make inspection or examination of records, or who fails to keep any records for the inspection of the department, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records as

required by regulations adopted pursuant to this section, is liable for a civil penalty of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(f) Liability under this section may be imposed in a civil action, or liability may be imposed administratively pursuant to this article.

(g) (1) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, all records that the facility or operator is reasonably required to keep to allow the department to verify information in, or verification of, the reports required pursuant to subdivisions (a) and (b) and implementing regulations shall be subject to inspection and copying by the department, but shall be confidential and shall not be subject to disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(2) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, an employee of a government entity may, at the permitted solid waste facility, inspect and copy records related to tonnage received at the facility on or after July 1, 2015, and originating within the government entity's geographic jurisdiction. Those records shall be limited to weight tags that identify the hauler, vehicle, quantity, date, type, and origin of waste received at a permitted solid waste facility. Those records shall be available to those government entities for the purposes of subdivision (a) and as necessary to enforce the collection of local fees, but those records shall be confidential and shall not be subject to disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). Names of haulers using specific landfills shall not be disclosed by a government entity unless necessary as part of an administrative or judicial enforcement proceeding to fund local programs or enforce local franchises.

(3) A government entity may petition the superior court for injunctive or declaratory relief to enforce its authority under paragraph (2). The times for responsive pleadings and hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

(4) For purposes of this section, a "government entity" is an entity identified in Section 40145 or an entity formed pursuant to Section 40976.

(5) For purposes of this subdivision, "disposal" and "disposal facility" have the same meanings as prescribed by Sections 40120.1 and 40121, respectively.

(6) Nothing in this subdivision shall be construed to limit or expand the authority of a government entity that may have been provided by this section and implementing regulations as they read on December 31, 2015.

(7) The records subject to inspection and copying by the department pursuant to paragraph (1) or by an employee of a government entity pursuant

to paragraph (2) may be redacted by the operator before inspection to exclude confidential pricing information contained in the records, such as contract terms and conditions (including information on pricing, credit terms, volume discounts, and other proprietary business terms), if the redacted information is not information that is otherwise required to be reported to the department.

(h) Notwithstanding the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code), reports required by this section shall be submitted electronically, using an electronic reporting format system established by the department.

(i) All records provided in accordance with this section shall be subject to Section 40062.

(j) For the purposes of this section:

(1) Recycling operations and facilities are facilities that conduct recycling, as defined in Section 40180, except that recycling is not limited to the processing of materials that would otherwise become solid waste, but also includes processes applied to nonhazardous materials that have value principally as a feedstock for that processing, regardless of whether the materials have been discarded or constitute solid waste.

(2) Regardless of whether a recycling operation or facility is required to register and report pursuant to the regulations adopted by the department pursuant to this section, that recycling operation or facility is not a solid waste handler unless the operation or facility is, in fact, handling solid waste.

SEC. 2. Chapter 3 (commencing with Section 42040) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 3. PLASTIC POLLUTION PREVENTION AND PACKAGING  
PRODUCER RESPONSIBILITY ACT

Article 1. General Provisions

42040. (a) This chapter shall be known, and may be cited, as the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

(b) The Legislature finds and declares all of the following:

(1) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of plastic pollution and fossil fuel extraction.

(2) (A) Local jurisdictions are the backbone of the solid waste management and recycling efforts in California. The new statewide comprehensive circular economy framework established by this chapter is intended to shift the burden of costs to collect, process, and recycle materials from the local jurisdictions to the producers of plastic products.

(B) 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.

(3) (A) In 2021, only 5 percent of postconsumer plastic waste in the United States was recycled, down from a high of 9.5 percent in 2014, when the United State exported millions of tons of plastic waste to China. Even then, much of this material was incinerated or dumped into the environment and not recycled.

(B) It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to ratepayers, and increase system efficiency.

(C) It is also the intent of the Legislature that these improvements will allow California, going forward, to better harmonize curbside collection programs as local jurisdictions will collect material identified as either recyclable or compostable if that material is found to be suitable for curbside collection.

(4) Recycling can be an effective way to reclaim some natural resources, such as metals, glass, paper, and some plastic resins. However, in some circumstances, recycling is cost-prohibitive and an ineffective means to handle the end-of-life of a covered material. In these circumstances, the Legislature acknowledges that some material types cannot effectively meet the requirements of this chapter and producers will be required to eliminate, redesign, or shift packaging or food service ware to a covered material category that can more efficiently meet the requirements of this chapter.

42041. For purposes of this chapter, the following definitions apply:

(a) “Advisory board” means the producer responsibility advisory board established pursuant to Section 42070.

(b) “Bulk or large format packaging” means packaging for a large amount of a product in a large packaging, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

(c) “California circular economy administrative fee” means the fee imposed by the department pursuant to Section 42053.5.

(d) “Concentrate” or “concentration” means reducing the amount of packaging needed for a product by reformulating the product to allow for smaller quantities of the product to be used for the same purpose as the previous, larger quantity.

(e) (1) “Covered material” means both of the following:

(A) Single-use packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.

(B) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. For purposes of this subparagraph, “single-use food service ware” includes both of the following:



(i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.

(ii) Wraps or wrappers and bags sold to food service establishments.

(2) Notwithstanding paragraph (1), “covered material” does not include any of the following:

(A) Packaging used for any of the following products:

(i) Medical products and products defined as devices or prescription drugs, as specified in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).

(ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

(iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) Fortified oral nutritional supplements used for persons who require supplemental or sole source nutrition to meet nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, malnutrition, or failure to thrive, as those terms are defined as by the International Classification of Diseases, Tenth Revision, or other medical conditions as determined by the department.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under Part 178 (commencing with Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(D) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with products covered under the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7.

(H) (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) The material has demonstrated a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

(f) “Covered material category” means a category that includes covered material of a similar type and form, as determined by the department.

(g) “Curbside collection” means a program that includes the collection of material, including, but not limited to, covered materials, by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction.

(h) “Department” means the Department of Resources Recycling and Recovery.

(i) “Disadvantaged community” means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(j) “Eliminate” or “elimination,” with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

(k) “Expanded polystyrene” means blown polystyrene and expanded or extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any technique or techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(l) “Local jurisdiction” means a city, county, city and county, regional agency formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code or Article 3 (commencing with Section 40970) of Chapter 1 of Part 2, or special district that provides solid waste collection services.

(m) “Lightweighting” means reducing the weight or amount of material used in a specific packaging or food service ware without functionally changing the packaging or food service ware. “Lightweighting” does not include changes that result in a recyclable or compostable covered material becoming nonrecyclable or noncompostable or less likely to be recycled or composted.

(n) “Low-income community” means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.

(o) “Malus fee” means a charge imposed by a PRO on a participant producer for a covered material due to the adverse environmental or public health impacts of the covered material.

(p) “Materials recovery facility” or “MRF” means a recycling facility that receives recyclable material, including, but not limited to, any covered material, for mechanical or manual sorting into specification-grade commodities for sale to a broker or end market.

(q) “Needs assessment” means a needs assessment prepared pursuant to Section 42067.

(r) “Optimize” or “optimization” means limiting the amount of covered material used in packaging by meeting product or packaging needs with minimal material. This includes, but is not limited to, eliminating unnecessary components, right-sizing, concentrating, and using bulk or large format packaging.

(s) “Packaging” means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. “Packaging” includes, but is not limited to, all of the following:

(1) Sales packaging or primary packaging intended to provide the user or consumer the individual serving or unit of the product and most closely containing the product, food, or beverage.

(2) Grouped packaging or secondary packaging intended to bundle, sell in bulk, brand, or display the product.

(3) Transport packaging or tertiary packaging intended to protect the product during transport.

(4) Packaging components and ancillary elements integrated into packaging, including ancillary elements directly hung onto or attached to a product and that perform a packaging function, except both of the following:

(A) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, as determined by the department.

(B) A component or element that is an integral part of the product, if all components or elements of the product are intended to be consumed or disposed of together.

(t) “Plastic” means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. “Plastic” includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA)

and polyhydroxybutyrate (PHB). “Plastic” does not include natural rubber or naturally occurring polymers such as proteins or starches.

(u) “Plastic component” means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

(v) “Processing” means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market.

(w) (1) “Producer” means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the covered product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into the state.

(4) “Producer” does not include a person who produces, harvests, and packages an agricultural commodity on the site where the agricultural commodity was grown or raised.

(5) For purposes of this chapter, the sale of covered materials shall be deemed to occur in the state if the covered materials are delivered to the purchaser in the state.

(x) “Producer responsibility organization” or “PRO” means an organization that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 and is formed for the purpose of implementing a plan to meet the requirements of this chapter.

(y) “Producer responsibility plan” or “plan,” unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1.

(z) “Rate of inbound contamination” means the amount of nonrecyclable or noncompostable materials arriving at a materials recovery facility or other recycling or composting facility.

(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.

(2) “Recycle” or “recycling” does not include any of the following:

(A) Combustion.

(B) Incineration.

(C) Energy generation.

(D) Fuel production, except for anaerobic digestion of source separated organic materials.

(E) Other forms of disposal.

(3) To be considered recycled, covered material shall be sent to a responsible end market.

(4) (A) The department may adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements, and contamination standards, or to otherwise implement this paragraph.

(B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:

(i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.

(ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.

(C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.

(D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.

(5) The department’s regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

(ab) “Recycling rate” means the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192, and the amount of covered material recycled, unless and until the department adopts a new methodology for calculating the recycling rate by regulation.

(ac) “Recycling service provider” means a solid waste enterprise that provides solid waste handling services on behalf of a local jurisdiction.

(ad) “Responsible end market” means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety.

(ae) (1) “Retailer” or “wholesaler” means the person or entity who sells covered material in the state to purchasers or offers to purchasers the covered material in the state through any means, including, but not limited to, any of the following:

- (A) Remote offering, including sales outlets or catalogs.
- (B) Electronically through the internet.
- (C) Telephone.
- (D) Mail.
- (E) Direct sales.

(2) A person who sells covered material as a third-party seller using an online marketplace as described in paragraph (3) shall be considered the retailer or wholesaler for purposes of such transactions. The owner or operator of the online marketplace shall not be considered the retailer or wholesaler for such sales.

(3) For purposes of this subdivision, “online marketplace” means a consumer-directed, electronically accessed platform in which all of the following are true:

(A) The platform includes features that enable third-party sellers to sell consumer products directly to consumers in the state without the owner or operator of the platform involved in the transaction other than by providing order processing, payment, storage, shipping, or delivery services.

(B) Third-party sellers use the features described in subparagraph (A) to sell directly to consumers in the state, with title to the consumer product passing from the third-party sellers directly to consumers and not being held by the owner or operator of the online marketplace at any point during the transaction, including upon receipt of the order and throughout the order fulfillment process.

(C) Except as provided by subparagraph (E), the owner or operator of the platform does not directly or indirectly control the covered material used in packaging and shipping of a consumer product in this state.

(D) The person or entity operating the platform has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(E) Third-party sellers agree, pursuant to the platform’s terms and conditions or other enforceable agreement, that they will not use the platform to offer for sale, sell, or distribute into the state covered material that does not meet the requirements of this chapter.

(af) “Reusable” or “refillable” or “reuse” or “refill,” in regard to packaging or food service ware, means either of the following:

(1) For packaging or food service ware that is reused or refilled by a producer, it satisfies all of the following:

(A) Explicitly designed and marketed to be utilized multiple times for the same product, or for another purposeful packaging use in a supply chain.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.

(D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.

(2) For packaging or food service ware that is reused or refilled by a consumer, it satisfies all of the following:

(A) Explicitly designed and marketed to be utilized multiple times for the same product.

(B) Designed for durability to function properly in its original condition for multiple uses.

(C) Supported by adequate and convenient availability of and retail infrastructure for bulk or large format packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

(ag) “Right-size” or “right-sizing” means reducing the amount of material used to package an item by reducing unnecessary space or eliminating unnecessary components of the packaging.

(ah) “Rural area” has the same meaning as defined in Section 50101 of the Health and Safety Code.

(ai) “Single use” means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

(aj) “Source reduction” means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. “Source reduction” does not include either of the following:

(1) Replacing a recyclable or compostable covered material with a nonrecyclable or noncompostable covered material or a covered material that is less likely to be recycled or composted.

