



May 8, 2024

*Submitted via [calrecycle.commentinput.com](https://calrecycle.commentinput.com)*

Claire Derksen  
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations  
Department of Resources Recycling and Recovery, Regulations Unit  
1001 "I" St., MS-24BSacramento, CA 95814

**RE: SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations**

Dear Ms. Derksen:

CalRecycle has issued a request for comment on its SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.<sup>1</sup> The Alliance for Automotive Innovation (Auto Innovators)<sup>2</sup> appreciates the opportunity to provide comments on this important step of California's implementation of its extended producer responsibility (EPR) program.

Auto Innovators represents the auto manufacturing sector, including automakers that produce and sell around 95% of the new light-duty vehicles in the United States. Our mission is to work with policymakers to realize a future of cleaner, safer, and smarter personal transportation and to work together on policies that further these goals, increase U.S. competitiveness, and ensure sustainable, well-paying jobs for citizens throughout the country. Millions of packaged auto parts are transported across the country and across the globe in order to repair and maintain the vehicles that our members sell; therefore, EPR programs have a substantial impact for automakers.

One overarching comment that we would like to make to CalRecycle: we request that the Department keep in mind the applicability of these regulations to producers of complex durable goods. It appears that much of the text is angled toward single-use consumer goods and plastics, whereas our parts and products are designed to last for a long time and may in the meantime be in the production or storage chain for longer periods. The durable goods exemption present in the statute appears to be given little value in these draft regulations. We offer the following additional comments to California on discrete sections of the proposed regulations.

**18980.2.1. Exemptions for Long-Term Storage Materials**

CalRecycle should consider adding a process for trade associations or others to apply for exemptions for long-term storage materials on behalf of industry. In the auto industry, for example, many auto parts can be stored for longer than five years; it may be helpful to consolidate applications for those products by allowing a trade association to file for that exemption, or to allow industry to aggregate multiple similar products in one application for exemption. This would reduce the application review burden on CalRecycle and would allow industry to share and/or reduce costs.

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<sup>1</sup> <https://calrecycle.ca.gov/Laws/Rulemaking/SB54Regulations/>.

<sup>2</sup> From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future. [www.autosinnovate.org](http://www.autosinnovate.org).

Additionally, CalRecycle should also consider an exemption application process that would allow applications by Global Product Classification (GPC) brick codes. These GPC codes are commonly used by industry and would allow consolidated applications, offering the same benefits in reduced burden for both CalRecycle in reviewing and industry in submitting.

Finally, we recommend that these exemptions have a duration of greater than one year. This is too short of an exemption for materials that are designed to protect for greater than five years. We recommend lengthening the duration of exemptions to at least five years.

#### **18980.2.4. Covered Material Category List Updates**

Auto Innovators recommends that the review cycle for the covered material category list be longer than the one-year process proposed, as the one-year process is awkward and not aligned with product cycles. We recommend that CalRecycle consider a three-year process: year one, collect data and recommendations from industry; year two, CalRecycle review of information and publishing of a draft and then final revised covered material category list; year three, a compliance deadline at the end of the year to allow industry and municipalities to transition to the new list.

Auto Innovators also recommends a grandfather sell-through period for packaging material that was previously on a version of the CMC list. Otherwise, industry would need to unpack, repack, and then dispose of those packaging materials for products already produced and warehoused or in transit.

#### **18980.3.2. Methodology for Recycling Rate Determination**

CalRecycle and the PROs should consider the possibility that PROs utilize an alternative approach that is sector-specific. Data will be scarce at the start of California's EPR program, and it would be helpful for industry to be able to make simplifying assumptions based on specific operational aspects of that industry. Complex goods manufacturers will not package products in the same manner as cleaning or laundry products, for example.

#### **18980.4. Responsible End Market Determination Criteria**

Auto Innovators has one small proposed change to (a)(3)(B)(ii) as follows:

- (ii) For incompatible materials that cannot be further processed and recycled, the end market shall dispose of the material in a way that ~~prevents~~ minimizes environmental, public health, and safety risks.

We suggest this change because preventing risks is nearly impossible; "minimizes" better captures what is feasible.

#### **18980.4.4. End Market Viability**

Auto Innovators cautions CalRecycle on these provisions requiring financial support to end markets. The costs to support those markets through the PRO will ultimately be provided by its members. Not all responsible end markets will be equal in terms of fiscal discipline or soundness, and not all PRO members will use all end markets. CalRecycle should instead consider other similar programs and develop a much more detailed cost allocation model.

### **18980.5. Producer Compliance**

It is not clear from the draft regulatory text how CalRecycle will be affirming that a producer has joined an approved PRO or applied to become an independent producer. Would a producer be required to notify CalRecycle that it has joined a PRO? Will CalRecycle instead be reviewing the membership roll of the PRO? The agency may wish to clarify this element of the process in the Final Statement of Reasons.

### **18980.6. General Requirements for the Producer Responsibility Organization**

Auto Innovators suggests that CalRecycle consider promulgating some governance standards for the PRO within this section. The role of the PRO is central, and producers may find joining a PRO to be the best option; however, some regulation of the PRO and its obligations to its members may be worth laying out in the regulatory text.

### **18980.6.7. Eco-modulated Fee and Fee Schedule**

The draft regulatory text proposes that a PRO will charge all participant producers a fee *prior to approval of a plan*. This introduces a risk that the fee will be inaccurate because it would be based on an unapproved plan that could potentially change. Auto Innovators recommends that the fee charged to the PRO members be determined based on a *state-approved* plan and not on the plan submitted for approval.

### **18980.8.3. Source Reduction Adjustments**

In subsection (d)(3), CalRecycle proposes that “Factors involving dollar amounts shall account for inflation.” Auto Innovators recommends CalRecycle specify that the approach in the U.S. Office of Management & Budget’s Circular A4 should be used when adjusting for inflation.

### **18980.10. Registration and Maintaining Address on File**

Auto Innovators finds the structure of this provision awkward and recommends rewriting. The draft opens by stating in (a)(1) that producers have to register with the Department, but then says in (a)(2) that a PRO shall register on behalf of its participant producers, except for those who choose to be reporting entities. CalRecycle should consider restructuring to outline the PRO’s obligations first and then the obligations of others to register.

Thank you for the opportunity to provide these comments; please reach out to us if you would like to discuss further.

Sincerely,



Catherine Palin  
Senior Attorney & Director of Environmental Policy  
Alliance for Automotive Innovation