



Rural Counties
Environmental Services
Joint Powers Authority

ESJPA

Board of Directors Meeting
Special Session

Wednesday
April 3, 2024
1:00 P.M.

1215 K St., Suite 1650
Sacramento, CA 95814
916-447-4806



**Rural Counties
Environmental Services
Joint Powers Authority**

ESJPA

CHAIR — MICHAEL KOBSEFF, SISKIYOU COUNTY
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DEPUTY EXECUTIVE DIRECTOR — STACI HEATON

**Rural Counties Environmental Services Joint Powers Authority
Board of Directors *SPECIAL MEETING***

**1215 K St., Suite 1650
Sacramento, CA 95814**

Wednesday, April 3, 2024 1 p.m. – 3 p.m.

**Additional Teleconference Locations are Listed on the
Last Page of this Agenda**

(All Teleconference Locations are Accessible to the Public)

This meeting will also be livestreamed for public access. Members of the public can watch or listen to the meeting using one of the following methods:

1. Join the Zoom meeting application on your computer, tablet or smartphone:

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PUBLIC COMMENT USING ZOOM: Members of the public who join the Zoom meeting, either through the Zoom app or by calling in, will be able to provide live public comment at specific points throughout the meeting.

EMAIL PUBLIC COMMENT: One may also email public comment to jlunn@rcrcnet.org before or during the meeting. All emailed public comments will be forwarded to all ESJPA Board of Directors members.

Only those items that indicate a specific time will be heard at the assigned time. All other items may be taken out of sequence to accommodate the Board, the staff, and the general public. Indicated time allocations are for planning purposes only and actual times will vary from those indicated.

I. Call to Order, Self-Introductions, and Determination of Quorum

- A. Overview of Meeting Procedures – Staci Heaton, ESJPA Deputy Executive Director. (5 minutes)

II. Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)

- A. Review and discussion of proposed CalRecycle draft regulations – John Kennedy, RCRC Policy Advocate, Larry Sweetser, Sweetser and Associates, Tedd Ward, Del Norte Solid Waste Management Authority, Staci Heaton (pgs. 1-116; 105 minutes)

III. Public Comment**IV. Adjournment**

Meeting facilities are accessible to persons with disabilities. By request, alternative agenda document formats are available to persons with disabilities. To arrange an alternative agenda document format or to arrange aid or services to modify or accommodate persons with a disability to participate in a public meeting, please call (916) 447-4806 at least 48 hours before the meeting.

Agenda items will be taken as close as possible to the schedule indicated. Any member of the general public may comment on agenda items during the public comment period. To facilitate public comment, please let staff know if you would like to speak on an agenda item. The agenda for this meeting of the Board of Directors of Rural Counties Environmental Services Joint Powers Authority was duly posted at its offices, 1215 K Street, Suite 1650, Sacramento, California, at least 72 hours prior to the meeting.

Any written materials related to an open session item on this agenda that are submitted less than 24 hours prior to the meeting, and that are not exempt from disclosure under the Public Records Act, will promptly be made available for public inspection at ESJPA's principal office, 1215 K Street, Suite 1650, Sacramento, CA 95814, (916) 447-4806, during normal business hours, and on the ESJPA website, <https://www.esjpa.org>.

Additional Teleconference Location(s)

Del Norte Solid Waste Management Authority Conference Room 1700 State Street Crescent City, CA 95531	El Dorado County Board of Supervisors 330 Fair Lane Placerville, CA 95667
Lake County Public Services 333 Second Street Lakeport, CA 95453	Mono County Civic Center Convict Lake Room 1290 Tavern Road Mammoth Lakes, CA 93546
Nevada County Government Building Coyote Room 950 Maidu Avenue Nevada City, CA 95959	County of San Luis Obispo Public Works Room 207 976 Osos Street San Luis Obispo CA 93408
Siskiyou County Board of Supervisors Chambers 311 Fourth Street Yreka, CA 96097	Tehama County Solid Waste Management Agency Administrative Office 20000 Plymire Road Red Bluff, CA 96080

PROPOSED REGULATION TEXT

Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations

Division of Circular Economy

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

CALIFORNIA CODE OF REGULATIONS

Note: All text is added text to title 14, division 7 of the California Code of Regulations.

TITLE 14

DIVISION 7

CHAPTER 11.1 Plastic Pollution Prevention and Packaging Producer Responsibility

Article 1 – Definitions

Article 2 – Covered Materials and Covered Material Categories

Article 3 – Evaluations for Covered Material and Covered Material Categories

Article 4 – Responsible End Markets

Article 5 – Requirements for Producers

Article 6 – Requirements for the Producer Responsibility Organization

Article 7 – Requirements for Independent Producers

Article 8 – Producer Responsibility Plan Requirements

Article 9 – Annual Report and Program Budget

Article 10 – Data Reporting Requirements

Article 11– Requirements for Local Jurisdictions and Recycling Service Providers

Article 12 – Requirements for the Advisory Board

Article 13 – Enforcement Oversight by the Department and Administrative Civil

Penalties

Article 14 – Additional PROs

Article 15 – Public Records

CHAPTER 11.5 Environmental Marketing and Labeling

Article 1 – Approval of Certification Entities

DRAFT

**CHAPTER 11.1 Plastic Pollution Prevention and Packaging Producer
Responsibility**

Article 1: Definitions

§ 18980.1. Definitions

(a) Except as otherwise noted, the following definitions shall govern the provisions of this chapter and supplement the definitions set forth in Chapter 3 (commencing with section 42041), Part 3, Division 30 of the Public Resources Code:

- (1) "Act" means the Plastic Pollution Prevention and Packaging Producer Responsibility Act, Chapter 3 of Part 3 of Division 30 of the Public Resources Code (sections 42040 through 42084).
- (2) "Alternative collection" means a program that collects covered materials regardless of whether the covered material is discarded or considered solid waste and is not "curbside collection" as defined in section 42041(g) of the Public Resources Code.
- (3) "Anaerobic Digestion" means the controlled biological decomposition of organic material in the absence of oxygen or in an oxygen-starved environment. Anaerobic digestion produces biogas and a residual digestate.
- (4) "Biogas" has the same meaning as defined in section 17896.2(a)(3) of this division.
- (5) "Brand or trademark" means a trademark, service mark, or trade name, as those terms are defined in section 14202 of the Business and Professions Code. For purposes of section 42041(w)(1) and section 42041(w)(2) of the Public Resources Code, the sale, offer for sale, distribution, or other use of a product in a commercial enterprise is deemed to be under a brand or trademark when the brand or trademark is used on such goods or services in a manner described in section 14202(h) of the Business and Professions Code. A product may be used in a commercial enterprise under a brand or trademark without the brand or trademark being used directly on the product itself.

(6)

- (A) “Component,” with respect to covered material, means a piece or subpart that is readily distinguishable from other pieces or subparts with respect to its composition or function.
 - (B) For purposes of categorizing components into covered material categories, each detachable component shall be considered individually and not necessarily categorized in the same category as the components from which it was detached. A “detachable component” is one that is either:
 - (i) designed such that it may be readily mechanically detached from all other components; or
 - (ii) commonly detached, or intended to be detached, from all other components by the consumer before being discarded.
 - (C) The term “separable and distinct component,” as stated in the definition of “packaging” in section 42041(s) of the Public Resources Code, means a component, as defined in this subdivision, that is not the good being packaged but rather is the covered material serving the functions of packaging, as set forth in that definition.
- (7) “Compost” means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility, and meets the following standards:
- (A) The material has undergone the Process to Further Reduce Pathogens, as described in section 17868.3 of this division, and has reached a stage of reduced biological activity as indicated by reduced temperature and rate of respiration below that of active compost.
 - (B) “Active compost,” for the purposes of this definition, has the same meaning as section 17852(a)(1) of this division.
 - (C) The material complies with the maximum metal concentration limits specified in section 17868.2 of this division.
 - (D) The material complies with the physical contamination limits specified in section 17868.3.1 of this division.

