



PUBLIC COMMENT · SUBMITTED

Comments on the CAA California Draft Program Plan — *Chapter 2*

Reimbursement and Payment Process

What SB 54 reimbursement means for independent haulers and MRFs

Biff Jennings

Co-Founder and Consulting CFO, netgainCFO

bjennings@netgaincfo.com · netgaincfo.com

Twenty-one comments submitted to Circular Action Alliance ahead of the August 14, 2026 close of the public comment period.

Source documents. CAA's draft California program plan, all twelve chapters, is at circularactionalliance.org/ca/program-plan-public-comment. The comments that follow address **Chapter 2, Reimbursement and Payment Process**, which is the chapter that governs how service providers get paid.

The enacting statute, SB 54 (Allen, Chapter 75, Statutes of 2022), codified at Public Resources Code sections 42040–42084, is at leginfo.legislature.ca.gov.

Note on Comment 6. Comment 6 as filed describes Oregon's 45-day payment requirement as running from invoice. ORS 459A.923(2)(a) runs the period from the service provider's request for payment. The comments are reproduced here as submitted. The distinction favors the service provider and does not change the substance of the comment, which is that Chapter 2 states no period at all.

How to read this

A relevance map for haulers, MRFs, and the people who finance them.

Circular Action Alliance is the producer responsibility organization for California under SB 54. Its draft program plan sets out how roughly **\$9.4 billion to \$17.2 billion** of producer money will move over five years, and Chapter 2 is the chapter that decides whether any of it reaches an independent service provider. The comment period closes **August 14, 2026**. These twenty-one comments were submitted from the perspective of the finance function of a \$5M–\$50M service provider, and of the lenders and buyers who underwrite them. They are shared here as context, not as advice on any particular company.

#	Comment	Hauler	MRF	Capital & financing
1	Make the modeled baseline an applicant election	●	●	High
2	Safe harbor against clawback on CAA-supplied baselines	●	●	High
3	Confirm the backstop reaches 2023–2026 claims	●	●	Medium
4	Publish a pre-2023 commodity-to-CMC crosswalk	○	●	Low
5	Publish the standard-rate schedule	●	●	High
6	Commit to a payment day-count	●	●	High
7	Objective criteria and timeline for pre-payment	●	●	High
8	Pre-application determination of the payee	●	○	Medium
9	Target review timelines by project category	●	●	High
10	Add curbside carts to standard-rate examples	●	–	High
11	State how the standard rate treats haul distance	●	–	Low
12	Identify the authority for the multi-year rate lock	●	●	High
13	Disclose the cost model, or its application	●	●	High
14	Include the express arbitration agreement terms	●	●	Medium
15	Quote the arbitration cost standard in full	●	●	Low

#	Comment	Hauler	MRF	Capital & financing
16	Add the omitted dispute trigger	●	●	Medium
17	Confirm only the applicant may compel mediation	●	●	Medium
18	Make the pre-mediation stage elective	●	●	Low
19	Interest and an outer bound during disputes	●	●	High
20	Reconcile the delivery-destination requirements	●	○	Medium
21	Basis, measurement, and taper for the 50-mile rule	●	●	Low

● primary relevance ○ secondary relevance – not applicable

Capital & financing rates how directly a comment bears on whether a reimbursement for a capital project can be underwritten. **High** means it affects whether the recovery is predictable, bankable, timely, or free from clawback. **Medium** means it affects the enforceability or timing of the receivable but not whether it exists. **Low** means it is operating or procedural, with limited direct effect on capital underwriting.

If you advise haulers

Start with **10** (carts are capital but are missing from the streamlined path), **11** and **21** (rural haul distance is priced into one pathway and not the other), **20** (reimbursement is conditioned on delivering to the nearest facility, which may not be the best economic outcome), and **8** (franchise agreements rarely contemplate a third-party payor).

If you advise MRFs

Start with **1** and **13** (eligibility is measured against a cost model that has not been published), **4** (historical bale grades must be restated into a taxonomy that did not exist until July 2024), **5**, and **21** (the secondary-processing rebate carries the same unexplained 50-mile threshold).

If you lend or underwrite

Start with **6** (no stated payment day-count, so the receivable may not enter a borrowing base), **2** (clawback risk on a baseline the borrower never produced), **5** and **13** (the rate and the model are both undisclosed), **7** (pre-payment is discretionary), and **19** (service must continue during a dispute, unpaid and without interest).

Comment 1 — Make the modeled baseline an applicant election, not a CAA discretion

Chapter 2, pp. 44, 46–47 (§2.3.4.3 Actual and Modeled Cost Assessment; Hybrid Evaluation)

Supportive: The modeled-cost backstop is the single best design feature in this chapter. The explicit statement at p.47 that the multi-tiered approach exists so that smaller or resource-constrained applicants are not excluded for lack of modern cost-accounting systems is correct policy and should be preserved in the final plan.