(2) Switching from virgin covered material to postconsumer recycled content.

(ak) “Source reduction plan” means the plan prepared as part of the PRO plan in accordance with Section 42057.

(al) “Unexpended funds” means moneys in a PRO’s accounts that the organization is not already obligated to pay pursuant to a contract, claim,

or similar mechanism. “Unexpended funds” excludes the California circular economy administrative fees.

## Article 2. Producer Responsibility

42050. Consistent with the policy goal established in Section 41780.01 and consistent with the waste hierarchy established in Section 40051, producers of covered material sold, offered for sale, imported, or distributed in the state shall achieve all of the following with respect to the materials for which they are the producers:

(a) All plastic covered material is source reduced pursuant to the requirements established in Section 42057 and paragraph (6) of subdivision (a) of Section 42060.

(b) Ensure that all covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable in the state or eligible for being labeled “compostable” in accordance with Chapter 5.7 (commencing with Section 42355).

(c) Ensure that all plastic covered material offered for sale, distributed, or imported in or into the state achieves the following recycling rates:

(1) Not less than 30 percent of covered material on and after January 1, 2028.

(2) Not less than 40 percent of covered material on and after January 1, 2030.

(3) Not less than 65 percent of covered material on and after January 1, 2032.

42051. (a) By January 1, 2024, producers of covered material shall form and join a PRO for the purposes of complying with this chapter. The governing body of the PRO shall submit an application to the department describing how the PRO meets the requirements to be an approved PRO pursuant to this chapter, as described in Section 42061.5. If the department approves the PRO, the PRO shall proceed to carry out the requirements of this chapter. If applications for more than one PRO are submitted to the department by January 1, 2024, the department shall determine which proposed PRO can most effectively implement this chapter.

(b) (1) Except as provided in paragraph (2), upon approval of a plan pursuant to Section 42063, or commencing January 1, 2027, whichever is sooner, a producer shall not sell, offer for sale, import, or distribute covered materials in the state unless the producer is approved to participate in the plan of a PRO that is approved by the department for the source reduction, collection, processing, and recycling of covered material to meet the requirements of this chapter. If an entity does not qualify as a producer and is not subject to this chapter before January 1, 2027, but, after January 1, 2027, becomes a producer by beginning to sell, offer for sale, import, or distribute covered material in the state, the producer shall, within six months, become a participant of the PRO and comply with this chapter.



(2) (A) Notwithstanding paragraph (1), a producer may comply with this chapter individually without participating in a PRO's plan if the producer can demonstrate to the department, and the department determines at its sole discretion, that the producer meets all of the following criteria or can demonstrate a recycling rate of 65 percent for three consecutive years prior to January 1, 2027, and on and after that date demonstrates a recycling rate at or over 70 percent annually:

(i) From the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 5 percent or greater source reduction of its covered materials through shifting to refill, reuse, or elimination.

(ii) From the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 8 percent or greater source reduction of its covered materials through optimization, concentration, right-sizing, bulking, shifting to a nonplastic packaging, or lightweighting, or increasing the number of consumer uses.

(iii) Seventy-five percent of the producer's covered material sold, offered for sale, distributed, or imported into the state is in a covered material category that meets a 30-percent recycling rate as of January 1, 2023.

(B) A producer who chooses to comply with this chapter individually shall assume individual responsibility for complying with this chapter, including, but not limited to, all of the following:

(i) Develop and implement a plan that meets all of the applicable requirements of a producer responsibility plan, including, but not limited to, the review, update, and approval process. The plan shall include a producer source reduction plan that meets all of the applicable requirements of a PRO source reduction plan prepared in accordance with subdivision (d) of Section 42057, including, but not limited to, the review, update, and approval process.

(ii) Fully cover the costs associated with implementing this chapter to the same extent as any other producer participating in a PRO based on the producer's share of covered material.

(iii) Annually report sales, recycling, composting, and source reduction data to the department pursuant to Sections 42052 and 42057 in a manner determined by the department.

(c) Regardless of whether a producer participates in a PRO plan, each producer in the state shall file its primary business address with the department in a manner prescribed by regulation pursuant to this chapter. Each producer shall notify the department of any change in their business address within 30 days. A PRO may satisfy the requirements of this subdivision on behalf of a producer by including the producer's primary business address in a plan, update, or annual report pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 42051.3 or otherwise notifying the department of the address and any changes of address.

(d) Each participant of a PRO with an approved plan shall comply with the requirements of this chapter. The PRO shall notify the department within 30 calendar days of any the following:

(1) The end of any three-month period in which the PRO unsuccessfully attempted to obtain a fee, records, or information from a participant producer, or received incomplete or incorrect records or information pursuant to Section 42052 or 42053.

(2) The date a producer no longer participates in the PRO's approved plan.

(3) Any instance of noncompliance by a participant producer.

(e) The PRO may organize itself into subcommittees or some other similar structure, including delineation by covered material category, to ensure sufficient focus on each covered material category to better enable each category to meet the recycling rates required in subdivision (c) of Section 42050.

42051.1. (a) As a condition of producer responsibility plan approval, the PRO plan shall comply with the regulations adopted by the department pursuant to Section 42060. The PRO shall submit a plan and budget that includes the provisions necessary for the department to ensure producers covered under the plan comply with this chapter.

(b) The plan shall include all of the following:

(1) Actions and investments that the PRO will implement in order to meet the requirements of this chapter and address the needs and investments identified in the needs assessment.

(2) The source reduction plan required pursuant to Section 42057. For any covered material that is not reasonably anticipated by the PRO to achieve the requirements of this chapter, the PRO shall include in the plan a timeline and actions to discontinue use of the covered material category.

(3) Technologies and means that will be utilized to achieve recycling requirements, including demonstration that the means and technologies meet the conditions specified in subdivision (aa) of Section 42041.

(c) The plan shall include objective and measurable criteria whenever possible, and describe all of the following:

(1) How the PRO will meet the requirements of this chapter, including, but not limited to, how it will, in an economically efficient and practical manner, provide for the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050 based on the needs assessments.

(2) 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. This includes, but is not limited to, actions necessary to sort, segregate, break or flake, and process material to specifications for sale to a responsible end market. For purposes of this paragraph, "specifications" means the third-party purchasing specifications issued by a buyer or buyers of recycled materials for reprocessing into a new product.

(3) (A) How the plan is supplemental to, and not in conflict with, disruptive of, or adversely affecting, the performance of the solid waste network providing services in accordance with local solid waste handling

requirements and the intent described in Section 40004, and how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure.

(B) Except as specified in subdivisions (b), (c), (d), and (e) of Section 42060.5, how the plan will be implemented in a manner utilizing solid waste collection programs and solid waste facilities as the designated system for the curbside collection and processing of covered material.

(4) In accordance with Section 40059, how the plan and the activities undertaken pursuant to the plan will be implemented in compliance with state and local laws, rules, and regulations applicable to solid waste handling and in a manner that does not violate existing franchise agreements.

(5) How covered material will be collected, processed, and managed, and recycled, remanufactured, or composted, consistent with the goals, standards, and practices required by this chapter, including ensuring covered material collected for recycling will be transferred to viable responsible end markets for processing into new packaging or products, including, but not limited to, how the plan will enhance or expand viable responsible end markets in California including manufacturing.

(6) Arrangements with processors or recyclers to ensure that covered materials that are not collected through a curbside collection program are collected and recycled at a viable responsible end market, including any investment that will be made to cover the cost of the covered material being processed or recycled by processors or recyclers.

(7) Arrangements to establish and fund reuse or refill infrastructure, fund facility retrofits, or other needed infrastructure to eliminate plastic covered material, shift covered material from plastic to a nonplastic covered material category, or any other actions taken, or that will be taken, to implement the source reduction requirements pursuant to Section 42057.

(8) How postconsumer recycled content will be incorporated into covered material, including the amounts of postconsumer recycled content.

(9) How the plan will be implemented in a manner consistent with the waste hierarchy established in Section 40051.

(d) (1) The plan shall include a fee for participants of the PRO consistent with the provisions of Section 42053, set forth the calculation of the fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO's approved plan.

(2) The plan shall include a description of the fee structure and a schedule of the fees actually charged to producers who are participants of a PRO's approved plan.

(e) The plan shall include efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems. The PRO shall ensure coordination between these efforts and existing educational and promotional efforts. These may include, but are not limited to, all of the following:

(1) Education and engagement to reduce the rate of inbound contamination or unwanted materials.

(2) Outreach to obtain consistently high levels of public participation in and use of collection services and reuse and refill systems.

(3) Education and engagement with residents on proper recycling, composting, and reuse and refill behaviors.

(4) Support for increased statewide and local outreach needed to achieve the plan's goals.

(f) The plan shall include a closure or transfer plan to settle the affairs of the PRO that ensures that producers who are participants of the PRO's approved plan will continue to meet their obligations in the event of dissolution of the organization or revocation of a plan by the department and that describes a process for notifying the department, the advisory board, local jurisdictions, and any contractors of the dissolution. The closure or transfer plan shall provide for sufficient reserve funds in the trust fund or escrow account established pursuant to Section 42056 to allow the PRO to satisfy all obligations in the event of dissolution of the PRO until the participants of the PRO's approved plan have become a participant of a different PRO's approved plan.

(g) (1) The plan shall include a process for determining and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter. Payment of these costs shall be reflected in the budget pursuant to subdivision (j).

(2) The plan shall include a process to resolve disputes for determining and paying the reasonable costs pursuant to paragraph (1) that arise between the PRO and a local jurisdiction or a recycling service provider. This process shall be reviewed by the advisory board to ensure the PRO covers costs related to this chapter and shall become effective upon plan approval by the department.

(h) The plan shall include the source reduction data specified in subdivision (c) of Section 42057.

(i) (1) The plan shall include consideration of the needs assessment and any recommended investments to meet the needs identified in the needs assessments and inform the budget.

(2) The budget shall not propose investing in activities in violation of Section 40004 or an agreement entered into pursuant to Section 40059 and shall include a mechanism to disburse funds for identified activities.

(3) The budget may include, but shall not be limited to, elements that will accomplish all of the following:

(A) Expanding access to or improvement of curbside collection services wherever feasible.

(B) Expanding access to dropoff recycling services or other mechanisms where curbside collection services are not feasible, or as necessary in order to supplement curbside collection services to achieve the requirements of this chapter.

(C) Expanding access to collection services in public spaces.

(D) Providing or facilitating deployment of innovative enhanced collection, composting, and recycling systems and innovative recycling systems within a recycling center or MRF that utilizes advanced technology,

such as artificial intelligence and robotics, to improve the identification and sorting of covered materials, where feasible.

(E) Creation of on-premises access to recycling or composting services for multifamily residences.

(F) Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.

(G) Enhancing existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.

(H) Infrastructure or other mechanisms needed to implement a source reduction plan, including, but not limited to, investments in reuse, refill, and composting infrastructure.

(I) Infrastructure or other activities needed to achieve recycling rates for all covered material under the plan and ensure covered material is recyclable or compostable.

(4) In developing the budget, the PRO may delineate investments the PRO will make based on covered material categories.

(j) (1) The plan shall include a budget designed to fully fund the costs necessary to implement this chapter. The budget shall include, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:

(A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.

(B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

(C) Reimbursing costs incurred by department and the California Department of Tax and Fee Administration.

(D) Administering the PRO.

(E) Environmental mitigation activities associated with Section 42064.

(F) Investments to develop and sustain viable responsible end markets for each covered material category.

(G) Other investments necessary to implement the plan and achieve the source reduction, recyclability and compostability, recycling rate, and other requirements of this chapter, including, but not limited to, ensuring that plan implementation avoids and minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas.

(H) If reasonable and able to be discretely directed, funding derived from a material type may be spent on investments needed for that specific material type.

(2) A producer or PRO shall not expend revenue collected for implementation of the plan for any of the following purposes:

(A) To pay an administrative civil penalty pursuant to Section 42081.

(B) To pay costs associated with litigation between the producer or organization and the state.