- (8) “Covered material category list” or “CMC list” means the list established pursuant to section 42061 of the Public Resources Code, which contains elements evaluating compliance, recycling rates, recyclability and compostability, by covered material category.
- (9) “Digestate for land application” means digestate, as defined in section 17852(a)(13.5) of this division, that meets the requirements of section 17852(a)(24.5) of this division.
- (10) “Discrete” means, with respect to covered material, a product, or any other physical good, a single physical instantiation of a unique item or material, rather than embodiments of such good generally or the good’s generic name, type, or category. Goods used to refill or reuse packaging are discrete items distinct from the previous goods with which the packaging was originally associated.
- (11) “Food” has the same meaning as defined in section 113781 of the Health and Safety Code.
- (12) “Food packaging” means packaging, as defined in section 42041(s) of the Public Resources Code, used for the containment, protection, handling, delivery, or presentation of food, and may come in direct contact with food, which includes but is not limited to, clamshells, hinged or lidded containers, wraps or wrappers, and bags.
- (13) “Food service ware” means an item that is intended to be used to contain, serve, store, handle, protect, or market food and facilitate the consumption of food, and is either intended to, or necessarily will, directly contact a food product when used for such purposes or is described in subparagraph (A) or (B). Without limitation, the following items are examples of food service ware:
- (A) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws.
 - (B) Wraps, wrappers, and bags used in the packaging of food offered to customers by food service establishments. For purposes of this definition:

- (i) A food service establishment is a retail operation, including any permanent or nonpermanent locations used in conjunction with the operation, that stores, prepares, packages, serves, vends, or otherwise handles food for human consumption, regardless of whether the food is consumed on or off the operation's premises, and regardless of whether there is a charge for the food.
 - (ii) Packaged food items that were not packaged by the operation and are not removed from their packaging by the operation shall not be considered food offered for sale or provided to customers by a food service establishment.
 - (iii) Notwithstanding the foregoing, bags provided to customers by a business that is a "store" pursuant to Chapter 5.3 of Part 3 of Division 30 of the Public Resources Code (commencing with section 42280) shall not be considered bags used in the packaging of food, provided such bags are precheckout bags (as defined in that Chapter) or are provided to customers at the point of sale.
- (14) "Incompatible material" means material that a receiving responsible end market is not designed, permitted, or authorized to recycle, as defined in section 42041(aa) of the Public Resources Code.
- (15) "Independent Producer" means a producer that is approved by the Department to comply with the requirements of this chapter independently from an approved PRO.
- (16) "Intermediate product" means a material that meets all of the following characteristics:
- (A) Derived entirely from postconsumer covered material that was recovered.
 - (B) Physically altered from its original state.
 - (C) Includes any form of postconsumer recovered material up to the point where the material is accepted at a responsible end market.

- (17) “Intermediate supply chain entity” means an entity that takes custody of materials at the end of their life, including intermediate products, and is within the supply chain that exists between collection, processing, and transfer of material to end markets. “Intermediate supply chain entity” includes, but is not limited to, recycling service providers, processors, brokers, or materials recovery facilities.
- (18) “In the state,” as that term is used in the Act with respect to a person, means that service of process, excluding service by publication and any other manner of service requiring a court order, on the person may be completed in the state pursuant to sections 413.10 to 417.40 of the Code of Civil Procedure (Article 1 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure) or section 2110 of the Corporations Code, and the person is subject to jurisdiction of California courts pursuant to section 410.10 of the Code of Civil Procedure based on the manufacture, sale, offer of sale, or distribution in the state of products using covered material.
- (19) “Mixed material” has the same meaning as defined in section 17852(a)(26) of this division.
- (20) “Nonplastic,” when used in these regulations to describe a component of covered material or other physical good, means the component or good is not considered plastic as set forth in paragraph (24).
- (21) “Organic waste” has the same meaning as defined in section 18982(a)(46) of this division.
- (22) “Participant,” “participant producer,” “participant of the PRO,” and “producer who participates in the PRO’s approved plan” all mean a producer, as defined in section 42041(w) of the Public Resources Code, who joins a PRO.
- (23) “Person” means an individual, firm, limited liability company, association, partnership, public or private corporation, or any other legal entity and, for purposes of whether a person other than a natural person is in the state pursuant to section 42041(w) of the Public Resources Code, any entity owning, directly or indirectly, a majority or controlling interest in such entity.

- (24) “Plastic,” when used to describe a component of covered material or other physical good, means the component or good contains or is made partially or entirely of plastic, as defined in section 42041(t) of the Public Resources Code, excluding plastic present in components or goods that otherwise do not contain plastic as a result of contamination not caused by the producer, a person acting on behalf of the producer, or a third party responsible for the manufacture or handling of such components or goods.
- (25) “Plastic or polymers” means, for purposes of determining whether section 42356.1(d) of the Public Resources Code exempts a fiber product from having to comply with a standard specification to be eligible to be labeled “compostable” pursuant to section 42050(b) of the Public Resources Code, material comprising chemical compounds that did not occur naturally and that are plastic or other chemical compounds comprising molecules bonded together in long, repeating chains.
- (26) “Processor” means an entity or entities that is processing or will process covered material.
- (27) “Product” means a physical good and all covered material used for or by it. Covered material is used for or by a product if the product is wholly or partially composed of covered material.
- (A) For a product that is physically provided to the consumer on the premises of a retail seller or other distributor, the product’s packaging does not include materials caused to be associated with the product at the point of sale or distribution or after initial physical display of the product to the consumer.
- (B) For purposes of determining whether a particular person is the producer, pursuant to section 42041(w)(3) of the Public Resources Code, of covered material used by a product, what constitutes such covered material shall be evaluated as of the time the person sells, offers for sale, or distributes the product, and the person is the producer only with respect to covered material for which there was not otherwise a producer before such time. For example, for a branded

product that is packaged using covered material and is distributed by a single other person in the state:

- (i) If the brand owner is in the state, it is the producer of all covered material used by the goods in connection with the brand, such as the sales packaging or primary packaging described in section 42041(s)(1) of the Public Resources Code, and any additional covered material, such as transport or tertiary packaging, used by the product before it is received by the distributor. If the distributor utilizes additional covered material packaging (e.g., transport or tertiary packaging) in its distribution of that product, it is the producer of the covered material used by the product at that time, except for the covered material packaging for which the brand owner was already the producer prior to receipt by the distributor.
- (ii) If the brand owner is not in the state, the distributor is the producer of all covered material, including any covered material added by the distributor, used by the product at time of distribution.
- (iii) If a wholesaler or retailer in the state subsequently obtains the good from the distributor and causes the product to use additional covered material packaging, it is the producer of such additional covered material, and either the brand owner or distributor is the producer of the other covered material used by the product, as described in clauses (i) and (ii).

(C) When a product is offered for sale, sold, distributed, or imported, the covered material used by the product is also considered to be offered for sale, sold, distributed, or imported.

(28) “Ratepayer” means a member of the public or business whose method of paying to prepare and sort covered material, though ultimately covered under PRO funding as required under this article, includes, but is not limited to:

(A) User fees or rates

- (B) Franchise fees on solid waste service providers
 - (C) Solid waste facility gate or tipping fees
 - (D) Mitigation or host fees on disposal facilities
 - (E) Excise tax, parcel tax, property tax, or respective fee
 - (F) Voter-approved surcharge or fee
- (29) “Recycled organic product” means raw organic material that is produced through composting, anaerobic digestion, or another process consistent with the definition of recycling pursuant to section 42041(aa) of the Public Resources Code and is not disposed. Only materials proposed to be considered a recycled organic product in a plan that is approved by the Department may be considered recycled organic products. “Recycled organic product” includes, but is not limited to, compost, digestate for land application, or biogas.
- (30) “Recycling rate” has the meaning set forth in section 42041(ab) of the Public Resources Code, except that recycling rate shall be calculated as described in section 18980.3.2.
- (31) “Reporting entity” means a PRO, which shall report all reportable activities by its participating producers on their behalf, or a producer identified pursuant to paragraph (A) that conducts any reportable activities not reported on their behalf by the PRO. Reportable activities are those required to be reported to the Department pursuant to Article 9 and Article 10 of this chapter, as applicable.
- (A) Independent Producers are reporting entities and must report all of their reportable activities pursuant to this chapter. Producers participating in a PRO plan are also reporting entities if they choose to report any of their reportable activities directly to the Department or fail to provide data to the PRO regarding their reportable activities.
 - (B) A participant producer shall notify the PRO of any reportable activities that it has reported or will report to the Department. Notwithstanding the other provisions of this paragraph, a PRO is not required to report such activities.

(C) All reporting entities shall register with the Department as set forth in section 18980.10.

(32) "Responsible End Market" has the same meaning as section 42041(ad) of the Public Resources Code and meets the criteria specified in section 18980.4.

(33) "Retailer" or "wholesaler" has the same meaning as section 42041(ae) of the Public Resources Code. A "retailer" or "wholesaler" shall be considered a producer only for covered materials for which a "retailer" or "wholesaler" meets the definition of producer, as defined in section 42041(w) of the Public Resources Code.

(34) "Reusable," "refillable," "reuse," and "refill," have the same definition as provided in section 42041(af) of the Public Resources Code. Determinations of whether packaging or food service ware satisfies the requirements of that definition shall be subject to the provisions of this paragraph.

(A) The terms "reuse" and "refill" refer to usage packaging or food service ware that is reusable or refillable pursuant to section 42041(af)(1)(A) through (af)(1)(D) and (af)(2)(A) through (af)(2)(C) of the Public Resources Code, subsequent to the initial use of the packaging or food service ware for its original purpose.

(B) To be considered reusable or refillable, packaging or food service ware must not constitute single-use packaging or food service ware pursuant to paragraph (35) and section 42041(ai) of the Public Resources Code.

(C) To be "designed for durability" as required by section 42041(af)(1)(B) or (af)(2)(B) of the Public Resources Code, the packaging or food service ware must remain usable for its original intended purpose when used multiple times.