Concern: The mechanism is written permissively. Page 44 states CAA "may use modeled costs." An independent operator deciding today whether to invest in an SB 54-driven project cannot underwrite that decision against a discretionary backstop. Capital committees and lenders discount discretionary recovery to near zero.

Proposed resolution: Revise §2.3.4.3 so that an applicant lacking granular pre-2023 baseline data may elect modeled-baseline treatment, and CAA will apply it, subject only to the applicant certifying the absence of the underlying data. Reserve discretion for the modeling methodology, not for whether the backstop is available.

Comment 2 — Safe harbor against clawback where CAA supplied the baseline

Chapter 2, pp. 46–47 and p. 56 (Hybrid Evaluation; recordkeeping, audit, and repayment)

Concern: Page 56 requires five-year record retention and provides that identification of ineligible costs triggers corrective action up to repayment and future funding suspension. Where the baseline used in the eligible covered cost calculation was supplied by CAA's own model rather than by the applicant, the plan does not state who bears the risk if that baseline is later revised. As drafted, an operator could face repayment of amounts calculated on a figure it never produced and could not verify.

This is not theoretical. Page 44 anticipates recalibration of the models as more actual cost data arrives through the Service Provider Portal.

Proposed resolution: Add to §2.6.1.5 an express safe harbor: eligible covered costs determined using CAA-supplied modeled baselines are final and not subject to clawback on the basis of subsequent model recalibration, absent fraud or material misrepresentation by the applicant. Model revisions apply prospectively only.

Comment 3 — Confirm the modeled backstop applies to the 2023–2026 retrospective window

Chapter 2, pp. 25 and 29 (§2.1.3.2.1; §2.2.4 Applications for 2023–2026 versus 2027 Onward)

Concern: Page 29 states that reimbursement for costs incurred between Jan. 1, 2023 and Dec. 31, 2026 will require detailed documentation of project costs, material types, and tonnages of CMCs managed before and after the project. Page 25 states the cost portion of that process relies on actual invoices and tons. Neither section references the modeled-cost pathway described at pp. 44–47.

The retrospective window is precisely where the data gap is most severe and least curable, because no operator can now go back and instrument a facility for 2022. If the modeled backstop does not reach this window, the plan effectively excludes independent operators from four years of eligible claims while leaving them available to operators with pre-existing cost accounting systems.

Proposed resolution: Add an explicit statement in §2.2.4 confirming that the modeled and hybrid cost pathways in §2.3.4.3 are available for 2023–2026 applications on the same terms as prospective applications, or, if they are not, state that limitation plainly so applicants can plan accordingly.

Comment 4 — Publish a crosswalk from pre-2023 commodity classifications to CMCs

Chapter 2, pp. 29 and 34 (§2.2.4; §2.3.3.5 Covered Material Categories List)

Concern: Page 29 requires documentation of material types and tonnages of CMCs managed before the project. CalRecycle published the Covered Material Categories List on July 1, 2024. No facility classified material by CMC before that date, because the taxonomy did not exist. Historical scale, bale, and shipment records use commodity grades and end-market classifications, not CMCs.

Applicants are therefore being asked to restate historical tonnage into a taxonomy that postdates the measurement period by roughly eighteen months, with no published mapping.

Proposed resolution: Publish, with the final plan, a standard crosswalk from common pre-2023 commodity and bale-grade classifications to CMCs, and permit applicants to use it to restate historical tonnage. Where a historical grade maps to multiple CMCs, provide default allocation percentages that applicants may apply without individual justification.

Comment 5 — Publish the standard-rate schedule with the final plan

Chapter 2, pp. 42–43 (§2.3.4.3 Standard-Rate Funding; Table 7)

Supportive: Standard-rate funding is the correct pathway for most independent operators. The reduced documentation burden at p.42 and the inclusion of optical sorting, film recovery, glass cleanup, and screening technology in Table 7 are well targeted.

Concern: Page 43 states CAA will maintain a schedule of standard rates on the Service Provider Portal. No rates, ranges, or methodology appear in the plan. Page 43 also provides that once a Project Schedule is signed the standard-rate payment is fixed for the duration of the agreement. An applicant is therefore asked to choose between two pathways, and to lock a rate for a multi-year term, without seeing the rate.

Comment 12 addresses separately whether the regulation compels that lock. The two comments are independent. Even if the lock is retained, the pathway election cannot be made on an informed basis without the rate.

Proposed resolution: Publish the initial standard-rate schedule concurrently with the final program plan in October 2026, or at minimum publish the rate-setting methodology, the local labor and density adjustment factors, and indicative ranges by project type, so applicants can make an informed pathway election.