(C) To compensate a person whose position is primarily representing the PRO relative to the passage, defeat, approval, or modification of legislation that is being considered by a local, state, or federal government body, nor shall the PRO use or permit the use of these funds for paid advertisement 30 calendar days prior to or during a legislative session for the purposes of encouraging the passage, defeat, approval, or modification of legislation that is being considered, or was considered during the previous legislative session.

(D) To subsidize, incentivize, or otherwise support incineration, engineered municipal solid waste conversion, the production of energy or fuels, except for fuels produced using anaerobic digestion of source separated organic materials, or other disposal activities.

(3) (A) A PRO shall not maintain total program reserves exceeding 60 percent of its annual operating expenses, consistent with the requirements of the Financial Accounting Standards Board's Accounting Standards Update 2016-14, Not-for-Profit Entities (Topic 958), and any future updates to that standard.

(B) The department, in approving the annual PRO budget, may authorize the total reserves to be increased to up to 75 percent of the PRO's annual operating expenses if the department determines the increase is necessary to implement the requirements of this chapter.

(C) If a PRO's reserves exceed the amount specified in subparagraph (A) or (B), the department may require the PRO or a participant producer to increase spending on implementing the requirements of this chapter.

(k) Consistent with subdivision (l), as part of the plan, the PRO or a participant producer may rely on a range of means to collect and recycle or compost various categories of covered materials that are not collected and recycled or composted through a curbside collection program, including, but not limited to, dropoff recycling services and retailer take-back.

(l) (1) A plan shall include curbside recycling and composting collection for covered materials under any of the following circumstances:

(A) The category of covered materials can be made suitable for curbside collection and can be effectively sorted by the facilities receiving the curbside collected material for recycling or composting.

(B) The recycling facility providing processing and sorting service, in consultation with the local jurisdiction, agrees to include the category of covered materials as an accepted material for recycling or composting and agrees to collect and sort the material in a manner that achieves the quality necessary for recycling and remanufacturing or composting.

(C) The provider of the curbside collection and recycling or composting service agrees to the costs arrangement.

(2) If a MRF chooses to send material to another sorting facility for additional sorting and recycling of covered materials, the PRO shall provide the initial MRF a rebate based on criteria the PRO shall develop to cover transportation costs of the covered materials provided the covered material is free of toxic or hazardous materials.

(m) The plan shall include specific measures to ensure that producers participating in the plan comply with the requirements of the plan and this chapter. Those measures shall include, at a minimum, all of the following elements:

(1) Adequate incentives for compliance, including, but not limited to, fees for failing to provide accurate and timely information required to be provided to the PRO or otherwise materially violating requirements of the plan or this chapter. Notwithstanding the PRO's assessment of a fee, the department may take enforcement action pursuant to Article 5 (commencing with Section 42080) against individual producers or the PRO in violation of this chapter.

(2) Protocols to ensure that the PRO becomes aware, within a reasonable time, of producers' violations of the requirements of the plan or this chapter.

(3) Criteria for determining when a producer's performance merits terminating the producer's participation in the PRO's plan, and a process for making that determination.

(4) Record maintenance protocols requiring the PRO to maintain records sufficient to demonstrate whether each producer participating in the plan has complied with the requirements of the plan and this chapter for at least the previous three years. Those protocols shall ensure that all records remain reasonably accessible by the department upon request.

(5) The plan shall include the specific data information required under subdivision (c) of Section 42057.

(n) The PRO shall ensure that the plan implementation avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas and vulnerable communities outside the state.

42051.2. (a) Before submitting the plan to the department for approval, the PRO shall submit a proposed plan to the advisory board for review and comment pursuant to subdivision (h) of Section 42070. The advisory board may provide written comments within 60 calendar days. The PRO shall consider the comments, along with any public comments, and may incorporate these comments into the plan.

(b) (1) The PRO shall submit the plan to the department with revisions, if any, in response to comments by the advisory board or public within 120 calendar days of receipt of the advisory board's comments.

(2) The department shall review the plan for compliance with this chapter. Within 90 calendar days of receipt of the plan from the PRO, the department shall, in accordance with Section 42063, respond with an approval, disapproval, conditional approval, request for additional information, or timeline for a decision on approval or disapproval.

(3) If the department conditionally approves the plan pursuant to paragraph (2), the department shall explain, in writing, how the plan or parts of the plan does not comply with this chapter, and the PRO shall ensure the conditions are met and resubmit a revised plan within 12 months.

(4) If the department disapproves the plan pursuant to paragraph (2), the department shall explain, in writing, how the plan does not comply with this chapter, and the PRO shall resubmit a plan to the department. If the department finds that the plan resubmitted by the PRO does not comply with the requirements of this chapter, the PRO shall not be deemed in compliance with this chapter until the organization submits a plan that the department finds complies with the requirements of this chapter.

(5) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by the PRO is not a public record for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department shall release financial, production, or sales data in summary form only so the information cannot be attributable to a specific producer, retailer, or wholesaler, or to any other entity.

(c) Within 90 calendar days after approval or conditional approval of the plan by the department, the PRO shall implement the approved plan and post the plan on the PRO's internet website.

(d) (1) Except as provided in subdivision (e), a plan approved by the department under this section is valid for five years.

(2) No less than 180 calendar days before a plan's five-year expiration date, the PRO shall submit a proposed updated plan to be reviewed by the advisory board and approved by the department for an additional five years. An updated plan submitted for approval under this paragraph shall satisfy the requirements of this chapter, including Section 42051.1, and describe any changes from the previously approved plan. The department may allow for an extension of a previously approved plan until a plan submitted under this paragraph is approved or rejected.

(e) (1) An amendment to the plan that modifies actions to meet the obligations set forth in Section 42050, modifies the setting and collection of fees, changes the implementation of this chapter with respect to costs incurred by local governments or recycling service providers, or changes the funding of costs to implement the plan, including costs to source reduce covered material, shall not be made to an approved plan unless the proposed amendment is submitted to the advisory board for comment, and approved



by the department. That submission and review shall be conducted according to the same process set forth in subdivision (d).

(2) The department's rejection or revocation of a plan or plan amendment submitted for approval under this section does not relieve the PRO or a participant producer from its obligations pursuant to the previously approved plan or the requirements of this chapter.

(3) The submission of a plan amendment for approval under this section does not relieve the PRO or a participant producer from its obligations pursuant to the approved plan prior to action by the department on the plan amendment.

(4) The department may approve or disapprove a proposed plan amendment based on a determination of whether the amendment is sufficient to result in actions reasonably likely to meet the requirements of this chapter.

42051.3. (a) (1) A PRO shall annually submit to the department and make publicly available on its internet website an annual report and budget that describes how the PRO is implementing the approved plan and how the PRO has complied with the requirements of this chapter and its implementing regulations.

(2) The annual report shall describe in detail progress made toward meeting or exceeding the requirements in Section 42050 and shall include an evaluation of whether the PRO is reasonably likely to meet those requirements. If the PRO is not reasonably likely to meet those requirements, the PRO shall submit to the department an amendment to the plan to include additional measures to be implemented to ensure the requirements are met.

(3) The annual report shall include all of the following:

(A) The PRO's cost and revenues, including an updated budget and any updates to the fee schedule necessary to ensure the revenues are sufficient to cover the full costs of implementing this chapter in the upcoming year.

(B) An updated list of the names and contact information of each participant of the plan.

(C) A description of outreach efforts and education to consumers.

(D) A report on activities the PRO has taken to implement each provision of the plan, including, but not limited to, all of the following:

(i) A description of the methods used to collect, transport, process, and recycle or compost covered material.

(ii) The recycling technologies and means that will be utilized to achieve recycling requirements, including demonstration that the means and technologies meet the conditions specified in subdivision (aa) of Section 42041.

(iii) Progress made in meeting source reduction goals.

(iv) Current recycling rates and progress made in meeting recycling rates and any investments made to achieve recycling rate requirements.

(E) The source reduction data specified in subdivision (c) of Section 42057.

(b) (1) Within 90 calendar days of receiving an annual report, the department shall, in accordance with Section 42063, review the report and notify the PRO of any deficiencies in the annual report. No later than 60

calendar days after receiving this notice from the department, the PRO shall provide additional information, modifications, or corrections in response to the department's notification.

(2) Within 90 calendar days of receipt of an annual report deemed complete, the department shall review the report for compliance with this chapter and shall approve, disapprove, or conditionally approve the annual report. As part of this review, the department shall evaluate the annual report to determine whether the PRO, in light of its implementation of the plan and any amendments or pending amendments to the plan pursuant to paragraph (1) of subdivision (e) of Section 42051.2, is reasonably likely to meet the requirements of the plan and this chapter.

(3) (A) If the department conditionally approves or disapproves the annual report, the PRO shall resubmit a revised annual report addressing the department's written reasons for its decision within 30 calendar days of the conditional approval or disapproval.

(B) The department, within 60 calendar days from the date a PRO resubmits a revised annual report, shall approve or disapprove a final annual report.

(4) If the department disapproves a revised annual report submitted pursuant to subparagraph (A) of paragraph (3), the PRO may submit only one additional final annual report, subject to review in accordance with subparagraph (B) of paragraph (3), which shall include the revisions necessary for approval by the department.

(5) If a PRO fails to submit an annual report that obtains approval by the department, the department may deem the PRO no longer in compliance with this chapter.

42052. (a) A PRO shall register in the department's Recycling and Disposal Reporting System, or an alternative reporting system established by the department, and annually submit to the system all of the following information on behalf of each producer who participates in the PRO's approved plan:

(1) The aggregate quantities in total weight and the number of plastic components of covered material, by covered material category and by type of plastic component, manufactured, sold, distributed, or imported in or into the state, as the department deems necessary to determine compliance with this chapter in a form, manner, and frequency determined by the department pursuant to paragraph (2) of subdivision (a) of Section 42060.

(2) The aggregate quantities in total weight and number of plastic components, of covered material by covered material category recycled as the department deems necessary to determine compliance with this chapter in a form and manner determined by the department pursuant to paragraph (2) of subdivision (a) of Section 42060.

(3) For covered material not collected through a curbside collection program, the PRO shall collect, validate, and submit to the system data demonstrating take-back and dropoff and alternative collection and recycling program performance, including the amount and type of covered materials collected.

(4) Any additional information deemed necessary by the department to collect and report data pursuant to subdivision (a) of Section 42060.

(b) A PRO shall not require a producer who is a participant of the PRO's approved plan to report to the PRO covered materials that the producer is required to report pursuant to another PRO's plan or to another department-authorized stewardship organization's plan, or that the producer directly reports to the department.

(c) A producer or PRO shall respond within 14 calendar days to a request by the department for additional data. The department may grant additional time for responding that shall not exceed 60 calendar days. To determine if an extension of time is warranted, the department shall take into account, at a minimum, all of the following considerations:

(1) The amount of data requested.

(2) Whether the producer or PRO has the data readily available.

(3) Whether the data is necessary to ensure compliance with Section 42050.

(4) Whether the producer or PRO needs to obtain the data from a third party.

(5) The producer's or PRO's timely compliance with any previous data requests.

(d) A producer or PRO shall maintain records of covered materials offered for sale, sold, distributed, or imported in or into the state in a form and manner established by the department that the department determines is necessary to determine if a producer is in compliance with this chapter during an audit.

(e) Data provided by producers and collected under this section shall only be used by the PRO for the purposes of this chapter. The PRO shall consider all information provided to it by producers in compliance with this chapter to be confidential and shall disclose the information to other producers or the public or allow the use of the information for commercial purposes. This section does not prohibit the PRO from providing data requested by the department or from releasing aggregated data that does not identify data in connection with a specific responsible entity.

(f) A PRO shall provide contact information for any of the PRO's registered participants to the department upon request.

42053. (a) (1) As part of its producer responsibility plan pursuant to Section 42051.1, a PRO shall establish a fee for its participants sufficient to ensure the requirements of this chapter are met by the PRO and the plan is fully implemented. The fee shall be based on a fee schedule to be developed by the PRO pursuant to subdivision (c). Development of the fee schedule shall ensure that the PRO budget included in the plan is fully funded. The fee shall not be passed on to consumers as a separate item on a receipt or invoice.

(2) The PRO shall adjust any fee schedules at least every year or more frequently if needed in order to fully cover the expenses approved budget.