(D) To be considered capable of being conveniently and safely reused or refilled:

(i) For purposes of section 42041(af)(1)(C) of the Public Resources Code, packaging or food service ware must, at a minimum, be

sufficiently washable, as set forth in section 18980.1(a)(35)(C) and retain its form and function during reuse and washing by the producer, without posing environmental or public health risks, such as chemical leaching and microplastic shedding.

- (ii) For purposes of section 42041 af)(2)(C) of the Public Resources Code, packaging or food service ware must, at a minimum, be sufficiently washable, as set forth in section 18980.1(a)(35)(C) and retain its form and function during reuse and washing by the consumer, without posing environmental or public health risks, such as chemical leaching and microplastic shedding.

(E) For purposes of this section and section 42041 af) of the Public Resources Code, “multiple times,” “multiple cycles,” and “multiple uses” have the same meaning. For packaging or food service ware to be considered used or refilled multiple times or for multiple cycles, or for use to be considered multiple uses, usage must occur more than once, rather than being a single use prior to disposal as described in subparagraph (A)(i) (for packaging) or (A)(ii) (for food service ware) of paragraph (35), and shall satisfy the following conditions:

- (i) The item is more likely than not to be used on more than one occasion or the item is, on average, used on more than one occasion without being discarded or disposed within five years after commencement of its initial use. For food service ware and food packaging whose usage can be shown to occur, on average, over a period of shorter than five years before it has been subject to at least 780 cycles in a cleaning and sanitization process as set forth in (C)(ii) of paragraph (35), this requirement shall be reduced to such shorter period. Satisfaction of this condition shall be demonstrated according to procedures and methods set forth in the approved PRO plan or Independent Producer plan, which may incorporate the procedures and methods from an approved PRO plan by reference.

(ii) The observed average number of uses or refills will result in the item having lower environmental impact than the item's equivalent single-use counterparts. The PRO plan shall include a procedure, including specific methods, for establishing estimates of the average number of uses or refills for particular products or types of products, and those estimates may be used as the observed average number of uses for purposes of this clause. Independent Producers' plans may include their own procedure or incorporate one from an approved plan by reference. Environmental impact must consider, at a minimum, the resources used throughout the lifecycle of the product, including, but not limited to, those related to:

- (I) Raw material extraction
- (II) Manufacturing
- (III) Transportation
- (IV) End-of-life management

(F) Participants in a PRO plan shall, as required by the PRO plan or otherwise by the PRO, demonstrate that packaging and food service ware is reusable or refillable according to this section and section 42041(af) of the Public Resources Code.

(G) Producers, retailers, wholesalers, and PROs are responsible for establishing, upon demand by the Department in a notice of violation issued pursuant to sections 42080 and 42081(a) of the Public Resources Code and section 18980.13.4, that packaging or food service ware that they claim to be reusable or refillable satisfy the requirements of this section and section 42041(af) of the Public Resources Code.

(35) "Single use" and "single-use" are defined as provided in section 42041(ai) of the Public Resources Code for "single use." As used in that definition, the following terms shall be further defined as indicated below.

(A) “Conventionally disposed of after a single use” means either of the following:

- (i) With respect to packaging, the packaging is commonly discarded, or is designed to be discarded, by the average consumer after it has served one or more of the purposes identified in section 42041(s) of the Public Resources Code with respect to the discrete physical good originally associated with the packaging, or otherwise not subsequently reused for such purposes with respect to additional discrete physical goods. Where packaging intermittently or continuously continues to serve such purposes with respect to the discrete physical good originally associated with the packaging, that remains a single use of the packaging.
- (ii) With respect to food service ware, the item is commonly discarded, or is designed to be discarded, by the average consumer after serving one or more of the purposes identified in subparagraph (13) once with respect to discrete food goods, rather than being subsequently washed and used again for such purposes with respect to additional food goods.

(B) “Sufficiently durable” means, with respect to packaging or food service ware, that it is designed for durability pursuant to section 18980.1(a)(34)(C), for purposes of being reused and, if applicable, refilled.

(C) “Washable” or “sufficiently washable” means, with respect to packaging or food service ware, that it can be washed as follows for purposes of being reused and, if applicable, refilled:

- (i) for packaging other than food packaging, the good can be sufficiently cleaned as necessary to be safely and hygienically refilled or reused, as applicable; or
- (ii) for food service ware and food packaging, the good maintains its shape, structure, and function after 780 cycles in a cleaning

and sanitizing process that complies with the requirements of Chapter 5 of Part 7 of Division 104 of the Health and Safety Code (commencing with section 113700), as demonstrated by test results from a laboratory having an ISO/IEC 17025:2017 accreditation issued by a body described in section 18981(b)(1).

(36) “Small producer” means a producer as defined in section 42041(w) of the Public Resources Code that has a current exemption on file with the Department pursuant to section 18980.5.2.

(37) “Ton” or “tons” means a unit of weight equal to 2,000 pounds.

(38) “Viable responsible end market” means a responsible end market that is feasible and capable of being economically successful.

(b) When referred to in this chapter, the following documents are incorporated by reference in their entirety:

(1) “ISO/IEC 17025:2017” refers to the publication titled “General requirements for the competence of testing and calibration laboratories,” International Organization for Standardization/International Electrotechnical Commission, November 2017.

(2) “ISO/IEC 17065:2012” refers to the publication titled “Conformity assessment—Requirements for bodies certifying products, processes and services,” International Organization for Standardization/International Electrotechnical Commission, September 2012.

Authority: Sections 40401, 40502, 42041, 42052, 42057 and 42060, Public Resources Code.

Reference: Sections 41780.01, 420051, 42040, 42041, 42050, 42051, 42051.1, 42051.2, 42052, 42053, 42057, 42060, 42060.5, 42061, 42063, 42064, 42067, 42080, 42081, 42280, 42281.2, 42281.5 and 42356.1, Public Resources Code; section 20, title 1, California Code of Regulations.

Article 2: Covered Material and Covered Material Categories

§ 18980.2. Categorically Excluded Materials

(a) Except as provided otherwise in this chapter, the materials listed below categorically do not constitute covered material, and are not required to meet the requirements set forth herein:

(1) Packaging used for products described in section 42041(e)(2)(A)(i) of the Public Resources Code as “medical products and products defined as devices or prescription drugs,” which means the following products:

(A) “Drugs,” as defined under section 321(g) of Title 21 of the United States Code, including drugs that require prescriptions pursuant to section 353(b)(1) of Title 21 of the United States Code.

(B) “Devices,” as defined by section 321(h) of Title 21 of the United States Code.

(2) Materials that meet the definition of “reusable” or “refillable.” If the Department determines that any product or material is covered material because it does not fulfill the criteria to be reusable or refillable, the producer, as identified by the Department, of the product or material shall produce evidence demonstrating otherwise upon the Department’s issuance of a notice of violation pursuant to section 18980.13.4 and sections 42080 and 42081(a) of the Public Resources Code.

(A) Producers and PROs are responsible for establishing, upon demand by the Department in a notice of violation issued pursuant to sections 42080 and 42081(a) of the Public Resources Code and section 18980.13.4., that packaging or food service ware that they claim to be reusable or refillable, satisfy the requirements of this section and section 42041(af) of the Public Resources Code. The producer may, at its option, do so using criteria and methodology contained in an approved PRO plan.

(3) Materials listed in section 42041(e)(2) of the Public Resources Code, excluding sections 42041(e)(2)(F) and 42041(e)(2)(H).

- (b) Nothing in this section precludes the Department from inspecting to verify if a material qualifies to meet this exclusion or from taking any appropriate enforcement action.

Authority: Sections 40401, 40502, 42060, 42080 and 42081, Public Resources Code.

Reference: Section 42040, 42041, 42080 and 42081, Public Resources Code; sections 321 and 353, Title 21 of the United States Code.

§ 18980.2.1. Exemptions for Long-Term Storage Materials

- (a) For packaging to be exempt from being considered covered material pursuant to section 42041(e)(2)(F) of the Public Resources Code, it must be determined by the Department to qualify for the exemption as prescribed in this section.
- (b) To be eligible for the exemption, the packaging must be associated with a product that is a non-consumable good that, through use for their intended purpose, is typically used for at least five years in association with the packaging and not partially or wholly discarded within five years of being sold or distributed. A non-consumable good is one that, when subject to ordinary usage, is not ingested, irreversibly used, destroyed, or expended.
- (c) A producer may request a determination that packaging associated with a particular product qualifies for the exemption by submitting an application to the Department. The application shall be submitted electronically and shall include, but not be limited to, the following:
 - (1) Contact Information
 - (A) Name and title of the person submitting the application
 - (B) Company or organization name
 - (C) Company or organization mailing and physical addresses
 - (D) Phone number
 - (E) Email address
 - (2) Name, description, and other information sufficient to uniquely identify the particular product. Such identification may be achieved, for example, with respect to unique physical characteristics, such as the product's form,

materials, and dimensions, or identifying information such as a unique stock keeping unit (SKU) or global trade item number, such as a universal product code (UPC).