Comment 6 — Commit to a payment day-count

Chapter 2, p. 67 (§2.6.4 Reasonable Payment Timing) **and pp. 61–62** (§2.6.3 Payment Variations and Forms)

Concern: The plan commits to "reasonable" payment timing without a stated day-count anywhere in Chapter 2. By contrast, Oregon's Recycling Modernization Act requires payment within 45 days of invoice by statute.

This is not only a policy preference. 14 CCR 18980.8(g)(4) provides that "The process must establish reasonable periods for making determinations pursuant to paragraph (3) and issuing payments, if any." The obligation runs to the plan, and the plan is the document in which it must be discharged. Section 2.1.2 states that CAA "will establish expected review and reimbursement timelines, which may be adjusted based on actual timelines as SB 54 is implemented," and §2.7.3 states that the process is designed to provide timelines consistent with (g)(4). A commitment to establish periods later, coupled with a reserved right to adjust them unilaterally, is not the establishment the regulation requires.

This distinction is decisive for financing. A receivable with a contractual payment term can be included in a borrowing base and treated as revenue by a lender or a quality-of-earnings reviewer. A receivable payable on a reasonable timeline cannot. For an independent operator, that is the difference between EPR reimbursement being bankable and being an assumption a buyer discounts to zero.

Proposed resolution: Commit in §2.6.4 to a defined payment period, for example 45 days from receipt of a complete and approved invoice, consistent with the Oregon standard, and state the remedy for late payment. State the period in the plan itself, and state the mechanism and notice requirements for any subsequent adjustment.

Comment 7 — Objective criteria and a decision timeline for pre-payment

Chapter 2, pp. 61–62 (§2.6.3.1–2.6.3.3 Reimbursement versus Pre-Payment)

Supportive: Page 62 explicitly names small or independent private haulers and processors lacking access to financing or credit for capital purchases as a category eligible for pre-payment consideration. That recognition is welcome and should be retained.

Concern: Pre-payment is available at CAA's sole discretion, with three evaluation factors stated but no weighting, no decision timeline, and no stated appeal. Combined with §2.2.5 at p.29, which anticipates review taking from a few weeks to several months, an operator cannot sequence equipment procurement or construction financing around an indeterminate answer to an indeterminate question.

Proposed resolution: Publish objective qualifying criteria for pre-payment, commit to a decision timeline for pre-payment requests separate from the underlying project review, and route pre-payment denials into the dispute resolution process described in §2.7. Comments 14 through 19 address deficiencies in that process; routing pre-payment denials into it presumes those are corrected.

Comment 8 — Pre-application determination of the financially responsible party

Chapter 2, pp. 33 and 60 (§2.3.3.2 Franchise Agreements; §2.6.2.1 General Payment Rules)

Concern: Page 60 provides that where a private service provider performs services under contract to a local jurisdiction, reimbursement may be issued directly to that provider if it is the financially responsible party. Page 33 requires the applicant to describe how the project does not conflict with existing franchise agreements.

California franchise agreements are typically bundled across solid waste, recycling, and organics, and frequently do not contemplate a third-party payor. Where a hauler and its jurisdiction disagree about which party is financially responsible for a given cost, the plan offers no mechanism to resolve that question before an application is filed.

The likely result is either duplicate applications or no application at all, and the smaller operator is the party least able to litigate the point with its franchisor.

The regulation treats a recycling service provider's covered costs as a distinct category and gives the jurisdiction a notice right, not a designation right. 14 CCR 18980.8(g)(8) provides that "For costs determined to be a recycling service provider's covered costs, the PRO or Independent Producer shall first notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination," and that the notice "shall, at a minimum, describe the nature and amount of the covered costs." Advance notice to the jurisdiction is a procedural safeguard. It does not vest the jurisdiction with discretion over who receives payment, and Chapter 2 should not be drafted so as to imply that it does.

Proposed resolution: Establish a short-form pre-application determination through which a service provider and its jurisdiction may jointly, or either may unilaterally, obtain a non-binding CAA determination of the financially responsible party for a proposed project before incurring application cost. State expressly in §2.6.2 that the jurisdiction notice required by 18980.8(g)(8) is a notice provision and does not condition payment on jurisdiction consent.

Comment 9 — Target review timelines by project category

Chapter 2, pp. 29 and 52 (§2.2.5; §2.4.4.3 Timeliness of Notification)

Supportive: The commitment at p.52 to issue written status updates for any review exceeding 60 days, and to maintain public metrics on processing times, is a meaningful accountability provision and should be retained in the final plan.

Concern: Page 29 anticipates review from a few weeks to several months depending on complexity. For capital projects, an indeterminate review period means the applicant must either hold a vendor quote open indefinitely or commit capital before determination. Page 29 also warns that approval of projects submitted after work has started is not guaranteed. Together these place the operator in a position where the cautious path is to do nothing.

14 CCR 18980.8(g)(4) requires the process to "establish reasonable periods for making determinations pursuant to paragraph (3)." The determination period is therefore a required element of the plan, not a target CAA may elect to publish. A status update at 60 days, while useful, is notification of delay rather than a period for determination.