(3) A producer that is a participant of a PRO's approved plan shall pay the fee required by this section and, upon request, provide the PRO with

records or other information necessary for the PRO to meet the PRO's requirements under this chapter.

(b) During the first two years of operation and during the preparation of the plan developed pursuant to Section 42051.1, the PRO shall determine the fee schedule for each producer based on estimated costs of implementing the plan, operating costs, the cost of completing the needs assessment, the costs to cover the environmental mitigation requirements of Section 42064, and the costs to reimburse the department. In the third year and each successive year of operation, each producer shall pay an annual fee as established in the PRO plan based on the factors described in subdivision (d).

(c) The fee schedule required pursuant to subdivision (a) shall include all of the following:

(1) Individual assessments imposed on a producer due to unique characteristics of their covered material, as described in subdivision (d).

(2) Any adjustments pursuant to subdivision (e).

(3) The California circular economy administrative fee.

(4) Reimbursing the department for costs to administer the advisory board.

(5) Any fees associated with environmental mitigation activities associated with Section 42064.

(6) The costs of the PRO, including, but not limited to, staff and the costs associated with the development and implementation of the producer responsibility plan.

(7) Any other costs described in subdivision (j) of Section 42051.1.

(d) A PRO shall structure the fee schedule required pursuant to subdivision (a), delineated by covered material category and based on the following factors:

(1) The costs to ensure each covered material category meets the requirements of this chapter. Covered material that is easier and less expensive to recycle or compost or that is designed to be recycled into a similar covered material or a material that is easier to be composted shall be subject to lower fees. The costs may include all of the following:

(A) Costs to develop and sustain viable responsible end markets for each covered material category.

(B) Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of the covered material either through curbside collection or other means.

(C) Costs incurred by local jurisdictions or recycling service providers to process and transport covered materials in a manner and quality sufficient for acceptance by viable responsible end markets. This includes costs incurred by local jurisdictions or recycling service providers to reduce or mitigate the rate of inbound contamination by noncertified compostable products at composting facilities. These costs may vary by local jurisdiction.

(D) Other costs necessary to implement the plan and achieve the source reduction, recyclability and compostability, recycling rate, and other

requirements of this chapter, including, but not limited to, ensuring that plan implementation avoids and minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas.

(E) Costs incurred by local jurisdictions or recycling service providers for any waste stream sampling and reporting required by this chapter and for any costs incurred to educate ratepayers to improve the preparation and sorting, as needed, of covered material.

(2) If recycling or composting of the covered material is made more difficult by the incorporation of specific elements, including, but not limited to, inks, labels, and adhesives that may be detrimental to recycling or composting according to the Association of Plastic Recyclers design guide or other relevant industry association, or criteria established by the department, the fee for that covered material shall be sufficient to account for the increased cost to manage that covered material.

(3) The commodity value of the covered material based on an independent index or the reported commodity value of materials of equivalent quality of the covered material.

(4) Costs incurred by the PRO to assist producers to meet the source reduction requirements pursuant to Section 42057.

(e) The fee required pursuant to subdivision (a) shall be adjusted using malus fees or credits for participant producers, with those adjustments based on any of the following, as applicable:

(1) The percentage of postconsumer recycled content in the participant producer's covered materials. The percentage of postconsumer recycled content shall be validated through an independent third party approved by the department to perform validation services to ensure that the percentage exceeds the minimum requirements for the covered material, as long as the recycled content does not disrupt the potential for future recycling.

(2) Source reduction related to right-sizing, optimization, and bulking of packaging, or concentrating the product packaged to reduce packaging.

(3) Standardization of packaging materials that simplifies the processing, marketing, sorting, and recycling or composting of covered materials.

(4) Presence of hazardous material as identified by the Office of Environmental Health Hazard Assessment, the Department of Toxic Substances Control, or the department.

(5) Actions taken by the producer, including clear and accurate disposal, recycling or composting, or reuse and refill labeling and instructions, that comply with Chapter 5.7 (commencing with Section 42335), including paragraph (6) of subdivision (d) of Section 42355.51, that improve consumer behavior related to sorting and proper disposal.

(6) Actions taken by the producer to accelerate source reduction and to invest in sustained and robust reuse and refill systems. The PRO may create a mechanism to allow producers to receive a credit for achieving source reduction beyond what producers of similar covered material are achieving. The revenue for that credit shall be paid for by charging producers not achieving source reduction for similar products a malus fee.

(7) Plastic covered materials derived from renewable materials shall be subject to a reduced fee relative to plastic covered material derived from a nonrenewable material.

(8) Certified compostable covered materials that do not contain toxic additives shall be subject to a reduced fee, as determined by the PRO.

(9) Covered material that contains toxic heavy metals, pathogens, or additives shall be subject to an increased fee.

(f) In addition to the annual schedule of fees approved in the plan, the PRO fee schedule may include a special assessment, charged to the participant producers of a particular covered material category, to be imposed on that particular category of covered material at the request of those producers if the nature of the covered material imposes unusual costs in collection or processing or requires special actions to address effective access to recycling, composting, or successful processing. The revenue from the special assessment shall be used to make system improvements for the specific covered materials or products on which the special assessment was applied.

(g) Fees paid to the PRO pursuant to subdivision (a) shall be used to implement the plan and fund the budget.

42053.5. (a) (1) On or before the end of the 2026–27 fiscal year, and once every three months thereafter, a PRO shall pay to the department the California circular economy administrative fee. The department shall set the fee at an amount adequate to cover the department’s and any other state agency’s full costs of implementing and enforcing this chapter. The total amount of fees collected shall not exceed the state’s actual and reasonable costs to implement and enforce this chapter. These costs may include the actual and reasonable costs associated with regulatory activities pursuant to this chapter before submission of producer responsibility plans pursuant to Section 42051.1 and annual reports pursuant to Section 42051.3.

(2) For a PRO, the administrative fee paid pursuant to paragraph (1) shall be funded by the producers that make up the PRO.

(b) The department shall deposit administrative fees paid by a PRO pursuant to subdivision (a) into the California Circular Economy Fund, which is hereby established in the State Treasury. Upon appropriation by the Legislature, moneys in the fund may be expended by the department for the department’s activities pursuant to this chapter and to reimburse any outstanding loans made from other funds used to finance the initial costs of the department’s activities pursuant to this chapter. Moneys in the fund shall not be expended for any purpose not enumerated in this chapter.

42054. (a) A PRO shall keep minutes, books, and records that clearly reflect the activities and transactions of the PRO.

(b) The accounting books of the PRO shall be audited at least once per calendar year at the PRO’s expense by an independent public accountant certified in the United States and retained by the PRO.

(c) The PRO shall provide the audit to the department with the annual report required pursuant to Section 42051.3. The department shall review the audit for compliance with this chapter and consistency with the plan

adopted pursuant to Section 42051.1 and shall post the audit publicly on its internet website. The department shall notify the PRO of any compliance issues or inconsistencies.

(d) (1) The department may conduct its own audit.

(2) The PRO shall reimburse the department for the costs of the department's audit.

(3) The PRO may obtain copies of the department's audit upon request.

(e) The department shall hold its audit confidentially to the extent described in subdivision (e) of Section 42080.

42055. (a) Except as provided in subdivision (c), an action specified in subdivision (b) that is taken by a PRO or its participants is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code).

(b) Subdivision (a) shall apply to all of the following actions taken by a PRO or its participants:

(1) The creation, implementation, or management of a plan approved by the department pursuant to this chapter and the types or quantities of covered material managed pursuant to an approved plan.

(2) The cost and structure of an approved plan.

(3) The establishment, administration, collection, or disbursement of any fees associated with funding the implementation of this chapter.

(c) Subdivision (a) shall not apply to an agreement that does any of the following:

(1) Fixes a price of or for covered material, except for an agreement related to costs or fees associated with participation in a plan approved or conditionally approved by the department and otherwise in accordance with this chapter.

(2) Fixes the output or production of covered material.

(3) Restricts the geographic area in which, or customers to whom, covered material will be sold, or where or by whom covered material may be purchased.

42056. (a) A PRO, as part of its producer responsibility plan, shall set up a trust fund or an escrow account in California, into which it shall deposit all unexpended funds for use in accordance with this section if the plan terminates or is revoked or the PRO dissolves in accordance with the closure or transfer plan required pursuant to subdivision (f) of Section 42051.1.

(b) If a plan terminates or is revoked, the trustee or escrow agent of a trust fund or escrow account set up pursuant to subdivision (a) shall do both of the following, starting within 30 calendar days:

(1) Accept payments directly from producers into the trust fund or escrow account that would have been made to the PRO before the plan's termination or revocation.

(2) Make payments from the trust fund or escrow account as the department shall direct, in writing, to implement the most recently approved plan.

(c) If a new plan has not been approved by the department within one year after termination or revocation, the department may make modifications to the previously approved plan, as it deems necessary, and continue to direct payments from the trust fund or escrow account in accordance with paragraph (2) of subdivision (b) to implement the modified plan.

(d) A trustee or escrow agent in possession of PRO funds shall, as directed by the department, transfer those funds to a successor PRO with an approved plan.

42057. (a) (1) By January 1, 2032, a PRO acting on behalf of participants of the PRO's approved plan shall develop and implement a plan to achieve the 25-percent reduction by weight and 25 percent by plastic component source reduction requirement for covered material sold, offered for sale, or distributed in the state. The PRO shall establish enforceable agreements with each of its approved plan participants to implement this section.

(2) Source reduction shall be achieved by a PRO in the following manner:

(A) At least 10 percent of the plastic covered material sold, offered for sale, or distributed in the state by its participant producers shall be source reduced through shifting a plastic covered material to refillable or reusable packaging or food service ware or through eliminating a plastic component.

(B) (i) The remaining source reduction of the plastic covered material sold, offered for sale, or distributed in the state by its participant producers not achieved pursuant to subparagraph (A) shall be source reduced through concentration, right-sizing, lightweighting, or shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers, or shifting from a plastic covered material to a nonplastic covered material. No more than 8 percent of the plastic covered material sold, offered for sale, or distributed in the state by its participant producers shall be source reduced through an alternative compliance formula developed by the PRO, subject to approval by the department, that offers source reduction credit on a sliding scale based on the ratio of virgin plastic to postconsumer recycled content plastic to producers who incorporate postconsumer recycled content into plastic covered material. A producer shall only receive this alternative source reduction credit if the postconsumer recycled content is able to be validated and is validated by a third party, such as the Association of Plastic Recyclers, through its APR Postconsumer Resin Certification Program, or a similar third party approved by the department, and the content does not contain intentionally added perfluoroalkyl and polyfluoroalkyl substances.

(ii) The resulting source reduction of each action taken to optimize, eliminate, right-size, concentrate, shift to bulk or large format packaging, or switch to a nonplastic covered material shall be counted once for the purposes of meeting the source reduction requirements.



(C) By January 1, 2027, the PRO shall source reduce no less than 10 percent of plastic covered material sold, offered for sale, or distributed in the state by its participant producers, with no less than 2 percent of plastic covered material sold, offered for sale, or distributed in the state by its participant producers source reduced through shifting to reusable or refillable packaging and food service ware systems.

(D) By January 1, 2030, the PRO shall source reduce no less than 20 percent of plastic covered material sold, offered for sale, or distributed in the state by its participant producers, with no less than 4 percent of plastic covered material of plastic covered material sold, offered for sale, or distributed in the state by its participant producers source reduced through shifting to reusable or refillable packaging and food service ware systems.

(b) By January 1, 2025, the department shall establish a baseline for the 25-percent reduction required in subdivision (a) based on the amount of plastic covered material, including the number of products packaged in covered material, that was sold, offered for sale, or distributed in the state in the 2023 calendar year.

(c) As part of any producer responsibility plan, plan update, or annual report submitted to the department, the PRO shall report the following data, disaggregated by each participant producer:

(1) The amount of plastic covered material and products sold in plastic covered material, including the number of plastic components and weight of plastic covered material, sold, offered for sale, or distributed in the state.

(2) The number of plastic components and the weight of plastic covered material shifted to a refillable or reusable packaging or food service ware.

(3) The number of plastic components and the weight of plastic covered material eliminated.