(3) Physical description of the packaging, including its combination of form and material, size, and other information sufficient to demonstrate that the packaging has a life span at least as long as the claimed life span of the product.

(4) Description of the following information and evidence supporting such information:

(A) The lifespan and intended use of the product. In lieu of other supporting evidence, an express, written warranty by the producer covering the product shall be sufficient to establish a particular lifespan for the product. Such warranty shall guarantee that the product will remain usable for its intended purpose for at least that period, when subject to ordinary or foreseeable use by the consumer, or else the producer will take back and replace the item at the applicant's expense.

(B) The actual or expected typical usage, including the typical duration of such usage, by consumers of such packaging in association with the product or similar products.

(C) How the packaging is designed for protection or storage of the product, as typically used by the consumer, for the entire lifespan of the product.

(D) The number of years the packaging is capable of storing or protecting the product under typical usage conditions.

(d) The application shall be a public document subject to mandatory disclosure under the California Public Records Act (Division 10 of Title 1 of the Government Code (commencing with section 7920.000)) unless an exemption from such disclosure applies. The Department shall withhold from public disclosure portions of the application that the producer appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.15.

- (e) For any producer that is a participant of a Producer Responsibility Organization, the PRO may submit the application on behalf of the producer.
- (f) Except as otherwise provided in section 18980.2.6, if an application is approved by the Department, the exemption shall apply only to the packaging, as described in the application, associated with the particular product identified in the application. When approving the exemption, the Department may, in its sole discretion, supplement or modify the producer's description of the packaging and associated product. The exemption shall be effective on the date the application is approved and is valid for one year from that date.
- (g) To maintain an exemption, the producer shall conduct either of the following:
 - (1) If the information within the producer's initial application has not changed, the producer shall file a certification electronically in the form of a letter to the Department, signed by the producer under penalty of perjury. The certification shall state that the information provided in the application for the exemption currently on file with the Department has not changed. The producer shall file the letter at least 90 days prior to the expiration date. If approved, the exemption shall be extended for one additional year with the new expiration date being one year from the original expiration date.
 - (2) If the information within the producer's initial application has changed, the producer shall file a new application pursuant to subdivision (c).

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 40062, 42040 and 42041, Public Resources Code; Sections 7921.500 and 7922.530, Government Code.

§ 18980.2.2. Exemptions for Specific Material with Demonstrated Recycling Rates

- (a) A producer seeking an exemption for a type of material from being considered covered material, pursuant to section 42041(e)(2)(H) of the Public Resources Code, shall submit an application to the Department. The application shall include but not be limited to the following and must be submitted electronically:
 - (1) Contact Information:

- (A) Name and title of the person submitting the application
 - (B) Company or organization name
 - (C) Company or organization mailing and physical addresses
 - (D) Phone number
 - (E) Email address
- (2) Name and description of the material.
- (3) Description of how the material is collected, processed, and recycled including:
- (A) List of entities that collect the material
 - (B) List of entities that process the material
 - (C) A description of how the treatment of the material is consistent with Article 4 of this chapter
- (4) A list of responsible end markets where the covered material is recycled and documentation that demonstrates that the material has been recycled at the specified responsible end markets. For the purposes of this article, “recycled” has the same meaning as section 18980.3.2(a)(1).
- (5) Recycling data substantiating the achievement of the goals set forth in section 42041(e)(2)(H)(i)(IV) of the Public Resources Code. Any consecutive three-year period of attainment prior to January 1, 2027, can substantiate achievement of the pre-2027 goal. The recycling rate shall be calculated using the methodology specified in section 18980.3.2.
- (b) The application shall be a public document subject to mandatory disclosure under the California Public Records Act (Division 10 of Title 1 of the Government Code (commencing with section 7920.000)) unless an exemption from such disclosure applies. The Department shall withhold from public disclosure portions of the application that the producer appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.15.
- (c) For any producer that is a participant of a Producer Responsibility Organization, the PRO may submit the application on behalf of the producer.
- (d) The Department shall review and evaluate an application to determine if it meets the requirements of this section.

- (e) Except as otherwise provided in section 18980.2.6, if granted, the exemption shall apply only to the material described in the application. When approving the exemption, the Department may, in its sole discretion, supplement or modify the producer's descriptions of the material. The exemption shall become effective on the date the application is approved and is valid for two years.
- (f) To maintain an exemption, the producer shall, at least 90 days before expiration of the exemption:
 - (1) File a certification electronically in the form of a letter to the Department, signed by the producer under penalty of perjury, stating that the information provided in the application for the exemption currently on file with the Department pursuant to subsections (a)(1) through (a)(4) has not changed.
 - (2) Provide recycling data substantiating the achievement of the goals set forth in section 42041(e)(2)(H)(i)(IV) of the Public Resources Code for all complete and previously unreported years subsequent to January 1, 2027. The recycling rate shall be calculated using the methodology specified in section 18980.3.2.
- (g) If the producer cannot provide certification pursuant to subsection (f)(1), the producer shall submit a new application pursuant to subdivision (a).

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 40062, 42040 and 42041, Public Resources Code; Sections 7921.500 and 7922.530, Government Code.

§ 18980.2.3. Exemptions for Certain Covered Materials

- (a) Pursuant to section 42060(a)(3) and 42060(a)(4) of the Public Resources Code, the Department may, in its sole discretion, exempt particular covered material from the requirements of the Act and this chapter.
- (b) A PRO, participating producer, or Independent Producer may submit an application to the Department to request that covered material be deemed exempt pursuant to this section. An application shall only be considered if it contains all the elements prescribed in this section.

(c) The application shall be submitted electronically and shall include, but not be limited to, the following:

(1) Contact Information:

- (A) Name and title of the person submitting the application
- (B) Company or organization name
- (C) Company or organization mailing and physical addresses
- (D) Phone number
- (E) Email address

(2) Name, description, and other information sufficient to uniquely identify the covered material for which an exemption is sought.

(3) Identification of the exemption sought. A single application can be submitted covering both exemptions, provided that the application contains the elements prescribed in this section.

(4) Except as otherwise provided with respect to entire classes of products or covered materials under section 18980.2.6, identification of all products or potential products that use or potentially would use the covered material and be covered by the exemption, if granted. Products may be identified by the information described in section 18980.2.1(c)(2).

(5) Description of the following information and evidence supporting such information.

(A) For an application requesting an exemption pursuant to section 42060(a)(3) of the Public Resources Code based on unique challenges in complying with the Act or this chapter, the description shall include:

- (i) Identification of which requirements of the Act for which the covered material presents unique challenges for compliance with the Act and this chapter.
- (ii) The nature of the unique challenges and how the characteristics of the covered material cause them.
- (iii) The practical necessity of the covered material that justifies exempting the covered material from the Act despite it not complying with the requirements identified in clause (i). Without

limitation, such justification shall address whether and to what extent that risks would arise or be exacerbated with respect to public health, the environment, economic development, burdens on vulnerable populations, disproportionate effects on identifiable classes of persons or industries, and conflicting obligations under any other laws.

- (iv) Potential alternatives to the covered material and a description of why they are not feasible for technological or financial reasons, would present greater compliance challenges than those identified described pursuant to clauses (i) through (iii), or would pose greater risks than those identified pursuant to clause (iii).
- (v) To the extent not otherwise addressed, potential impacts of the covered material on environmental justice communities from exempting or not exempting the covered material.
- (vi) Impacts of the covered material on the existing processing and recycling infrastructure.
- (vii) If applicable, a description of why the covered material cannot be recycled or source reduced.
- (viii) A proposed plan pursuant to section 42060(a)(3)(B) of the Public Resources Code to phase the covered material into the requirements of the Act, unless the nature of the unique challenges makes such a plan unfeasible or unnecessary, in which event the applicant shall explain why a plan is unfeasible or unnecessary. Such a proposal shall address, at a minimum, the requirements of the Act that the covered material currently satisfies, a timeline for when the covered material is anticipated to satisfy all requirements of the Act, and goals for each year of that timeline with respect to addressing the challenges described in the application and otherwise progressing toward full compliance with the Act.