Proposed resolution: Publish target review timelines by project category in the final plan, with the public metrics at p.52 reported against those targets. State the determination period required by 18980.8(g)(4) as a period, distinct from the status-update commitment at p.52.

Comment 10 — Add curbside carts to the standard-rate funding examples

Chapter 2, pp. 37, 43, 63 (Table 4 Cost Categories; Table 7 Examples of Eligible Standard-Rate Funding Projects; §2.6.3.4.2 Operating Costs)

Supportive: The plan is clear that carts are eligible capital. Table 4 at p.37 lists collection vehicles and carts under capital costs. Page 63 confirms that isolated capital expenditures for carts may be reimbursed separately as lump sum payments, independent of ongoing per-household reimbursement. That treatment is correct and should be retained.

Concern: Table 7 at p.43 does not include curbside carts among the examples eligible for standard-rate funding, although it does include new drop-off containers, on-board cart inspection hardware, and four categories of MRF equipment.

The practical result is asymmetric. A MRF acquiring an optical sorter, a capital item that is engineered to site and varies widely in configuration and price, has a streamlined path. A hauler acquiring curbside carts, among the most standardized and price-transparent capital purchases in the industry, is directed toward the full actual and modeled cost pathway at pp. 44 to 47, with the associated documentation burden and review time.

Carts are exactly the kind of purchase standard rates exist to handle. Unit prices are published, volumes are countable, and the local adjustments contemplated at p.42 apply cleanly.

Proposed resolution: Add curbside recycling carts and containers to the collection cost examples in Table 7, on the same basis as drop-off containers. Publish a per-cart standard rate by size class with the standard-rate schedule.

Comment 11 — State how the standard rate accounts for haul distance to the MRF

Chapter 2, pp. 42, 44, 63–64 (§2.3.4.3 Standard-Rate Funding; §2.3.4.3 Actual and Modeled Cost Assessment; §2.6.3.4.2 Collection Services and Transportation Funding)

Concern: The two funding pathways appear to treat haul distance differently, and the difference falls entirely on rural and remote operators.

Page 44 lists the criteria used to establish modeled collection costs and includes transport distance to MRF among them. Page 42, describing the standard-rate pathway, states that evaluation applies approved local adjustment factors such as labor conditions, route density, and collection frequency. Table 7 at p.43 similarly describes collection standard rates as adjusted for local criteria such as labor rates and route densities. Haul distance is not named in either place.

Route density and haul distance are not the same variable. Two service areas can share a density profile while one sits fifteen miles from its MRF and the other ninety. On a rural route the round trip to the MRF can exceed the productive collection time on the route itself.

This matters because page 64 provides that transportation costs of CMCs directly from source to MRFs or REMs are not eligible for separate reimbursement, while transportation exceeding 50 miles from a drop site or transfer point is. We understand the intent is to avoid duplicating cost already captured in the per-household collection payment described at p.63, and we support avoiding duplication. The concern is not that direct-haul transport is excluded; it is that if the per-household standard rate does not adjust for haul distance, that cost is neither recovered separately nor recovered within the rate.

Proposed resolution: State expressly in §2.3.4.3 whether haul distance to the receiving facility is among the local adjustment factors applied to standard-rate collection payments. If it is, publish the adjustment methodology alongside the labor and density factors. If it is not, provide either a distance-based adjustment to the per-household rate or a separate direct-haul allowance beyond a stated mileage threshold, so that operators in rural, mountain, and border regions are not systematically underpaid for electing the streamlined pathway.

Comment 12 — Identify the authority for fixing the standard rate for the term of the agreement

Chapter 2, p. 43 (§2.3.4.3 Standard-Rate Funding)

Concern: Page 43 provides that an applicant may shift between funding approaches during the application process, but that "once a Project Schedule has been signed, the standard-rate payment will be set for the duration of the agreement, pursuant to Section 18980.8(g)."

The cited subdivision does not appear to support that proposition. 14 CCR 18980.8 sits within Article 8, Producer Responsibility Plan Requirements, and is titled Producer Responsibility Plan. Its subdivisions specify what a producer responsibility plan must contain. The provision addressing the performance-based approach is 18980.8(g)(6), which reads in relevant part:

In addition to allowing identification of covered costs based on claims for certain amounts as described in paragraphs (3) through (5), the process **may** establish a performance-based approach (e.g., based on tons of covered material) for identifying covered costs. An entity that opts to have covered costs for certain **activities** determined in such a manner shall not also request that those covered costs **for those activities** be determined according to paragraph (3).

Three observations. The rule is scoped to activities, not to time; it prevents an entity from having the same activity's costs determined twice by two methods. It says nothing about Project Schedules, contract duration, or subsequent periods. And the authority it confers on the PRO is permissive, which is a grant to CAA rather than a constraint on the applicant.