(4) The number of plastic components and the weight of plastic covered material shifted from a plastic covered material to a nonplastic covered material.

(5) The number of plastic components and the weight of plastic covered material reduced through concentration, right-sizing, and shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers.

(6) The amount of postconsumer recycled content used compared to virgin plastic in covered material.

(d) Producers who are members of the PRO shall submit to the PRO individual source reduction plans that include both of the following:

(1) In the first individual producer source reduction plan, the producer shall include any amount of covered material, by number of plastic components and weight of covered material, the producer source reduced since January 1, 2013.

(2) The amount of plastic covered material, by number of plastic components and weight of plastic covered material, the producer plans to source reduce by January 1, 2027, January 1, 2030, and January 1, 2032. The producer shall describe how much will be source reduced in each of the following ways:

(A) The number of plastic components and the weight of plastic covered material shifted to a refillable or reusable package.

(B) The number of plastic components and the weight of plastic covered material eliminated.

(C) The number of plastic components and the weight of plastic covered material shifted from a plastic covered material to a nonplastic material.

(D) The number of plastic components and the weight of covered material source reduced through concentration, right-sizing, lightweighting, and shifting to bulk or large format packaging that allows consumers to refill home or commercial reusable containers.

(E) The amount of postconsumer recycled content used compared to virgin plastic in covered material.

(e) The PRO shall require producers that are participants of the PRO's approved plan to submit to the PRO the data necessary for the PRO to report the information required pursuant to subdivisions (c) and (d).

(f) (1) As part of the producer responsibility plan, the PRO shall include a source reduction plan designed to meet the requirements of this section. The source reduction plan shall be disaggregated based on the individual producer source reduction plans and shall meet all of the following requirements:

(2) In the source reduction plan, the PRO shall give producers credit for source reduction achieved from the 2013 calendar year to the 2022 calendar year, inclusive. This amount shall not count toward the requirements of subdivision (a). Allocation of this amount, and the requirement for the PRO source reduction plan to meet the requirements of subdivision (a), may require the PRO to require a producer to revise its individual producer source reduction plan.

(3) The PRO may identify material types in the source reduction plan that face significant recycling or end market challenges and would require significant investment to bring into compliance with this chapter by January 1, 2032. Switching an entire identified covered material category to a reusable, refillable, or nonplastic alternative shall be considered source reduction for the purpose of subdivision (a). The PRO may report this source reduction in an aggregated form.

(g) To ensure equity in the market, the PRO shall require a producer with a covered material new to the producer subsequent to the approval of the PRO to optimize packaging and not include unnecessary covered material. The PRO shall assess a malus fee on any producer with a new covered material that is not optimized, as determined by the PRO and approved by the department pursuant to subdivision (j) of Section 42051.1.

(h) To ensure source reductions achieved by January 1, 2032, are not lost after January 1, 2032, while still allowing for businesses to grow, the department shall, beginning in the 2030 calendar year and every five years thereafter, conduct an evaluation of the plastic covered material subject to this section to determine if actions to secure greater source reductions are necessary. If the number of plastic components or weight of plastic covered material has increased, the department shall make this determination. If the

department determines that there has been an increase in the number of plastic components or the overall weight of plastic covered material, the department shall take the following actions to secure greater source reductions:

(1) Require the PRO to ensure participant producers increase the rate of source reduction through shifting a plastic covered material to reusable or refillable packaging or food service ware or through eliminating plastic components. In requiring these higher source reduction rates, the department shall consider all of the following:

(A) The feasibility of increased source reduction rates, as determined by evaluating consumer adoption and acceptance, potential impacts to food safety, and infrastructure availability.

(B) The use of postconsumer recycled content.

(C) The degree to which reuse and refill infrastructure investments were made to improve consumer convenience and adoption.

(D) Examples of reuse and refill systems and elimination requirements in other jurisdictions.

(E) Reductions achieved through the other tools implemented by the PRO, including fees and required optimization.

(F) The percentage of growth in the number of plastic components and the overall weight of covered material.

(2) Determine if new packaging types are optimized and, if not, develop optimization requirements through regulations.

(i) Producers of expanded polystyrene food service ware shall not sell, offer for sale, distribute, or import in or into the state expanded polystyrene food service ware unless the producer demonstrates to the department that all expanded polystyrene meets the following recycling rates:

(A) Not less than 25 percent on and after January 1, 2025.

(B) Not less than 30 percent on and after January 1, 2028.

(C) Not less than 50 percent on and after January 1, 2030.

(D) Not less than 65 percent on and after January 1, 2032, and annually thereafter.

(j) The department may adopt regulations to implement this section, including, but not limited to, reporting and collection requirements.

### Article 3. Program Administration

42060. (a) By January 1, 2025, the department shall adopt regulations necessary 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. The regulations shall include, but not be limited to, all of the following:

(1) Any regulations necessary to ensure the PRO fully funds plan implementation, including fully funding the budget. This shall include the 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. Costs may vary based on population density or other relevant factors and shall allow local jurisdictions to protect ratepayers from increased costs associated with the processing and marketing of covered material.

(2) (A) Establish a mandatory process for producers, retailers, and wholesalers, or a PRO operating on behalf of a producer, retailer, or wholesaler, to register with and report to the department.

(B) The process shall include establishing appropriate timelines to begin regular reporting following the adoption of the regulations. The department shall consider, along with any other factors the department deems appropriate, the amount of information being reported in developing the timelines.

(C) (i) Data requests by the department shall be consistent with the covered material categories established and posted on the department's internet website pursuant to subdivision (a) of Section 42061.

(ii) To the maximum extent feasible, the department shall seek to use records and information that the local jurisdiction, producer, retailer, wholesaler, or PRO already maintains, in order to minimize the burden imposed by the reporting and recordkeeping requirements while still enabling the department to determine compliance with this chapter.

(D) The department shall, to the extent feasible, make the reporting consistent with other recognized third-party reporting systems used by producers or other packaging extended producer responsibility programs.

(E) Market-sensitive trade secret data received by the department pursuant to this chapter shall be held confidentially by the department as required by Section 40062 and any implementing regulations, provided that the furnisher of the data complies with the requirements set forth in subdivision (b) of Section 40062 and any implementing regulations for identifying the information claimed to be a trade secret.

(F) The department shall create an online registration form to facilitate submitting reports pursuant to this subdivision. To the extent permissible under applicable law, the department may contract with an independent third-party online reporting system with recognized standards for waste characterization, source reduction, and recycling.

(3) (A) The department shall establish a process to identify covered material that, while determined to be single use for purposes of this chapter, presents unique challenges in complying with this chapter. The department may exempt covered material identified pursuant to this subparagraph from this chapter.

(B) For any covered material identified as presenting unique challenges and exempted from this chapter under subparagraph (A), the department may at any point develop a plan to phase the covered material into the requirements of this chapter.

(4) The department shall establish a process to identify covered material that cannot comply with this chapter for health and safety reasons, or because it is unsafe to recycle. The department may exempt that covered material from this chapter.

(5) The department shall establish a process to exempt from the requirements of this chapter, except for the requirements of subdivision (b) of Section 42050, small producers, small retailers, and small wholesalers based on size, revenue, number of retail locations, and market share, as follows:

(A) Subject to subparagraph (B), the department shall exempt producers, retailers, or wholesalers that, in the most recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state.

(B) If the department determines that exempting a particular small producer, small retailer, or small wholesaler pursuant to subparagraph (A) would hinder the ability of a type of covered material or covered material category from complying with the requirements of this chapter, the department may determine that the particular small producer, small retailer, or small wholesaler will not be exempted from the requirements of this chapter.

(6) (A) The department shall include mechanisms necessary to reduce the amount of covered material entering the environment, in accordance with the regulations adopted pursuant to this section.

(B) The department may consider reductions of covered material achieved by a producer before the effective date of the regulations toward a producer's compliance with this chapter if the producer can demonstrate to the satisfaction of the department that the producer reduced the covered material in a manner consistent with this chapter and actions taken to comply with Chapter 5.5 (commencing with Section 42300).

(C) In calculating the reductions necessary to achieve the requirements adopted pursuant to subdivision (a), the department shall consider source reduction achieved pursuant to Section 42057.

(7) The department shall establish a process to require coordination between a PRO and producer that is not a participant of the PRO's approved plan and between multiple PROs as necessary. This includes determining how much each PRO shall charge producers of plastic covered material in order to prorate the funding as necessary to raise the revenue required by Section 42064.

(8) The department shall establish a methodology and process to calculate, to the extent feasible, an annual recycling rate defined in subdivision (ab) of Section 42041.

(b) (1) The department shall ensure that any regulations adopted pursuant to this chapter consider guidelines and do not conflict with regulations issued by the United States Food and Drug Administration and the United States Department of Agriculture and consider requirements imposed by other California state agencies.

(2) Neither the department nor the PRO shall impose any requirement, including, but not limited to, a recycled content requirement, in direct conflict

with a federal law or regulation, including, but not limited to, laws or regulations covering tamper-evident packaging pursuant to Section 211.132 of Title 21 of the Code of Federal Regulations, laws or regulations covering child-resistant packaging pursuant to Part 1700 (commencing with Section 1700.1) of Subchapter E of Chapter II of Title 16 of the Code of Federal Regulations, regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration relevant to packaging agricultural commodities, requirements for microbial contamination, structural integrity, or safety of packaging under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), 21 U.S.C. Sec. 2101 et seq., the federal FDA Food Safety Modernization Act (21 U.S.C. Sec. 2201 et seq.), the federal Poultry Products Inspection Act (21 U.S.C. Sec. 451 et seq.), the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), or the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.). In establishing a recycled content requirement, the department or PRO shall consider the amount of organic waste and analyze the greenhouse gas emissions associated with that organic waste. Neither the department nor a PRO shall impose a postconsumer recycled content requirement for covered material for fresh produce.

(c) In developing the regulations, the department shall consider relevant information on reduction programs and approaches in other states, localities, and nations, including, but not limited to, the European Union, India, Costa Rica, China, Chile, and Canada, and international standards, including, but not limited to, ISO 18602.

(d) In adopting regulations pursuant to this section, the department shall ensure the regulations, and activities conducted in accordance with the regulations, avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas.

42060.5. (a) Except as provided in subdivisions (b), (c), (d), and (e), all 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. This section does not authorize the department to require mandatory route collection service where it does not already exist. This section shall not limit a local jurisdiction from collecting additional materials for recycling or composting.

(b) The department shall grant an extension of, or exemption from, a requirement of subdivision (a) upon a written showing by the local jurisdiction or recycling service provider that compliance with the requirement is not practicable for a specific identified covered material because of specific local conditions, circumstances, or challenges. If the PRO objects to the extension or exemption, the PRO shall be responsible for arranging alternative means for the collection, processing, storage, and transportation of covered materials resulting from implementing this chapter. The department shall review a granted extension or exemption every two years, and may renew the extension or exemption after that review. An exemption or extension for a local jurisdiction or recycling service provider

does not in any way relieve a producer or PRO from meeting the requirements of the chapter.

(c) A county board of supervisors of a rural county or a rural jurisdiction, as those terms are defined in Section 42649.8, may adopt a resolution to exempt the rural county or rural jurisdiction from the requirements of this section. If a rural jurisdiction is a regional agency composed of jurisdictions that are located entirely within one or more rural counties, the board of the regional agency may adopt a resolution, as prescribed in this subdivision, to exempt the rural jurisdiction from the requirements of this section. An exemption for a rural county or a rural jurisdiction does not in any way relieve a producer or PRO from meeting the requirements of this chapter.

(d) A local jurisdiction or recycling service provider shall not be required to collect material for recycling or composting on the lists published pursuant to subdivisions (c) and (d) of Section 42061 that does not meet the criteria described in subdivision (l) of Section 42051.1 and is collected and recycled or composted by means other than curbside collection in a producer responsibility plan.

(e) A local jurisdiction shall not be required to collect a material category that is subject to an ordinance passed by the local jurisdiction prohibiting the sale or distribution of that covered material in the local jurisdiction before the publication of the lists of recyclable or compostable material pursuant to subdivisions (c) and (d) of Section 42061.