(B) An application for an exemption pursuant to section 42060(a)(3) of the Public Resources Code may be based on the challenges involved in establishing an alternative collection program that satisfies the requirements of section 42355.51(d)(5) of the Public Resources Code. Such an exemption shall not be granted unless the application includes a proposed phase-in plan, as described in clause (viii) of subparagraph (A). In addition to satisfying the requirements of subparagraph (A), such an application shall include the following elements:

- (i) Explanation, information, and evidence concerning the nature of the challenges, generally and with respect to the specific covered material at issue, affecting the establishment of an alternative collection system that satisfies the applicable requirements (those of section 42355.51(d)(3) of the Public Resources Code).
- (ii) Explanation, information, and evidence demonstrating how the challenges will be overcome to satisfy the applicable requirements, the efforts to overcome them to date, and the extent to which such efforts have been successful.
- (iii) If the applicant has already established an alternative collection program for the covered material, a complete description of the program, its current status, and plans for further development. Such description shall include, but not necessarily be limited to:
 - (I) on an annual basis, since the program's inception, the volume of the covered material to be exempted being collected and its percentage of the total such covered material sold or distributed;
 - (II) other covered material, if any, also collected by the program;
 - (III) efforts undertaken to ensure that covered material being collected is ultimately recycled, and demonstration of the efficacy of such efforts;

- (IV) details regarding consumer convenience and efforts to facilitate and incentivize participation;
 - (V) educational outreach and marketing activities to raise awareness of the program;
 - (VI) names of entities that will operate or partner with the program, including recycling service providers, if any;
 - (VII) the infrastructure, technology, and methods established to facilitate collection of the covered material; and
 - (VIII) the financial investment made in the program to date.
- (iv) If there is no current collection program, a description of the anticipated program, including its planned start date and anticipated features, including with respect to the elements listed in clause (iii).
 - (v) Projections of the current or anticipated program's progress toward meeting the applicable requirements. Such projections shall address all known and anticipated financial, technical, and other assumptions on which such projections are based and shall identify the date by which the program is expected to satisfy the applicable requirements.
 - (vi) Information, if available, similar to the information required under clauses (iii) through (v), regarding comparable takeback programs, such as those that collect similar covered material.
- (C) For an application requesting an exemption pursuant to section 42060(a)(4) of the Public Resources Code based on health and safety reasons, the description shall include:
- (i) Identification of which requirements of the Act and this chapter for which health and safety concerns prevent compliance.
 - (ii) The nature of the health and safety concerns, including how the characteristics of the covered material relate to the concerns

and how the concerns prevent compliance with the Act and this chapter.

- (iii) The information described in clauses (iii) through (viii) of subparagraph (A), except with respect to the health and safety concerns asserted in the request and the challenges related to them.

(D) For an application requesting an exemption pursuant to section 42060(a)(4) of the Public Resources Code because the covered material is unsafe to recycle, the description shall include:

- (i) Identification of which requirements of the Act and this chapter with which the covered material cannot comply due to it being unsafe to recycle.
- (ii) Characteristics of the covered material that render recycling unsafe.
- (iii) Explanation of the nature of the safety risks, why they cannot reasonably be mitigated without an exemption, and how granting the exemption would mitigate or avoid them. The explanation shall, at a minimum, address the extent to which such risks relate to the environment, health and safety, and worker health and safety. The explanation shall also explain the extent to which recycling the covered material creates or exacerbates risks, including contamination of equipment by a toxic or hazardous substance, to end markets, processors, and intermediate supply chain entities.

- (iv) The information described in clauses (iii) to (viii) of subparagraph (A).

- (v) To the extent not otherwise addressed, the risk that recycling the covered material would result in the manufacture of new products that would expose consumers to toxic or hazardous substances.

- (d) The application shall be a public document subject to mandatory disclosure under the California Public Records Act (Division 10 of Title 1 of the Government Code (commencing with section 7920.000)) unless an exemption from such disclosure applies. The Department shall withhold from public disclosure portions of the application that the producer appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.15.
- (e) A PRO may submit an application on behalf of a participant producer.
- (f) Except as otherwise provided in section 18980.2.6, if an application is approved by the Department, the exemption for covered material shall apply only to the products, as described in the application, that use the covered material. When approving the exemption, the Department may, in its sole discretion, supplement or modify the application's descriptions of the covered material and products. Unless the Department, in its sole discretion, deems the basis for an exemption to warrant a longer duration, the exemption shall become effective on the date the application is approved and is valid for one year.
- (g) Except as provided in subdivision (h), to maintain an exemption, the producer shall conduct either of the following:
- (1) If the information within the producer's initial application has not changed, the producer shall file a certification electronically in the form of a letter to the Department, signed by the producer under penalty of perjury. The certification shall state that the information provided in the application for the exemption currently on file with the Department has not changed. The producer shall file the letter at least 90 days prior to the expiration date. If approved, the effective period of the renewed exemption shall be determined as provided in subdivision (f) for initial approvals, with the new expiration date being one year after the original expiration date.
 - (2) If the information within the producer's initial application is no longer accurate in its entirety, the producer shall file a new application pursuant to subdivision (a).
- (h) Regarding approval and maintenance of an exemption requested pursuant to subparagraphs (A) or (B) of paragraph (5) of subdivision (c):

- (1) Approval may be conditioned upon the approval of and establishment of a phase-in plan pursuant to section 42060(a)(3)(B) of the Public Resources Code. The phase-in plan may be the plan proposed by the applicant, as may be modified by the Department, or another plan developed by the Department, as it deems appropriate. The exemption and the plan shall only be approved if, as determined by the Department in its sole discretion, they are reasonably expected to further the successful implementation and enforcement of the Act and have an effect consistent with the intent of the Act, as described in section 42040 of the Public Resources Code.
- (2) To maintain the exemption, the applicant shall annually update all information required to be included in the initial application and, if applicable, report to the Department the extent to which it has achieved the goals of its phase-in plan. If the phase-in plan has not been complied with, the applicant shall explain the reasons for such noncompliance. The Department shall terminate the exemption unless it determines, in its sole discretion, that such noncompliance was justified and does not negate the basis for granting the exemption and that such basis, including that it is reasonably expected to further the successful implementation and enforcement of the Act and have an effect consistent with the intent of the Act, remains valid.
- (i) Notwithstanding any other provision of this section, the Department shall terminate or modify the terms of an exemption upon its determination of any of the following:
 - (1) the information provided in the application for the exemption was incomplete, false, or the relevant circumstances have materially changed such that the information is no longer accurate;
 - (2) the exemption does not further the successful implementation and enforcement of the Act, has an effect inconsistent with the intent of the Act, or the basis for granting the exemption otherwise no longer applies; or
 - (3) conditions or requirements of a phase-in plan established pursuant to section 42060(a)(3)(B) of the Public Resources Code have failed or not been satisfied.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42040, 42041, 42050, 42051, 42051.1 42053, 42057, 42060, 42067 and 42355.51, Public Resources Code; Sections 7921.500 and 7922.530, Government Code.

§ 18980.2.4. Covered Material Category List Updates

- (a) The Department shall periodically review the covered material category elements within the timeframe specified by section 42061 of the Public Resources Code and, as appropriate, update the CMC list after its review.
- (b) As appropriate for the respective element, sources of information for the review may include, but are not limited to, those identified in section 42061(b)(2) of the Public Resources Code and information submitted pursuant to section 42061(f)(3) of the Public Resources Code in a timely manner.
 - (1) The Department may deem information received after August 1 of each year to be untimely. Information deemed untimely by the Department may be ineligible for evaluation during the current calendar year.
 - (2) Information intended to inform the Department's review of the CMC List shall be sent electronically in a form and manner approved by the Department.

Authority: Sections 40401, 40502, 42060 and 42061, Public Resources Code.

Reference: Sections 42041 and 42061, Public Resources Code.

§ 18980.2.5. Covered Material Category List Recommendations

- (a) A PRO, participant producer or Independent Producer may recommend changes to the current CMC list.
- (b) All recommendations shall be submitted electronically and include the following:
 - (1) A description of the recommended changes, specifying which elements of the CMC list are impacted by the recommended changes.
 - (2) CMCs affected by the recommended change, including those suggested for addition or removal.

- (3) All data, analysis, forecasting, or projections pertaining to the recommendation and a description of the methodologies on which they rely.
 - (4) How the CMC recommendations will meet requirements pursuant to section 42050 of the Public Resources Code, as applicable, and how the producer responsibility plan may be impacted and adapted accordingly.
 - (5) A list of producers, responsible end markets, or other entities recommending the change, including contact information for each.
 - (6) Documentation demonstrating circumstances requiring the recommended change, including but not limited to, data not considered in the existing evaluations, changes in infrastructure, updated acceptance rates at responsible end markets, new innovations in materials, products, or technologies.
 - (7) Financial implications and impact of recommended changes on affected entities, including but not limited to, responsible end markets and intermediate supply chain entities, and, where applicable, include information concerning the necessity of expanding or creating new facilities and viability of responsible end markets pursuant to section 18980.4.4 if the change is made.
 - (8) A PRO shall additionally include financial implications for the fee schedule for participant producers and eco-modulated formulas.
- (c) Participant producers that submit recommendations to the Department shall additionally submit a copy to the PRO(s), and Independent Producers shall submit recommendations to the Department.
- (d) The Department may request additional information from a PRO, participant producer or Independent Producer when evaluating recommendations.

Authority: Sections 40401, 40502, 42060 and 42061, Public Resources Code.

Reference: Sections 42041, 42050 and 42061, Public Resources Code.