The plan itself appears to recognize the distinction. At p.63 it describes the performance-based framework as one "allowed under" 18980.8(g)(6), which is accurate. At p.43 the same subdivision is invoked as compelling a duration lock.

There is a further tension. 18980.8(h) requires the plan to give a recycling service provider the option to require mediation and, failing agreement, binding arbitration over covered cost determinations, and 18980.8(h)(4)(F) empowers the arbitrator to determine the reasonable costs the PRO must pay. A contractual term fixing a rate for the term of an agreement should not be understood to foreclose a dispute right the regulation requires the plan to contain.

Proposed resolution: Identify in the final plan the operative regulatory language that requires the standard-rate payment to be fixed for the duration of the agreement, or remove the citation to Section 18980.8(g) and state the term as a program design choice. If it is a design choice, provide a reopener permitting adjustment where an applicant's operating characteristics, including route density, service area, or haul distance, change materially during the term, and confirm that the term does not limit the dispute rights conferred by 18980.8(h).

Comment 13 — Disclose the System Mapping and Cost Modeling Study, or its application to each determination

Chapter 2, pp. 24, 25, 44, 46–47, and 69 (§2.1.2 Reimbursement Principles; §2.1.3.2; §2.3.4.3; §2.3.4.5 Project Evaluation Process; §2.7.7.B)

Supportive: Grounding determinations in a consistent statewide cost model is the right approach, and the recognition at p.25 that the model must account for California's geographic and economic diversity is appropriate.

Concern: The System Mapping and Cost Modeling Study is incorporated into a binding determination process. Under §2.3.4.3 and §2.3.4.5 it establishes baseline costs where actual costs are unavailable, benchmarks submitted actual costs, identifies claims requiring further substantiation, and calibrates the standard rates. Page 44 lists the criteria used as model inputs. The plan does not disclose the cost functions, coefficients, density bands, regional stratification, or resulting unit-cost estimates.

An applicant therefore cannot determine before applying what the model concludes about a system with its operating characteristics, cannot make the pathway election described in Comment 5 on an informed basis, and cannot evaluate an adverse determination against the benchmark used to produce it.

The plan's own cost principles make the asymmetry explicit. Verifiability is stated as a governing principle, requiring the applicant to provide documentation sufficient for audit and review. The plan asks audit-grade substantiation of the applicant while withholding the analytical basis of CAA's counter-determination.

Section 2.7.7.B is instructive on both points. In describing how modeled-cost disputes are resolved, the plan states that CAA will resolve them by reviewing model inputs with the applicant. That establishes that the inputs are capable of being shared, so no confidentiality constraint prevents disclosure. It also establishes that, as drafted, an applicant obtains access to the basis of an adverse determination only after receiving it and only by initiating a formal dispute.

Proposed resolution, primary: Publish with the final program plan in October 2026 the methodology, cost functions, coefficients, density bands, and regional stratification of the System Mapping and Cost Modeling Study, together with resulting modeled unit-cost estimates by region and service profile.

Proposed resolution, alternative: If the study is not published in full, require that every written determination issued under 18980.8(g)(3) disclose the specific model inputs, adjustment factors, regional assumptions, and benchmark values applied to that applicant, at a level of detail sufficient for the applicant to reproduce the calculation. This is the disclosure §2.7.7.B already contemplates, made available at determination rather than only upon dispute.

Comment 14 — Include the express terms of the mediation and arbitration agreement required by 18980.8(h)(4)

Chapter 2, pp. 68–69 (§2.7.6 Three-Stage Dispute Resolution Process)

Supportive: The three-stage structure is sensible, and the commitment at §2.7.8 that neither party may suspend performance during a dispute serves continuity of service. See Comment 19 on the financing consequence of that provision.

Concern: 14 CCR 18980.8(h)(4) provides that the process must give the local jurisdiction or recycling service provider the option to require mediation and then binding arbitration, and that "The PRO or Independent Producer plan shall include the express terms of an agreement that, upon the local jurisdiction or recycling service provider's exercise of its option, will govern mediations and arbitrations."

Section 2.7.6 provides a narrative description of a process. It does not include the express terms of an agreement. The distinction is practical rather than formal: an applicant exercising its option under (h)(4) needs terms capable of governing a proceeding.