42061. The department shall do all of the following:

(a) (1) By July 1, 2024, the department shall establish and post on its internet website a list of covered material categories. The department may consider material types and forms referenced in waste characterization studies or material characterization studies for determining the categories.

(2) The department shall conduct and publish on its internet website a characterization study of covered material categories that are disposed of in California landfills. The department's activities pursuant to this paragraph, including the department's determination of the appropriate facilities to include in the study, are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) (A) For the department's first material characterization study conducted pursuant to paragraph (1), which the department shall complete on or before July 1, 2025, the department shall conduct disposal-based characterization studies to determine the approximate amount of covered material disposed of in California landfills.

(B) The department shall, on or before January 1, 2024, report to the Legislature in compliance with Section 9795 of the Government Code on the status of material types relative to the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51. When updating information pursuant to clause (ii) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 42355.51, the department may identify materials that are trending toward meeting the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51 and measurable increase of statewide collection and sorting rates through either

statewide recycling programs or alternative programs, such as take-back systems, and for which the continued increase in the collection, sorting, and viable responsible end market development the department determines will be disrupted by a loss of a recyclable designation. Those material types and forms shall be considered recyclable in the state and may be labeled as recyclable, notwithstanding subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51, so long as the material types and forms satisfy subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (d) of Section 42355.51 and until the material types and forms are a part of, and in compliance with, a program described in paragraph (6) of subdivision (d) of Section 42355.51.

(4) The department shall update the material characterization study required pursuant to this subdivision in 2028, 2030, 2032, and at least every four years thereafter.

(5) Notwithstanding paragraphs (2) and (3), the department may publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms.

(6) For purposes of studying a representative sample of material types and forms in the state, within 90 calendar days of a department request, a transfer, processing, or recycling facility shall allow for periodic sampling conducted by a designated representative of the department on a mutually agreed upon date and time. The department shall not require a periodic sampling of a transfer, processing, or recycling facility if that facility was sampled during the previous 24 months.

(7) For each material characterization study conducted pursuant to this subdivision, the department shall publish on its internet website the preliminary findings of the study and conduct a public meeting to present the preliminary findings and receive public comments. The public meeting shall occur at least 30 calendar days after the department publishes the preliminary findings. After receiving and considering public comments, and within 60 calendar days of the public meeting, the department shall finalize and publish on its internet website the findings of the study.

(b) (1) By January 1, 2026, the department shall calculate and publish on its internet website the current recycling rates being achieved in the state for each covered material category. These recycling rates shall be deemed to meet the description in subdivision (g) of Section 11340.9 of the Government Code and may be filed by the Office of Administrative Law, at the request of the department, pursuant to Section 11343.8 of the Government Code.

(2) In determining a recycling rate, the department may consider data gathered pursuant to any of the following, including any amendments thereto:

- (A) Chapter 746 of the Statutes of 2015.
- (B) Chapter 6 (commencing with Section 42370).
- (C) Chapter 395 of the Statutes of 2016.
- (D) Chapter 5.5 (commencing with Section 42300).
- (E) Division 12.1 (commencing with Section 14500).



(F) Chapter 5.7. (commencing with Section 42355).

(G) Data voluntarily provided by local jurisdictions.

(H) Data and information received from producers.

(I) Any other relevant data and information received by the department.

(c) By January 1, 2024, the department shall publish on its internet website a list of covered material categories that are, based on available collection and processing infrastructure and recycling markets, deemed recyclable as of January 1, 2024. Covered material is deemed recyclable if it meets the requirements of Section 17989.2 of Title 14 of the California Code of Regulations, as that section existed on January 1, 2023, and Section 42355.51. The list shall include covered material categories identified by the department and considered recyclable pursuant to clause (vi) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 42355.51.

(d) By January 1, 2024, the department shall create and post on its internet website a list of covered material categories that are deemed compostable as of January 1, 2024. Covered material is deemed compostable if it meets the requirements to be labeled as compostable pursuant to Chapter 5.7 (commencing with Section 42355).

(e) The department shall determine a process for updating the lists created pursuant to subdivisions (c) and (d) to either add covered material categories that are deemed to meet all of the criteria in either subdivision (c) or (d) or remove covered material categories if they can no longer be deemed recyclable or compostable pursuant to subdivision (c) or (d). As part of the process, the department shall update the list at least annually until January 1, 2032. After January 1, 2032, the department shall regularly, but no less than once every two years, evaluate the list to determine if it is still accurate and update it as needed. Covered material categories deemed to be recyclable or compostable as of January 1, 2032, and listed pursuant to subdivision (c) or (d) shall be deemed to be compliant with subdivision (b) of Section 42050 until and unless the department determines that the covered material category no longer meets the requirements of subdivision (c) or (d).

(f) (1) The department shall determine a process for updating the rates published pursuant to subdivision (c) of Section 42060. The department shall update the list at least every two years and shall regularly, but no less than once every two years, evaluate the list of rates to determine whether the rates are still accurate. After evaluation, the department may amend the list to remove, add, or change rates. The department shall post any updates to the list on its internet website.

(2) A producer may demonstrate compliance with the rates in subdivision (c) of Section 42050 by submitting to the department evidence that the particular type of covered material meets the applicable recycling rate by reference to a recycling rate on the department's list or through another mechanism approved by the department.

(3) A producer that seeks to have a rate included or changed on the list, or a covered material category added to the list, may be required by the

department to submit data for purposes of the department's determination of the rate to include on the list or the appropriateness of adding the category.

(4) Publication of and updates made to the list pursuant to this subdivision are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

42061.5. (a) The department shall approve a PRO that meets the requirements of this chapter and both of the following:

(1) The PRO has a governing board consisting of producers that represent the diversity of covered material placed in the market by those entities. The governing board shall include nonvoting members with representation of material trade associations and companies if those material types are covered by the organization.

(2) The PRO demonstrates that it has adequate financial responsibility and financial controls in place, including fraud prevention measures and an audit schedule, to ensure proper management of funds.

(b) After January 1, 2031, upon the determination of the director that an additional PRO would be beneficial in satisfying the requirements of this chapter, the department may approve additional PROs that meet the requirements of this chapter and that meet all of the following requirements:

(1) The proposed PRO submits to the department, and agrees to cover the department's costs to review, a petition to establish a new PRO.

(2) The proposed PRO is composed of a sufficient number of producers of a specific covered material or covered material category to jointly comply with the requirements of this chapter.

(3) The proposed PRO for a specific covered material or covered material category agrees to cover the costs of all of the provisions of this chapter applicable to the proposed PRO and its participant producers.

(4) Producers covered by the proposed PRO for the specific covered material or covered material category agree to cover the prorated funding share associated with environmental mitigation funding under Section 42064, as determined by the department, based on the original PRO's established cost distribution.

(c) In the event that the department determines that a PRO no longer meets the requirements of this chapter, including those set forth in subdivision (a), or fails to implement and administer an approved PRO plan in a manner that effectuates the purposes of this chapter, the department shall revoke its approval of the PRO and, notwithstanding subdivision (b), may approve additional PROs pursuant to subdivision (a).

42062. (a) Commencing in the 2026 calendar year, and every two years thereafter, the department shall review, in consultation with the advisory board, relevant data to assess whether the recycling rate established in subdivision (c) of Section 42050 should be adjusted. The department shall make its determination and rationale available for public review.

(b) If the department determines pursuant to a review under subdivision (a) that current unforeseen and anomalous market conditions, including, but not limited to, recycling infrastructure conditions, warrant an adjustment to the recycling rates established in subdivision (c) of Section 42050, the

department may impose a higher or lower rate for a covered material category subject to both of the following conditions:

(1) The rate shall not be adjusted by more than 10 percent of the plastic covered material manufactured for sale, distribution, or import in or into the state for that covered material category.

(2) A decreased rate shall be in effect for no more than two years, at which point the rate shall revert to the applicable rate established in subdivision (c) of Section 42050. For an increased rate, the department may determine after each two-year period whether to maintain the increased rate or reduce the increased rate partially or entirely down to the applicable rate established in subdivision (c) of Section 42050.

(c) The department shall determine and post on its internet website whether each covered material category recycling rate complies with the rates required pursuant to subdivision (c) of Section 42050 or this section.

42063. (a) In accordance with Sections 42051.2 and 42051.3, the department shall review a plan, plan amendment, or annual report submitted by a PRO for compliance with this chapter and shall approve, conditionally approve, or reject the document within 90 calendar days of receipt of the document, or notify the PRO of the timeline for determination if additional time is needed.

(b) (1) If the department disapproves a plan, plan amendment, or annual report, the department shall explain, in writing, how the plan, plan amendment, or annual report is noncompliant, and the PRO shall resubmit the plan, plan amendment, or annual report with any additional information, modifications, or corrections to the department within 30 calendar days.

(2) If the department finds that the plan, plan amendment, or annual report resubmitted by the PRO still does not comply with the requirements of this section, the department shall direct changes to the document and require the PRO to resubmit the plan, plan amendment, or annual report to the department within 30 calendar days.

(3) If the department determines the PRO has not incorporated the changes into the plan, plan amendment, or annual report, the department shall determine the PRO to be out of compliance with this chapter and shall take enforcement action pursuant to Article 5 (commencing with Section 42080).

(4) If a PRO's updated plan, plan amendment, or annual report is rejected by the department, the department may allow the previously approved plan to remain in effect.

(c) An approved annual report and approved plan shall be a public record, except that financial, production, or sales data reported to the department by the PRO is not a public record for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department shall release financial, production, or sales data in summary form so the information cannot be attributable to a specific producer, retailer, or wholesaler, or to any other entity.

42064. (a) (1) The surcharge imposed by this section shall be collected annually by the California Department of Tax and Fee Administration in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this chapter, the references in the Fee Collection Procedures Law to “fee” shall include the surcharge imposed by this section, and references to “feepayer” shall include a person required to pay the surcharge imposed by this section.

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the department that a person is required to pay a surcharge, or a determination by the department regarding the amount of that surcharge, is subject to review under Section 42064.01 and is not subject to a petition for redetermination by the California Department of Tax and Fee Administration.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the California Department of Tax and Fee Administration shall not accept any claim for refund that is based on the assertion that a determination by the department improperly or erroneously calculated the amount of a surcharge, or incorrectly determined that the person or entity is subject to the surcharge, unless that determination has been set aside by the department or a court reviewing the determination of the department.

(b) The annual surcharge shall be due and payable 30 days from the date of assessment by the California Department of Tax and Fee Administration. Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30 of Division 2 of the Revenue and Taxation Code, the surcharge shall be remitted by electronic funds transfer to the California Department of Tax and Fee Administration.

(c) On or before March 1, 2027, and each March 1 thereafter, the department shall annually transmit to the California Department of Tax and Fee Administration the appropriate name and address of each person who is liable for the surcharge under this section and the amount of the surcharge to be assessed, and at the same time shall provide to the California Department of Tax and Fee Administration a contact number for the department to be printed on the bill to respond to questions about the surcharge.

(d) The California Plastic Pollution Mitigation Fund is hereby established in the State Treasury. The California Plastic Pollution Mitigation Fund shall consist of all surcharges, interest, penalties, and other amounts collected and paid to the California Department of Tax and Fee Administration pursuant to this section, less payments of refunds and reimbursements to the California Department of Tax and Fee Administration for expenses incurred in the administration and collection of the fees imposed by this section.

(e) (1) A PRO shall pay five hundred million dollars (\$500,000,000) each year, as assessed by the California Department of Tax and Fee Administration. The department shall transmit the PRO name and address and annual surcharge amount of five hundred million dollars (\$500,000,000)

to the California Department of Tax and Fee Administration pursuant to subdivision (c).

(2) A PRO approved by the department pursuant to subdivision (a) of Section 42051 shall, commencing in the 2027 calendar year, remit the five hundred million dollars (\$500,000,000) specified in paragraph (1) each year to the California Department of Tax and Fee Administration to be deposited into the California Plastic Pollution Mitigation Fund.

(3) (A) The PRO may collect up to one hundred fifty million dollars (\$150,000,000) from plastic resin manufacturers who sell plastic covered material to producers who are participants of the PRO.

(B) The PRO may require its participants to provide to the PRO a list of plastic resin manufacturers who sell plastic for use in covered material to the participants.