§ 18980.2.6. Effective Scope of Exemptions

- (a) The Department may, in its sole discretion, deem any exemption granted under this article to apply to products and covered materials not specifically identified in an application for an exemption if the exemption necessarily applies to, or is necessarily justified with respect to, additional, similar products or covered materials. Such exemptions shall be based on the same factors that would be considered through applications for the exemptions under this article. The exemption may, for example, be deemed to apply to an entire class of products or covered material. Exemptions that apply to classes of covered materials may not necessarily cover all covered materials in a particular covered material category.
- (b) The Department may issue an exemption to a class of products or covered materials regardless of whether the exemption was requested in any application. The Department shall base its decision to grant an exemption without having received an application pursuant to this article on information and evidence that would have been required to be provided to the Department in an application for such an exemption. Decisions under this subdivision shall be based on the same factors that would be considered through applications for the exemptions under this article.
- (c) In addition to satisfying all other requirements under this article applicable to the exemption sought, applications for exemptions may identify, as precisely as possible, a class of products or covered materials and provide information and evidence to demonstrate why the justification for the exemption necessarily applies to such general class. Regardless of whether an application includes such optional information and evidence, the Department may deem the exemption granted in response to the application to apply to a class of products or covered materials, as described in subdivision (b).
- (d) The Department shall publish on its website all issued exemptions that apply to classes of products or covered materials.
- (e) The provisions of this article concerning expiration or termination of exemptions and the requirements for maintaining an applied-for exemption shall apply regardless of whether the Department deems the exemption to apply to products or covered materials not identified in an application. The Department may, however, deem an exemption to apply for more than one year or to be extended without any additional

action by a PRO or producer if it determines, in its sole discretion, that the basis for the exemption continues to justify the exemption pursuant to the standards set forth in this article.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42040, 42041, 42050, 42051, 42051.1, 42053, 42057, 42060, 42061 and 42067, Public Resources Code.

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Article 3: Evaluations of Covered Material and Covered Material Categories

§ 18980.3. Recyclability

- (a) For the purposes of this chapter, as further described in section 18980.3.2(a)(1), covered material shall not be considered recycled before it has been accepted by a responsible end market.
- (b) For the purposes of this chapter and the Act, a covered material category shall be considered recyclable only if all materials within the category necessarily satisfy the categorical basis for being considered recyclable, as set forth in section 42355.51(d)(2) of the Public Resources Code.
- (c) To be considered recyclable for purposes of 42050(b) of the Public Resources Code, covered material must either:
 - (1) be within one of the covered material categories on the list maintained by the Department pursuant to subdivisions (c) and (e) of section 42061 of the Public Resources Code and, subject to subdivision (e), satisfy the additional criteria listed in section 42355.51(d)(3) of the Public Resources Code; or
 - (2) be excepted from the requirements of sections 42355.51(d)(2) and 42355.51(d)(3) of the Public Resources Code pursuant to sections 42355.51(d)(4), 42355.51(d)(5), or 42355.51(d)(6) of the Public Resources Code.
- (d) For purposes of determining compliance with the criterion identified in section 42355.51(d)(3)(A) of the Public Resources Code, plastic packaging includes components, inks, adhesives, or labels that prevent recyclability pursuant to the design guide incorporated in the plan pursuant to section 18980.8(f) if, according to the design guide, either:
 - (1) any component, ink, adhesive, or label renders the packaging “non-recyclable”; or
 - (2) Any component, ink, adhesive, or label “requires test results,” unless the producer has obtained the required test results described in the design guide from a laboratory having an ISO/IEC 17025:2017 accreditation (issued by a body described in section 18981(b)(1)) and provided such results to the PRO

(for PRO plan participants) or to the Department (upon request by the Department).

- (e) In addition to meeting the requirements of subdivision (d), covered material that is food packaging or food service ware must comply with the material composition restrictions set forth in section 17989.2(a)(1) and section 17989.2(a)(3) of this division as that section existed on January 1, 2023. Upon demand, a producer shall provide the Department test results from a laboratory having an ISO/IEC 17025:2017 accreditation (issued by a body described in section 18981(b)(1)) verifying compliance with section 17989.2(a)(3) of this division. A PRO may provide such test results on behalf of a producer.
- (f) For covered material to be considered recyclable pursuant to section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code, the following requirements apply:
- (1) Participant producers shall demonstrate to their PRO how the materials meet the requirements of section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code.
 - (A) A PRO shall establish a process to evaluate whether a particular covered material meets the requirements. The process shall be described in their plan.
 - (B) A PRO shall specify in their annual report which covered materials are considered recyclable pursuant to section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code and which participants use the covered materials.
 - (C) A PRO shall conduct periodic audits and investigations of the identified covered materials and participant producers to ensure the covered materials continue to meet the requirements specified in section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code. The results of any audits and investigations shall be included in a PRO's annual report. All investigations and audits shall be conducted by an independent third-party, with all financial audits being conducted by an independent public accountant certified in the United States. The

Department shall have full access to any results of an audit or investigation.

(2) Independent Producers shall:

(A) Specify in their plan any covered materials that meet the requirements of section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code and shall include data to support their claims.

(B) Annually demonstrate to the Department that the covered material continues to meet the requirements of section 42355.51(d)(4) or section 42355.51(d)(5) of the Public Resources Code by including in their annual report a verification that the requirements are continuing to be met and data to support their claims.

Authority: Sections 40401, 40502, 42041 and 42060, Public Resources Code.

Reference: Sections 42040, 42041, 42050, 42061 and 42355.51, Public Resources Code.

§ 18980.3.1. Recyclability of Certain Covered Material Categories Identified by the Department

(a) Pursuant to section 42061(a)(3)(B) of the Public Resources Code, the Department may identify covered material categories exempted from section 42355.51(d)(2) of the Public Resources Code for the purposes of this Act, provided they comply with all other restrictions on being considered recyclable set forth in section 42355.51 of the Public Resources Code. Subject to the requirements of this section, the Department shall add such covered material categories to the list of covered material categories maintained by the Department under section 42061(c) and 42061(e) of the Public Resources Code.

(b) To be considered recyclable under this section, a covered material category must first be preliminarily identified by the Department when the Department publishes the update mandated by section 42355.51(d)(1)(B)(ii) of the Public Resources Code to the material characterization study initially published pursuant to section

42355.51(d)(1)(B)(i) of the Public Resources Code. The Department may preliminarily identify a covered material category only if it preliminarily concludes, in its sole discretion, that the following conditions are met:

- (1) The update to the material characterization study or other available information demonstrates an increase in the collection and sorting of materials.
 - (2) Such an increase is more likely than not to continue.
 - (3) Such an increase is more likely than not to result in the covered material category satisfying the requirements of section 42355.51(d)(2) of the Public Resources Code before the next mandatory update to the material characterization study.
- (c) If the Department preliminarily identifies a covered material category pursuant to subdivision (b), it shall publish the basis for its determination on its website. The Department shall provide an opportunity for public engagement and allow public comment and submission of relevant information and evidence. The Department shall consider comments and submissions only to the extent that they address the following with respect to the covered material category:
- (1) The likelihood that the covered material category will satisfy the requirements of section 42355.51(d)(2)(A) and section 42355.51(d)(2)(B) of the Public Resources Code within the subsequent five years.
 - (2) The extent to which statewide recycling programs or alternative programs, such as take-back systems, have contributed to the increases in statewide collection and sorting recognized by the Department.
 - (3) How designation of the covered material category as recyclable on the list maintained pursuant to sections 42061(c) and 42061(e) of the Public Resources Code is necessary to avoid disruption of ongoing increases in collection, sorting, and viable responsible end markets.
 - (4) For assertions that such disruption would be caused by the inability to lawfully label particular covered material as “recyclable” or with the chasing arrows symbol, submissions must address, in addition to the factors identified in subdivision (c):

- (A) How, and to what extent, absence of the covered material category from the recyclable covered material category list inhibits particular covered materials from being considered recyclable pursuant to paragraphs of section 42355.51 of the Public Resources Code other than paragraph (2), such as paragraph (4), (5), or (6).
 - (B) How labeling the covered material as “recyclable” or with the chasing arrows symbol affects consumer behavior, including with respect to disposal for collection by local recycling programs, in a way that will affect whether collection, sorting, and development of viable responsible end markets will increase.
 - (C) How, if at all, use of the term “recyclable” or the chasing arrows symbol on labels otherwise will affect collection and sorting operations of recycling programs and development of responsible end markets.
 - (D) How, if at all, the ability to label items as “recyclable” or with the chasing arrows symbol affects existing alternative programs, such as takeback systems, or will affect anticipated alternative programs.
- (d) The Department shall review available information and evidence and confirm or withdraw its preliminary identification of covered material categories. The preliminary identification shall be deemed confirmed when the Department either adds the covered material category to the list maintained pursuant to sections 42061(c) and 42061(e) of the Public Resources Code or publishes on its internet website its decision to do so. The preliminary identification shall be deemed withdrawn unless it is confirmed within one year after the Department publishes it pursuant to subdivision (c).
- (e) The Department may only finalize the identification of a covered material category pursuant to subdivision (b) if, in its sole discretion, it determines the following:
- (1) The comments and submissions received pursuant to this section clearly demonstrate that:
 - (A) Improvements in statewide recycling programs or alternative programs, such as takeback systems, are responsible for the increase in

statewide collection and sorting rates underlying the Department's preliminary identification of the covered material category.