Specific required elements that do not appear in the plan:

1. **Identification of service providers, (h)(4)(A).** The regulation requires that "The plan shall identify a mediation service provider and an arbitration service provider, or a single service provider for both." Section 2.7.6 refers to "a nationally recognized mediation service provider," naming none, and to "a nationally recognized arbitration body (e.g., JAMS)." An example introduced by "e.g." is not an identification.
2. **Governing rules and statutory framework, (h)(4)(B).** The regulation requires arbitration to be conducted subject to sections 1280 through 1294.4 of the Code of Civil Procedure, and provides that where the parties agree on rules complying with those sections, the arbitrator shall adopt them. Neither element appears.
3. **Arbitrator selection, (h)(4)(C).** The regulation provides that where the parties cannot agree, each selects one arbitrator and the two selected arbitrators select a third to chair the panel. The plan is silent on arbitrator selection.
4. **Fee allocation carve-out, (h)(4)(E).** The regulation allocates fees equally "Unless the parties agree otherwise." Section 2.7.6 states the equal allocation and omits the carve-out.
5. **Precondition protection, (h)(4)(G).** The regulation provides that a local jurisdiction or recycling service provider "shall not be required to agree to submit a matter to binding arbitration as a precondition for submitting the matter to mediation." This protection does not appear.

Proposed resolution: Include in the final plan, as an exhibit or within §2.7, the express terms of the mediation and arbitration agreement contemplated by 18980.8(h)(4), incorporating subparagraphs (A) through (G), and identify the mediation and arbitration service providers by name.

Comment 15 — Quote 18980.8(h)(4)(F) in full

Chapter 2, p. 68 (§2.7.6, Step 3)

Concern: Section 2.7.6 states that the arbitrator is empowered to determine "The reasonable costs, if any, for which the PRO must pay the local jurisdiction or the service provider," citing Section 18980.8(h)(4)(F).

The subparagraph continues beyond the quoted language. It provides that "The arbitrator or arbitration panel shall apply that provision as follows:"

- (i) The determination shall be made in light of all provisions of the Act relevant to payment of such costs, including paragraph (1) of subdivision (a) of section 42060, paragraph (1) of subdivision (j) of section 42051.1, subdivision (l) of section 42051.1 of the Public Resources Code, and all provisions affecting the costs that local jurisdictions and recycling service providers may incur.
- (ii) Cost determinations shall be subject to the limitations provided in subdivision (b).

Clause (i) is mandatory and directs the arbitrator to PRC 42060(a)(1), the provision requiring the PRO budget to fully fund costs incurred by local jurisdictions and their recycling service providers. Describing the arbitration remedy without it understates the framework the regulation requires an arbitrator to apply. Clause (ii), which imposes a limitation, is likewise omitted; the concern is completeness in both directions.

Proposed resolution: Quote or incorporate 18980.8(h)(4)(F) in full, including clauses (i) and (ii), in §2.7.6.

Comment 16 — Add the omitted dispute trigger and tie the payment trigger to the regulatory period

Chapter 2, p. 68 (§2.7.5 Triggers for Dispute Resolution)

Concern: 14 CCR 18980.8(h)(1) provides that the process "must allow a local jurisdiction or recycling service provider to initiate the process after the PRO or Independent Producer has determined whether particular costs are covered costs or if the PRO or Independent Producer fails to make a determination or payment within the period established for doing so pursuant to paragraph (4) or subdivision (g)."

We note that the internal cross-reference in the adopted text is susceptible to more than one reading. "Paragraph (4) or subdivision (g)" may refer to paragraph (4) of subdivision (g), or to paragraph (4) of subdivision (h) together with subdivision (g) generally. The ambiguity does not affect the analysis below. Subdivision (g)(4) is the only provision in section 18980.8 that establishes periods for making determinations and issuing payments; (h)(4) concerns the mediation and arbitration option and establishes no period. Under any available reading, the period from which the trigger runs is the period required by (g)(4). We raise the point because it is a further reason for the plan to state that period expressly rather than incorporate it by cross-reference.

Two gaps follow.

An omitted trigger. Section 2.7.5 lists four triggers. Three concern determinations that have been issued. The fourth concerns failure to issue payment. Failure to make a determination at all is not listed. Under the plan as drafted, an applicant whose determination is simply never issued has no enumerated basis on which to initiate the process, although (h)(1) expressly provides one.

A substituted standard. The plan's payment trigger arises when CAA "Fails to issue payment within the terms negotiated in the California Funding and Services Agreement and/or Project Schedules." The regulation ties the trigger to the period established under (g)(4), which applies uniformly. Tying it instead to individually negotiated contract terms means the availability of the dispute right varies with each applicant's negotiating position, and an applicant that accepts unfavorable payment terms has no regulatory floor beneath them. Smaller operators are the least likely to negotiate favorable terms and the most exposed to the consequence.

Proposed resolution: Add failure to issue a determination within the established period as an enumerated trigger in §2.7.5. Restate the payment trigger to run from the period established under 18980.8(g)(4), with negotiated contract terms applying only where more favorable to the applicant. See Comment 6 on establishing that period.

Comment 17 — Confirm that only the applicant may compel mediation, and that CAA may not withdraw from it unilaterally

Chapter 2, p. 68 (§2.7.6, Step 2)

Concern: 14 CCR 18980.8(h)(4) gives the local jurisdiction or recycling service provider the option "to require the dispute to be submitted to mediation." 18980.8(h)(6) provides that "Nothing in this subdivision shall be construed as empowering the PRO or Independent Producers to require local jurisdictions or recycling service providers to submit any matter to mediation or arbitration."