(C) If the PRO does not collect all or any of the one hundred fifty million dollars (\$150,000,000) from plastic resin manufacturers, the PRO is still responsible for the total remittance specified in paragraph (2).

(f) (1) The PRO shall establish and impose on its participants who produce plastic covered material subject to Section 42057 an environmental mitigation surcharge in the amount necessary to remit the moneys pursuant to subdivision (a) based on each producer's market share of plastic covered material, accounting for both number of plastic components and weight.

(2) The surcharge imposed pursuant to paragraph (1) shall be paid annually by July 1, commencing in the 2027 calendar year.

(g) Moneys in the California Plastic Pollution Mitigation Fund shall not be expended for obligations imposed on any party by any law other than this section or to cover costs identified in a needs assessment.

(h) (1) For producers that are not participants of a PRO's approved plan, the department shall determine the amount of the environmental mitigation surcharge the producer shall pay based on both the number and weight of plastic covered material the producer offers for sale, sells, distributes, or imports in or into the state.

(2) Commencing July 1, 2027, and every July 1 annually thereafter, a producer not in a PRO shall pay the amount of the surcharge determined by the department. The department shall transmit the producer name and address and surcharge amount to the California Department of Tax and Fee Administration pursuant to subdivision (c).

(i) In the 2030 calendar year, the department shall determine whether the surcharge collected pursuant to this section should be increased based on the evaluation conducted pursuant to subdivision (h) of Section 42057. If that evaluation finds a change in the overall number of plastic components or weight of plastic covered material in the state, the department shall adjust, through regulation, the amount of the surcharge a PRO collects in proportion to that change. A PRO shall conform the surcharge imposed on its participant producers to the adjusted amount of the surcharge established by the department.

(j) (1) Upon appropriation by the Legislature, 40 percent of the moneys in the California Plastic Pollution Mitigation Fund shall be expended by the

Department of Fish and Wildlife, the Wildlife Conservation Board, the State Coastal Conservancy, the California Coastal Commission, the Ocean Protection Council, the Department of Parks and Recreation, the Natural Resources Agency, and the California Environmental Protection Agency to monitor and reduce the environmental impacts of plastics on terrestrial, aquatic, and marine life and human health, including to restore, recover, and protect the natural environment.

(2) At least 50 percent of the funds appropriated pursuant to paragraph (1) shall provide benefits to residents living in a disadvantaged or low-income community or rural area.

(3) Moneys appropriated pursuant to paragraph (1) may be used to support grants for tribes, nongovernmental organizations, community-based organizations, land trusts, and local jurisdictions.

(k) (1) Upon appropriation by the Legislature, 60 percent of the moneys in the California Plastic Pollution Mitigation Fund shall be expended by the Strategic Growth Council, the California Environmental Protection Agency, the Natural Resources Agency, and the Department of Justice to monitor and reduce the historical and current environmental justice and public health impacts of plastics, including to mitigate the historical and current impact of plastics on disadvantaged or low-income communities or rural areas.

(2) Of the moneys appropriated pursuant to paragraph (1), 75 percent shall directly and primarily benefit residents living in disadvantaged or low-income communities.

(3) Moneys appropriated pursuant to paragraph (1) may be used to support grants to local jurisdictions, tribes, nongovernmental organizations, and community-based organizations.

(l) Moneys appropriated from the California Plastic Pollution Mitigation Fund pursuant to subdivisions (j) and (k) shall be used to increase and enhance the activities described in subdivisions (j) and (k) and shall not replace or reduce allocation of any other funding for those purposes. Accordingly, General Fund or Greenhouse Gas Reduction Fund appropriations to the Department of Fish and Wildlife, the California Coastal Conservancy, the California Coastal Commission, the Wildlife Conservation Board, the Ocean Protection Council, the Department of Parks and Recreation, the Strategic Growth Council, the Department of Justice, the California Environmental Protection Agency, and the Natural Resources Agency shall not be reduced below the levels provided in the Budget Act of 2019 (Chapter 23 of Statutes of 2019).

(m) Each agency or department receiving funding under this section shall, notwithstanding Section 9795 of the Government Code, provide an annual report to the relevant budget committees of the Legislature on how the funding will be used, progress toward mitigation goals, and relevant details and outcomes from third parties who may be provided funding by the agency or department for mitigation purposes.

(n) This section shall remain in effect only until January 1, 2037, and as of that date is repealed.

42064.01. (a) A person from whom the surcharge imposed pursuant to Section 42064 is determined to be due by that section may petition for a redetermination of whether this chapter applies to that person within 30 days after service upon them of a notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration of the 30-day period.

(b) A petition for redetermination of the application of this section or Section 42064 shall be in writing and be sent to the department or its designee. The petition shall state the specific grounds upon which the petition is founded and include supporting documentation. The petition may be amended to state additional grounds or provide additional documentation at any time prior to the date that the department issues its order or decision with regard to the petition for redetermination.

(c) If a petition for redetermination of the application of this section or Section 42064 is filed within the 30-day period, the department shall reconsider whether the surcharge is due and make a determination in writing. The department may eliminate the surcharge based on a determination that the section or Section 42064 does not apply to the person who filed the petition.

(d) The department shall provide to the California Department of Tax and Fee Administration notice and the result of each petition for redetermination or claim for refund, including the filing date, reporting periods, amount of fee involved, and details necessary for the California Department of Tax and Fee Administration to perform refund or collection duties.

(e) If a timely petition for redetermination has been filed pursuant to subdivision (a), all legal action to collect the surcharge imposed pursuant to Section 42064 shall be stayed pending the final determination of the department pursuant to subdivision (g).

(f) Notice of the determination of the department pursuant to subdivision (c) shall be served on the same date to the petitioner and the California Department of Tax and Fee Administration.

(g) The order or decision of the department upon a petition for redetermination of the surcharge shall become final 30 days after service upon the petitioner of notice of the determination.

(h) The surcharge imposed pursuant to Section 42064 determined to be due by the department pursuant to this section is due and payable at the time it becomes final, and if it is not paid when due and payable, the penalty imposed pursuant to Section 55086 of the Revenue and Taxation Code shall be applied.

(i) Written notice required by this section shall be served as follows:

(1) The notice shall be placed in a sealed envelope, with postage paid, addressed to the petitioner at the petitioner's address as it appears in the records of the department. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly

maintained or provided by the United States Postal Service without extension of time for any reason.

(2) In lieu of mailing, a notice may be served personally by delivering it to the person to be served and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

(j) A dispute regarding the surcharge imposed pursuant to Section 42064 shall be resolved pursuant to this section only.

(k) If the department determines that a person is entitled to a refund of all or part of the surcharge imposed pursuant to Section 42064, the person shall make a claim to the California Department of Tax and Fee Administration pursuant to Chapter 5 (commencing with Section 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

42065. (a) The department shall report to the Legislature every two years its progress in implementing this chapter, including, but not limited to, a description of efforts to adopt regulations under subdivision (a) of Section 42060 and whether PROs are on track to meet the requirements contained in those regulations and the PRO plan. Notwithstanding Section 9795 of the Government Code, the report shall be submitted to the relevant policy and budget committees of the Legislature by January 1 of each odd-numbered year.

(b) If a national recycling PRO and producer responsibility plan is implemented that is similar to the PRO and plan established under this chapter, the department shall review, evaluate, and compare the national PRO and producer responsibility plan and the PRO and plan established under this chapter. Notwithstanding Section 9795 of the Government Code, the department shall submit a report to the relevant policy and budget committees of the Legislature with any related recommended changes to this chapter.

42067. (a) The department shall prepare one or more initial statewide needs assessments designed to determine the necessary steps and investment needed for covered material, by covered material category, to achieve the requirements of this chapter. Needs assessments, or components thereof, shall be updated every five years or as necessary to ensure the requirements of this chapter are met. An initial needs assessment for specific covered material shall be completed before the completion and approval of any producer responsibility plan that includes that covered material. The department may select an independent third-party contractor to complete the needs assessment. The department or the third-party contractor shall consult with the PRO and local jurisdictions when developing the needs assessment.

(b) The PRO shall reimburse the department for the cost of developing any needs assessment and any update to a needs assessment.

(c) The department may prepare either several needs assessments, with each assessment specific to one or more covered materials subject to this



chapter, or may prepare one comprehensive needs assessment that includes all covered material subject to this chapter.

(d) The department shall guide development of a needs assessment, which shall be developed in collaboration with the PRO and a broad diversity of local jurisdictions, recycling service providers, and processors that reflect the different needs and challenges faced by urban, suburban, and rural communities and a variety of different population densities and socioeconomic perspectives and that choose to participate in the development of a needs assessment.

(e) A needs assessment shall comply with all of the following:

(1) Be designed to inform the PRO budget and PRO plan.

(2) Include an evaluation of all of the following with respect to covered materials and covered material categories:

(A) Existing state statutory provisions and funding sources related to market development and financial incentives to help achieve the state's goals related to recycling, composting, reuse, reduction, and recovery.

(B) The current recycling, composting, collection, and hauling system in the state and the expanded access and additional recycling or composting options needed for enhancements to the system.

(C) The existing access to on-premises recycling and composting for multifamily residences, and the need to expand that access.

(D) The processing capacity and infrastructure in the state and regionally and the ability for innovative and advanced technologies such as artificial intelligence and robotics to improve that capacity.

(E) Current market conditions and the need to create viable responsible end markets in the state and regionally.

(F) Consumer education needs for recycling, composting, reuse, and reduction.

(G) Funding needs and actions necessary to achieve the requirements of this chapter, including payments to recyclers, market incentive payments, or other payments necessary to achieve the requirements of this chapter.

(H) Actions and investments necessary to provide sufficient access to collection, recycling, composting, processing, and transportation to viable responsible end markets.

(I) An evaluation of the availability or lack of availability of markets for recycled covered material, the need to incentivize recycled or composted material market development, and the associated investments and actions needed to ensure that the covered materials are recycled or composted and have viable and sufficient responsible end markets to meet the requirements of Section 42050.

(J) Factors contributing to contamination and actions and investments needed to avoid contamination and improve recycled and composted material in order to ensure the material meets quality requirements for remanufacturing.

(K) Availability of responsible end markets and mechanisms to identify and expand responsible end markets. The evaluation shall include

identification of measures to avoid and minimize environmental and public health impacts on communities where recycling occurs.

(3) Include an evaluation of all of the following with respect to covered material:

(A) The needs associated with shifting packaging or food service ware from a covered material category that is unlikely to develop sustained viable responsible end markets to a covered material category that either has a viable responsible end market or is likely to develop a sustained viable responsible end market.

(B) Actions and investments necessary to improve covered material design to improve recyclability and compostability.

(C) Funding needed to implement the source reduction requirements established in Section 42057, including, but not limited to, investments needed to develop reuse and refill infrastructure and to provide consumers with convenient access to that infrastructure to grow and market the use of reusable and refillable packaging and food service ware.

(D) An evaluation of integrating innovative and advanced technologies throughout a MRF that utilize artificial intelligence to improve data collection in order to identify, categorize, and track the disposition of covered materials throughout the recycling process.

(E) An evaluation of actions and investments that would be effective in achieving source reduction requirements.

(4) The needs assessment shall not propose investing in activities contrary to the intent described in Section 40004 or in violation of an agreement entered into pursuant to Section 40059 and shall include a mechanism to disburse funds for identified activities.

(5) The needs assessment may include, but shall not be limited to, elements that will accomplish all of the following:

(A) Expanding access to or improvement of curbside collection services wherever feasible.

(B) Expanding access to dropoff recycling services or other mechanisms where curbside collection services are not feasible, or as necessary in order to supplement curbside collection services to achieve the requirements of this chapter.

(C) Expanding access to collection services in public spaces.

(D) Providing or facilitating deployment of innovative enhanced collection, composting, and recycling systems and innovative recycling systems within a recycling center or MRF that utilizes advanced technology, such as artificial intelligence and robotics, to improve the identification and sorting of covered materials, where feasible.

(E) An evaluation of actions and investments that would be effective in achieving source reduction requirements.

(F) Creation of on-premises access to recycling or composting services for multifamily residences.

(G) Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.

(H) Enhancing existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.