(B) Not adding the covered material category to the list published pursuant to section 42061(c) of the Public Resources Code will result in disruption of increasing collection, sorting, and development of responsible end markets.

(2) The comments and submissions received pursuant to this section do not clearly invalidate the Department's preliminary conclusion that the conditions described in subdivision (b) have been satisfied.

(f) An exemption established pursuant to this section shall be reconsidered by the Department according to the process set forth in this section upon each update to the information pursuant to section 42355.51(d)(1)(B)(ii) of the Public Resources Code, unless the Department determines, based on such update, information and evidence previously submitted, and other information and evidence in its possession, that such process is unnecessary for it to determine that the covered material category continues to satisfy the requirements of section 42060(a)(3)(B) of the Public Resources Code.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42041, 42050, 42061 and 42355.51 Public Resources Code.

§ 18980.3.2. Methodology for Recycling Rate Determination

(a) Recycling rate shall be calculated using data and methodology as described below:

(1) Material shall be considered recycled when it has been accepted by a responsible end market and is not incompatible material removed by the responsible end market.

(2) Without limitation, the Department may use the following sources of data:

(A) Data from a PRO regarding recycling and generation of covered materials pursuant to section 42052 of the Public Resources Code.

- (B) Data reported by facilities registered with the Recycling and Disposal Reporting System pursuant to section 18815.1 through 18815.13 of this division.
 - (C) Data provided by jurisdictions, producers, or other entities.
 - (D) Data from other sources, including data submitted voluntarily by producers, that the Department deems relevant.
- (b) Recycling rate shall be calculated using data from the most recent calendar year for which data are available.
 - (c) Recycling rate shall be calculated based on the weight of materials, rather than volume or number.
 - (d) Recycling rate shall be calculated for each covered material category.
 - (1) If a covered material comprises multiple components that are not detachable, the covered material category applicable to the covered material as a whole shall be used to calculate a single recycling rate, rather than calculating a recycling rate for each component.
 - (2) If a covered material comprises components that are detachable and not all within a single covered material category, then a recycling rate shall be calculated for each detachable component using the covered material category applicable to the component.
 - (3) If a recycling rate can be calculated for a group of materials representing more than one covered material category, and if a recycling rate cannot be calculated separately for a covered material category in such group, then the recycling rate of the group shall be used for each covered material category in the group for which an individual recycling rate cannot be calculated.
 - (4) Except as described in subdivision (e), if there is insufficient information for the Department to calculate recycling rate for a covered material category as described in this subdivision, then the recycling rate shall be specified to be “unknown.”
 - (5) For a new covered material category created after 2024 for which insufficient information exists to calculate recycling rate, the recycling rate shall be assumed to achieve the required rate under section 42050(c) of the Public

resources Code, as may be adjusted pursuant to section 42062 of the Public Resources Code, until one year of data is available for the covered material category, at which point the recycling rate shall be calculated based on available data.

- (e) When a PRO or Independent Producer calculates an estimated recycling rate and reports it to the Department, the same methodology shall be used as described in subdivision (a)(1), (b), (c), and (d) or an alternative methodology specified in a PRO or Independent Producer's approved plan. If a PRO or Independent Producer uses an alternative methodology approved by the Department, then the Department may require the PRO or Independent Producer to provide the inputs and assumptions used in the calculation.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

References: Sections 42041, 42050, 42051, 42051.3, 42052, 42060, 42061 and 42062, Public Resources Code.

§ 18980.3.3. Eligibility to be Labeled Compostable

- (a) To be considered "eligible for being labeled 'compostable'" pursuant to section 42050(b) of the Public Resource Code, covered material must satisfy the criteria set forth in Chapter 5.7 of Part 3 of Division 30 of the Public Resources Code (sections 42355 through 42358.5) for whether products can potentially be labeled "compostable." The criteria concerning the lawfulness of discrete labels themselves, such as restrictions on the manner of labeling pursuant to section 42357(g)(1)(D) or (g)(2) of the Public Resources Code, shall not be construed to concern eligibility.
- (b) Each covered material category on the list published by the Department pursuant to section 42061(d) of the Public Resources Code shall include each category that encompasses discrete covered material that, provided it meets the requirements applicable to discrete covered materials set forth in subdivision (c), is eligible to be labeled compostable. To be listed, a covered material category must satisfy the criteria set forth in section 42357 of the Public Resources Code that are applicable on a category-by-category basis. In particular:

- (1) Materials within the covered material category must satisfy the requirements set forth in section 42357(g)(1)(B) of the Public Resources Code or regulations adopted pursuant to it, whichever are applicable.
 - (2) Materials within the covered material category must satisfy the requirement set forth in section 42357(g)(1)(E) of the Public Resources Code, as it may apply according to its terms, concerning association with the recovery of desirable organic wastes. The Department's evaluation of whether covered material categories satisfy this requirement may consider evidence of acceptance rates submitted with a recommendation for an update to the covered material category list pursuant to section 18980.2.5. To be considered designed to be associated with the recovery of desirable organic wastes collected for composting, the material must be within a covered material category that satisfies following collection and acceptance thresholds:
 - (A) Prior to January 1, 2026, the covered material category is composed of materials that are regularly collected for composting by at least 50 percent of organic waste recycling programs statewide and accepted by at least 50 percent of the compost facilities in the state that are permitted to accept mixed materials.
 - (B) Effective January 1, 2026, the covered material category is composed of materials that are regularly collected for composting by at least 75 percent of organic waste recycling programs statewide and accepted by at least 75 percent of the compost facilities in the state that are permitted to accept mixed materials.
- (c) To be eligible to be labeled compostable, discrete covered material must satisfy the following criteria, as applicable:
- (1) It must be within one of the covered material categories listed pursuant to section 42061(c) of the Public Resources Code.
 - (2) It must not have characteristics that cause it not to comply with the requirements stated in subdivision (b).

- (3) It must be certified as required by section 42357(g)(1)(A) of the Public Resources Code, if made effective according to its terms, including the condition that the Department shall have approved at least one third-party certification entity pursuant to section 18981. This requirement shall not apply to covered materials that are exempt from this paragraph according to paragraph (4).
- (4) If it does not satisfy the requirements of paragraph (3), the covered material must be exempt from the certification requirement pursuant to section 42356.1(d) of the Public Resources Code because it comprises fiber and does not incorporate any plastics or polymers, as defined in section 18980.1(a)(27). Applicability of this exemption shall be demonstrated as follows:
- (A) A complete listing of all substances, none of which may be plastic, present in the covered material, used as an ingredient to produce the covered material, adhered to, or that is otherwise a component of the covered material regardless of whether the materials were added intentionally or the means by which they were added.
 - (B) The absence of plastic other than plastic present due to contamination present in the product that was not caused by equipment or processes used in manufacturing. Satisfaction of this criterion must be confirmed by a laboratory having an ISO/IEC 17025:2017 accreditation issued by a body described in section 18981(b)(1). The laboratory shall utilize a methodology determined by the laboratory to be appropriate for confirming compliance with this subparagraph. The laboratory shall be provided with the information required in paragraph (A) and information regarding the manufacturing process necessary for the laboratory to make such a determination.
 - (C) If the producer of the covered material is a participant in a PRO, the producer shall demonstrate compliance with subparagraphs (A) and (B) to the PRO. The PRO shall establish a process for accepting

documentation proving compliance and for protecting confidential information contained therein.

(D) The producer, or the PRO acting on behalf of the producer, shall maintain all documentation required to demonstrate applicability of this exemption. Upon request by the Department, the producer or PRO shall provide all such documentation to the Department.

(E) A single demonstration of compliance as described in subparagraphs (A) and (B) shall apply to all products certified in writing by the producer to have an identical material type, contain identical substances, and have identical composition.

(d) Satisfying the requirements of this section or any other provision of this article shall not be construed as necessarily satisfying any requirement of section 42357 of the Public Resources Code for any purpose other than deeming covered material compliant with section 42050(b) of the Public Resources Code.

(e) The provisions of this article shall not be construed as setting forth all the requirements for a particular label or labeling practice to comply with applicable requirements of sections 42355 through 42358.5 of the Public Resources Code or any other law.

Authority: Sections 40401, 40502, and 42060, Public Resources Code.

Reference: Sections 42041, 42050, 42061, 42355, 42355.5, 42355.51, 42356, 42356.1, 42356.2, 42357, 42357.5, 42357.6, 42358 and 42358.5, Public Resources Code.