Two aspects of Step 2 are in tension with those provisions.

Who may compel. The Step 2 heading reads "Mediation (Mandatory Upon Applicant Request)," which is consistent with the regulation. The body states that "either party may request mediation." Read with the heading, the text can be construed to make mediation mandatory on a request by CAA. Subdivision (h)(6) forecloses that construction, and the plan should say so rather than leave it to inference.

Unilateral withdrawal. The plan states that "Either party may withdraw from mediation." The regulation gives the applicant the option to require mediation. A right vested in CAA to withdraw at will converts a process the applicant is entitled to require into one CAA may elect to leave, which defeats the option in substance.

Duration. The plan states that the mediation period "typically extends up to 90 days." A typical practice is not a term and provides no outer bound on the interval before the arbitration option becomes available.

Proposed resolution: State in §2.7.6 that only the local jurisdiction or recycling service provider may compel mediation or arbitration, consistent with 18980.8(h)(6). Remove or qualify CAA's withdrawal right so that it cannot defeat an applicant's exercise of the (h)(4) option. Replace "typically extends up to 90 days" with a stated maximum period after which the applicant may proceed to arbitration.

Comment 18 — Make the direct discussion stage available at the applicant's election rather than as a precondition

Chapter 2, p. 68 (§2.7.4; §2.7.6, Step 1)

Supportive: Early informal resolution is sensible and generally in the applicant's interest. CAA is right to offer it, and most disagreements should resolve there.

Concern: Section 2.7.6 describes "three sequential steps," and mediation is available only "If the disagreement remains unresolved" after Step 1. The regulation at 18980.8(h)(4) gives the applicant the option to require mediation without an intervening precondition, and (h)(3) requires the process to avoid unnecessary burden. No duration is stated for Step 1.

An applicant experiencing payment delay, which is one of the enumerated triggers at §2.7.5, is by definition already carrying a financing cost. A mandatory pre-mediation stage of unspecified length compounds it.

Proposed resolution: Make Step 1 available at the applicant's election rather than as a precondition to Step 2, or state a maximum duration for Step 1 after which the applicant may proceed to mediation as of right.

Comment 19 — Provide interest and an outer bound where continued performance is required during a dispute

Chapter 2, p. 69 (§2.7.8 Continuity of Service and Payment During Dispute)

Supportive: Continuity of recycling service during a dispute is a legitimate objective, and residents should not experience service interruption because CAA and a service provider disagree about a cost determination.

Concern: Section 2.7.8 provides that service providers "must continue delivering contracted services," that CAA "will continue to pay undisputed portions," and that neither party may suspend performance. No regulatory basis is cited for the continued performance obligation, and none appears in 18980.8(h).

The provision is symmetric in wording and asymmetric in operation. A service provider must continue incurring collection or processing cost throughout a dispute of indeterminate length while the disputed receivable remains unpaid. The plan provides no interest on withheld amounts, no security, and, absent the periods sought in Comment 6, no outer bound on duration. For an operator in the \$5M–\$50M range, a disputed receivable carried while service continues is a direct draw on a revolving credit facility, and the financing cost of CAA's own determination process falls on the applicant.

Proposed resolution: If the continuity obligation is retained, provide for interest on amounts ultimately determined to be eligible covered costs, accruing from the date payment would have been due under the period established pursuant to 18980.8(g)(4), and state an outer bound on the total duration of the dispute process.

Comment 20 — Reconcile the destination requirements, and do not condition reimbursement on delivery to a facility the operator has not chosen

Chapter 2, pp. 64–65 (§2.6.3.4.2 Transportation Funding)

Supportive: Reimbursing incremental transportation cost from rural drop sites and transfer facilities is correct, and the express recognition that the nearest appropriate facility may be located outside California is a practical accommodation for border and mountain regions that should be retained.

Concern: Page 64 conditions transportation reimbursement on delivery to a specified destination, and states that condition three different ways within two pages.

- For rural drop sites and transfer facilities, reimbursement runs to "The nearest MRF with capacity to process commingled recyclables."
- For out-of-state delivery, the standard is the facility that "represents the closest feasible option for managing the material."
- For collector transportation generally, reimbursement runs to "the nearest participating MRF or transfer location within a specified geographic boundary," and "If a collector chooses to deliver materials to a different MRF, CAA California will not cover the additional transportation costs unless mutually agreed to."

Capacity, feasible, participating, and specified geographic boundary are each undefined. The three formulations are not equivalent, and an applicant cannot determine which governs a given movement.

Beyond the drafting inconsistency, the substantive concern is that nearest is not the same as least-cost, and the plan appears to assume it is.