(I) Infrastructure or other mechanisms needed to implement a source reduction plan, including, but not limited to, investments in reuse, refill, and composting infrastructure.

(J) Infrastructure or other activities needed to achieve recycling and composting rates for all covered material under the plan and ensure covered material is recyclable or compostable.

(f) (1) The initial needs assessment, and any updates, shall be submitted to the advisory board.

(2) Development of a needs assessment by the department pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The initial needs assessment, and any updates, shall be developed through a public process including at least one public meeting at which the department provides the PRO, the advisory board, and any interested members of the public the opportunity for input.

#### Article 4. Producer Responsibility Advisory Board

42070. (a) In implementing this chapter, the department shall establish a producer responsibility advisory board for the purpose of identifying barriers and solutions to creating a circular economy consistent with this chapter and advising the department, producers, and producer responsibility organizations in the implementation of this chapter. The advisory board shall be composed of 13 voting and 3 nonvoting members as provided in the following categories, who shall be appointed by the director:

(1) One representative nominated by a statewide city association.

(2) One representative nominated by a statewide rural county association.

(3) One representative from an environmental protection organization.

(4) One representative from an ocean advocacy organization.

(5) One representative from an environmental justice organization.

(6) One representative from a disadvantaged or low-income community or rural area.

(7) One representative of a materials recovery facility located within the State of California.

(8) One representative of a recycling service provider, or a representative of an association of recycling service providers.

(9) One representative from the composting industry operating in the State of California.

(10) A representative of each of four manufacturers of covered materials of different material types utilizing postconsumer recycled content, one of

which produces third-party certified compostable covered material. These board members shall not be a board member of a PRO.

(11) One representative nominated by a statewide association representing the retail sector. This board member shall be a nonvoting member.

(12) One representative nominated by a statewide association representing the grocery sector. This board member shall be a nonvoting member.

(13) One representative of a producer responsibility organization. This board member shall be a nonvoting member.

(b) The director shall appoint all members to the advisory board on or before July 1, 2023. The director shall appoint the members for staggered three-year terms, and may reappoint a member for additional terms. At its first meeting, the advisory board shall elect a chair who will serve as chair for the calendar year, and who may be reelected as chair.

(c) The advisory board shall meet at least once per year by the call of the chair or by request of a majority of the voting members. The department shall provide administrative support to the advisory board.

(d) The advisory board meetings shall be open to the public and are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e) (1) The advisory board shall provide the PRO and the department, and a third party conducting or updating a needs assessment if applicable, with initial recommendations regarding all of the following:

(A) Key barriers and possible solutions to advance the objectives of increasing recovery of covered materials and decreasing the leakage of plastic into the environment no later than one year after the advisory board's initial meeting. This shall include key barriers and possible solutions related to available and viable responsible end markets and market development for covered materials.

(B) Key barriers and possible solutions to advance the objectives of reducing the production of virgin material for covered material and reducing the landfilling of covered material.

(C) Key barriers and possible pathways toward reusable packaging and products and refillable systems.

(D) Key barriers and other considerations needed for covered material to meet the requirements of this chapter.

(E) How a PRO will cover the costs incurred by local jurisdictions and local jurisdictions' recycling service providers associated with implementing this chapter and managing the material covered in a plan.

(2) The department shall consider the recommendations provided under paragraph (1) as it evaluates which specific actions may be appropriate to advance the objectives of this chapter.

(f) The advisory board may take any of the following actions through written recommendations as the advisory board deems appropriate:

(1) Advise the department, producers, or PROs on technical matters in support of the goals of this chapter to create a circular economy and reduce covered material pollution.

(2) Advise the department in the adoption of the regulations required by this chapter.

(3) Advise the department, producers, or PROs on any other pertinent matters in implementing this chapter, as determined by the advisory board or department.

(g) Pursuant to Section 42067, the advisory board shall review any needs assessment or revised needs assessment submitted to it within 90 calendar days of receipt of the assessment.

(h) Within 60 calendar days of receiving a plan submitted pursuant to subdivision (a) of Section 42051.2, the advisory board shall review the plan and offer written comments, which may include suggested modifications to the plan.

(i) The advisory board shall submit written recommendations to the department only if a majority of the advisory board's voting members endorse the recommendation. One or more advisory board members who do not endorse the recommendation may submit a separate written recommendation to the department reflecting the minority opinion or opinions.

(j) If an affected entity asserts that specific actions taken to meet the requirements of this chapter are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements, the affected entity may bring the concern and evidence supporting this assertion to the advisory board for discussion and ask the advisory board to conduct a preliminary evaluation of the information. If the evaluation demonstrates that specific actions are disrupting or otherwise adversely affecting existing operations, the advisory board shall submit this concern to the department for further analysis. The department shall analyze the information provided by the advisory board and may offer a recommendation for resolution.

#### Article 5. Enforcement

42080. (a) Failure to comply with the requirements of this chapter, including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO, producer, wholesaler, or retailer to penalties for violations as set forth in this article or revocation of an approved plan. The department may conduct investigations, including by inspecting operations, facilities, and records of producers and PROs and by performing audits of producers and PROs, to determine whether entities are complying with the requirements of this chapter.

(b) The department may deem the information contained in an audit provided by a PRO pursuant to Section 42054 or the records maintained by the PRO pursuant to subdivision (d) of Section 42052 to be sufficient to establish violations of the requirements of this chapter.

(c) The department shall notify a PRO, producer, retailer, or wholesaler of any conduct or practice that does not comply with this chapter and of any inconsistencies identified in the department's audit.

(d) Within 15 calendar days of the director approving a completed audit of a PRO, producer, retailer, or wholesaler, the department shall notify the audited entity that the audit will be posted on the department's internet website. The department shall post the completed audit on the department's internet website no later than 45 calendar days after it provides that notice.

(e) The department shall hold its audit confidentially only to the extent it contains information that is specifically identified as and constitutes a trade secret pursuant to subdivision (d) of Section 3426.1 of the Civil Code or is otherwise exempt from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). Within 15 calendar days of receiving a completed audit and notice from the department that the audit will be posted on the department's internet website, the PRO, producer, retailer, or wholesaler audited by the department shall specifically identify each portion of the audit that it claims constitutes or contains a trade secret. Notwithstanding any provision to the contrary in regulations promulgated pursuant to Section 40062, information not identified as a trade secret and information improperly identified as a trade secret shall be subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) unless exempted from disclosure by another provision of law.

42081. (a) (1) The department may issue a notice of violation to, and impose an administrative civil penalty not to exceed fifty thousand dollars (\$50,000) per day per violation on, any entity not in compliance with this chapter or any of the regulations the department adopts to implement this chapter, unless the entity meets the criteria of paragraph (5) of subdivision (a) of Section 42061, in which case the civil penalty shall not exceed twenty-five thousand dollars (\$25,000) per day per violation.

(2) A violation of Section 42050 by a producer or the PRO shall be determined based on the brand name, package or product line, package or product form, covered material category, and package or product size that the department deems is not in compliance.

(3) Penalties against a PRO or producer shall not begin accruing with respect to a violation until 30 calendar days following the notification of the violation.

(4) The department shall deposit all penalties collected pursuant to this section into the Circular Economy Penalty Account, which is hereby created in the State Treasury. Moneys in the Circular Economy Penalty Account shall be available upon appropriation by the Legislature for purposes that further this chapter.

(b) (1) Before determining whether to assess a penalty, the department may allow a producer or a PRO to develop and submit a corrective action plan to the department detailing how and when the producer or a PRO will come into compliance with this chapter. Corrective action plans may include,

but are not limited to, actions such as shifting production to covered material categories that meet the recycling rates required pursuant to subdivision (c) of Section 42050, no longer offering the covered material for sale, reaching a minimum recycled content standard set by the department, or establishing a take-back system or deposit system for the covered material that would increase the recycling rate of the material. The department shall not assess a penalty and the producer shall not be listed as noncompliant pursuant to Section 42082 for material covered in a corrective action plan if the producer complies with the corrective action plan. A producer or PRO may request approval from the department to comply with a corrective action plan or elements of a corrective action plan in cooperation with other producers or PROs.

(2) (A) The duration of a corrective action plan shall not exceed 24 months. The department may extend a corrective action plan up to an additional 12 months if the department sets forth steps and a timeline for the producer or PRO to comply with the corrective action plan and if the producer or PRO made a substantial effort to comply but was reasonably prevented from doing so due to extenuating circumstances.

(B) For purposes of this paragraph, making a “substantial effort” means taking all practicable actions to comply with a corrective action plan. Substantial effort is not made in circumstances in which a producer or PRO has not taken reasonable steps to comply with a corrective action plan, including, but not limited to, providing staff resources and funding necessary for compliance.

(3) The department’s authority under this article to impose penalties and to consider a corrective action plan do not affect the department’s authority to withdraw its approval of a PRO plan pursuant to Section 42051.2 and the department may impose penalties and consider corrective action plans against the PRO or producers without revoking an approved plan.

(c) The department, in determining the penalty amount and whether to assess a penalty under this section, shall consider, at a minimum, all of the following:

(1) The nature, circumstances, extent, and gravity of the violation or a condition giving rise to the violation and the various remedies and penalties that are appropriate in the given circumstances, with primary emphasis on protecting the public health and safety and the environment.

(2) Whether the violation or conditions giving rise to the violation have been corrected in a timely fashion or whether reasonable progress is being made to correct the violation or conditions giving rise to the violation.

(3) Whether the violation or conditions giving rise to the violation demonstrate a pattern of noncompliance with this chapter or the regulations adopted pursuant to this chapter. If the violation is a first offense, and the nature and gravity of the violation is not considered egregious, the department shall consider assessing a penalty not to exceed twenty-five thousand dollars (\$25,000) per day.

(4) Whether the violation or conditions giving rise to the violation were intentional.

(5) Whether the violation or conditions giving rise to the violation were voluntarily and promptly reported to the department before the commencement of an investigation or audit by the department.

(6) Whether the violation or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the producer or PRO or were otherwise unavoidable under the circumstances, including, but not limited to, unforeseen changes in market conditions. This does not include circumstances in which curbside collection either was not available or not suitable for the collection and processing of the covered material and the PRO or producer failed to adequately invest in or develop other means to collect or process the covered material.

(7) The size and economic condition of the producer or PRO.

(8) The magnitude of the impact on the environment, human health, and disadvantaged or low-income communities or rural areas reasonably anticipated from the violation.

42082. (a) The department shall post on its internet website a list of covered material categories, including by material form if applicable, by producer, that are not in compliance with this chapter. The department shall update the list at least once every six months.

(b) The department may provide, upon request, a list of covered material categories, by producer if applicable, that are in compliance with this chapter.

42083. A producer may offer for sale, sell, distribute, or import covered material in a covered material category that does not meet the recycling rates established pursuant to subdivision (c) of Section 42050 if the producer demonstrates to the department that the producer has achieved the applicable rate for an amount equal to the producer's market share of that covered material category in the state.

42084. (a) If the department determines that a producer responsibility organization or producer has not achieved the targets established pursuant to Section 42050 or 42057, the department shall, through a public process, adopt regulations that do both of the following:

(1) Place requirements on the PRO or producers to achieve the recycling rates established pursuant to subdivision (c) of Section 42050 or subdivision (i) of Section 42057.

(2) Place requirements on producers to source reduce, by both weight and number of items, to meet the requirements of Section 42057.

(b) The regulations shall apply to the PRO or producer after the date of the target or upon the end of any approved corrective action plan, as applicable.

SEC. 3. The addition of subdivision (j) to Section 41821.5 of the Public Resources Code made by Section 1 of this act does not constitute a change in, but is declaratory of, existing law. It is the intent of the Legislature in adding subdivision (j) to clarify that the reporting obligations described in Section 41821.5 apply to materials regardless of whether they are discarded or otherwise constitute solid waste.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Chapter 3 (commencing with Section 42040) to Part 3 of



Division 30 of the Public Resources Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure the effective solid waste management of, and viable markets for, single-use packaging and single-use food service ware, it is necessary to protect the proprietary information of producers, retailers, wholesalers, and solid waste enterprises by keeping confidential the financial, production, and sales data reported by those entities under Section 2 of this act.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.