The economically relevant measure is total delivered cost, which is haul cost plus tip fee net of any commodity revenue share. A facility forty miles away charging a higher gate rate with no revenue share can be materially worse for the operator, and for the system, than one seventy-five miles away with a lower gate rate and a share arrangement. A rule keyed to distance alone optimizes the smallest of the three variables.

Several practical consequences follow for independent operators specifically.

Existing commercial arrangements. Haulers commonly operate under multi-year supply agreements with processing facilities, some with minimum tonnage or take-or-pay terms, and some with equity or affiliate relationships. A destination condition keyed to proximity would require an operator either to breach or renegotiate those arrangements or to forgo reimbursement.

Franchise obligations. As noted in Comment 8, California franchise agreements frequently designate a delivery facility. Where the designated facility is not the nearest, the operator is placed between two obligations, and the plan provides no mechanism to resolve the conflict.

Counterparty position. In many California markets the nearest MRF is owned by a vertically integrated competitor of the independent hauler. Conditioning reimbursement on delivery to that facility directs an independent's tons to a competitor at a gate rate the competitor sets, and removes the independent's principal source of negotiating leverage, which is the credible ability to take its volume elsewhere.

Downstream compliance exposure. Under the REM framework, chain-of-custody documentation and end-market qualification of outbound material bear on whether tonnage qualifies. An operator directed to a facility it did not select, and whose residue rate and end markets it does not control, assumes exposure it cannot manage.

Finally, the last sentence of the paragraph provides that "Project Schedules will outline the conditions that may require materials to be delivered to alternative locations." A condition on reimbursement is one thing. A contractual power to require delivery to a location of CAA's choosing is materially different, and the plan states no criteria governing its exercise, no notice period, and no appeal.

We note a related circularity. Page 44 lists transport distance to MRF among the criteria used to establish modeled collection costs. Where CAA also determines the destination, CAA is setting an input to its own cost model and then evaluating claims against that model's output.

Proposed resolution: Adopt a single destination standard and define its terms. Replace the proximity test with a least-total-delivered-cost test, under which an operator may deliver to any qualifying facility whose total delivered cost, comprising transportation plus gate rate net of commodity revenue share, does not exceed that of the nearest qualifying facility, with reimbursement capped at the nearest-facility equivalent. Expressly preserve delivery under an existing supply agreement or franchise designation in effect before the Project Schedule is signed. State in §2.6.3.4.2 the criteria, notice period, and dispute rights applicable to any Project Schedule condition requiring delivery to an alternative location.

Comment 21 — State the basis for the 50-mile threshold, define how it is measured, and taper it

Chapter 2, pp. 64–65 (§2.6.3.4.2 Transportation from Rural Drop Sites and Transfer Facilities; Transportation from MRFs to Secondary Processors)

Concern: A 50-mile threshold governs two distinct reimbursements. Page 64 reimburses transportation "more than 50 miles from collection point (e.g., drop site or transfer point)." Page 65 provides that the secondary-processor rebate "will cover the transportation cost of new and additional materials exceeding 50 miles from the initial MRF." Neither passage states how the figure was derived, and the two movements have different cost structures, different payload characteristics, and different vehicle types.

Three specific issues.

Basis. The System Mapping and Cost Modeling Study is described at pp. 24 to 25 as the analytical foundation for reimbursement levels. If the threshold derives from that work, the derivation should be stated. If it does not, the plan should say what it does derive from. This is the same disclosure concern raised in Comment 13, applied to a specific number.

Measurement. "More than 50 miles from collection point (e.g., drop site or transfer point)" does not resolve whether the measure runs from the generator stop or from the consolidation point, and the parenthetical suggests the latter while the defined term suggests the former. The plan also does not state whether the measure is one-way or round trip, whether it is road miles or straight-line, or whether it is applied per load or averaged across a route. On a rural consolidation route these choices produce materially different results.

Cliff versus taper. As drafted the threshold is a discontinuity rather than a gradient. A forty-nine mile movement recovers nothing; a fifty-one mile movement recovers. Operators on either side of the line have nearly identical cost structures and entirely different outcomes, and the rule creates an incentive to structure movements around the threshold rather than around efficiency. It also interacts poorly with Comment 20: an operator required to deliver to the nearest facility may be placed below the threshold by that requirement and lose the reimbursement as a result.

To be clear, we do not propose that all transportation become separately reimbursable. As stated in Comment 11, we support avoiding duplication of cost already captured in the per-household collection payment. The concern is the calibration and administration of the threshold, not its existence.

Proposed resolution: State in the final plan the basis for the 50-mile threshold and whether the same figure is appropriate for both the rural haul and secondary-processor rebates. Define the measurement convention: origin point, one-way or round trip, road or straight-line, and per-load or per-route. Replace the cliff with a taper, for example a per-mile allowance applying to all miles above a lower threshold, so that outcomes vary continuously with cost rather than discontinuously with geography.