§ 18980.3.4. Independent Third-Party Validation for Postconsumer Recycled Content

(a) To be approved by the Department as an independent third party for purposes of validating postconsumer recycled content pursuant to section 42053(e)(1) or section 42057(a)(2)(B)(i) of the Public Resources Code, an entity must satisfy the following criteria:

- (1) Has 17065:2012 ISO/IEC accreditation issued by an accrediting body that is a signatory member of either the International Accreditation Forum or the International Laboratory Accreditation Cooperation, or both, or is a signatory to a mutual recognition arrangement established by either organization.
- (2) Must be independent, impartial, and not have any conflict of interest with respect to issuing the validations. Without limitation, the entity shall be deemed not to satisfy this requirement if any of the following are true:
 - (A) It holds any financial interest, whether direct or indirect, in any entity that is the producer of any product having the required validation;
 - (B) Other than for its services as a testing lab, transacts business with any producer of a product subject to the validation requirement, whether such business is with the person directly or indirectly, such as through affiliates of the person.
 - (C) Is party to any agreement under which any other entity agrees to refer persons to it.
- (b) A third-party validation entity shall request approval, or renewal of a prior approval, by submitting the following in the manner prescribed by the Department:
 - (1) Contact information.
 - (2) Documentation of the accreditation required pursuant to subdivision (a)(1).
Identifying an accrediting body's directory or other publication.
 - (3) Identifying the entity as holding the accreditation required under this section shall be deemed sufficient documentation.
 - (4) An affidavit, subject to the penalty of perjury, that the entity satisfies the requirements for approval pursuant to paragraph (a)(4).
- (c) The Department's approval of a third-party validation entity shall expire on January 1 of the fifth calendar year following the calendar year in which the Department approved the entity or as of the date the entity's accreditation expires or otherwise becomes invalid.
- (d) No earlier than two years before expiration of the Department's approval, the entity may request renewal. Renewed approvals shall expire in the same manner as initial approvals, as described in subdivision (c).

- (e) The Department shall maintain on its website a list of currently approved third-party validation entities for postconsumer recycled content validation. Notwithstanding a third-party validation's presence on such list, it shall be deemed not approved as of the date it no longer holds a valid, unexpired accreditation pursuant to subdivision (a)(1). A person seeking adjustment of eco-modulated fees pursuant to section 42053(e)(1) of the Public Resources Code or alternative source reduction credit pursuant to section 42057(a)(2)(B)(i) of the Public Resources Code shall be responsible for ensuring that a third-party validation entity held a valid accreditation as of the date it issued a validation.
- (f) Regardless of when a third-party validation entity is added to the list of approved entities published pursuant to subdivision (e), the Department's approval shall be retroactive as of the effective date of the accreditation satisfying the requirements of subdivision (a)(1).

Authority: Sections 40401, 40502, 42053 and 42060, Public Resources Code.

Reference: Sections 42053 and 42057, Public Resources Code.

§ 18980.3.5. Disposal of Covered Material

For the purposes of this chapter, covered material sent to one of the following facilities, operations, or used for one of the following activities in or outside of the state, shall be deemed to constitute disposal of covered material:

- (a) Final deposition at a landfill.
- (b) Used as alternative daily cover as specified in section 20690 of Title 27 of the California Code of Regulations or intermediate cover as specified in section 20700 of Title 27 of the California Code of Regulations.
- (c) Energy generation or fuel production, except for anaerobic digestion of source separated organic materials.
- (d) Other operations, facilities, or activities with processes that results in the final deposition of covered material onto land, into the atmosphere, or into the waters of the state or out of the state, including but not limited to, littering, open burning, or illegal dumping.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 40120.1, 40121, 40192, 42041 and 42061, Public Resources Code.

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Article 4: Responsible End Markets

§ 18980.4. Responsible End Market Determination Criteria

- (a) For an entity to be considered a responsible end market as defined in section 42041(ad) of the Public Resources Code, that entity shall meet the following criteria:
- (1) The entity shall be compliant, which means the entity operates with all required permits, licenses, and other clearances that may be required by local, state, or federal regulatory agencies including, but not limited to, local health and local land use authorities.
 - (2) The entity shall be transparent, which means the entity shall:
 - (A) Document the chain of custody of materials transported from origination to the end market.
 - (B) Maintain any relevant records pertaining to the chain of custody.
 - (C) Document any complaints, penalties, violations, or other forms of enforcement action taken against the entity.
 - (D) Maintain any relevant records pertaining to any permits, licenses, or other clearances required by local, state, or federal regulatory agencies.
 - (E) Be willing to be named, audited, and inspected by a PRO or an Independent Producer pursuant to section 18980.4.3.
 - (F) Provide any records identified in subparagraph (A) through (D) to a PRO or Independent Producer. The PRO or Independent Producer shall produce these records to the Department upon a written request by the Department.
 - (G) Specify to the PRO, the Department, and any Independent Producers the types of covered materials and covered material categories the end market will collect.
 - (3) The entity shall maximize benefits to the environment and minimize risks to public health and safety, which means:
 - (A) The entity shall recycle covered material consistent with this chapter.
 - (B) The entity shall handle incompatible materials in the following manner:

- (i) For incompatible materials that can be further processed and recycled, the end market shall send materials to entities that are authorized to further process and recycle the material.
 - (ii) For incompatible materials that cannot be further processed and recycled, the end market shall dispose of the material in a way that prevents environmental, public health, and safety risks.
 - (C) The entity shall provide documentation to a PRO or Independent Producer that describes how it recycles covered materials and how the entity works to minimize and manage emissions, effluents, and residuals.
- (4) The entity shall achieve adequate recycling yields for recyclable covered materials, as specified in subparagraph (A), or fully convert compostable covered materials or covered material made of wood or organic material into a recycled organic product, specified in subparagraph (B):
 - (A) Adequate recycling yield means:
 - (i) An entity shall achieve yields of recycling pursuant to the percentage identified in the most recent statewide needs assessment.
 - (ii) Yield shall be calculated by taking the total weight of material that is successfully remanufactured and dividing by the total weight of the recyclable material that is accepted by the end market.
 - (B) Fully convert compostable covered material or covered material made of wood or organic material into a recycled organic product means 100 percent of the covered material is converted into a recycled organic product. If the end market does not fully convert the covered material into a recycled organic product and disposes of the unconverted portion, the end market shall not be deemed responsible.
- (b) An end market is a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted. For the purposes of this article, end markets shall be identified in accordance with this subdivision.

- (1) For covered material made of glass, the end market is the entity that first uses the glass in lieu of a virgin material downstream of the beneficiation plant, including, but not limited to, a bottle manufacturer, a fiberglass manufacturer, a pozzolan producer, or a producer of any other packaging or product made of glass.
- (2) For covered material made of metal, end markets include, but are not limited to, entities that smelt metal and produce ingots, sheets, coils, or other materials that are subsequently refabricated into a packaging or product made of metal.
- (3) For covered material made of paper or fiber:
 - (A) End markets include, but are not limited to, entities that re-pulp the material into a pulp product that is sold to paper manufacturers or used to produce paper, paperboard products, or molded pulp products.
 - (B) If material is processed without repulping, end markets include, but are not limited to, entities that use the beneficiation waste paper to produce a product that is sold without further processing or manufacturing.
- (4) For covered material made of plastic, end markets include, but are not limited to, entities that create a new product by molding, extruding, or thermoforming processed material.
- (5) For compostable covered material or covered material made of wood or organic materials, end markets include, but are not limited to, entities that convert the material into a recycled organic product.
- (6) For covered material that comprises multiple material types and has a combination of components that are not detachable, the end market for that covered material shall be an end market, as defined in paragraphs (1) through (5), for the dominant material type. Dominant material type is the material type that the covered material is predominantly made of by weight.
- (7) For covered material that is comprised of multiple material types and have detachable components, the end market for the covered material shall be the end markets of each respective material type for each detachable component.

- (8) For covered material that is eligible for different types of end markets, any of the eligible end markets shall be deemed valid.

Authority: Sections 40401, 40502, 42041, 42060 and 42057, Public Resources Code.

Reference: Sections 42041, 42051, 42051.1, 42057 and 42061, Public Resources Code.

§ 18980.4.1. End Market Identification

- (a) A PRO or Independent Producer shall include in their plan the method by which they intend to identify and verify responsible end markets. The method shall:
- (1) Describe how end markets will be identified.
 - (2) Describe the process by which a PRO or Independent Producer will evaluate how each end market meets the standards defined in section 18980.4(a).
- (b) A PRO or Independent Producer shall ensure that any intermediate supply chain entity operates with all required permits, licenses, or other clearances that may be required by local, state, or federal regulatory agencies including, but not limited to, local health, local land use, and transportation authorities.
- (c) For any independent supply chain entity that manages covered material, the end market or independent supply chain entity shall agree to:
- (1) Maintain chain of custody information for any collected covered material or intermediate product.
 - (2) Supply the information to a PRO or Independent Producer upon request.
- (d) If a PRO or Independent Producer receives information pertaining to subdivision (c), the PRO or Independent Producer shall:
- (1) Provide the information to the Department upon request.
 - (2) Keep all information confidential to all entities other than the Department.
- (e) A PRO or Independent Producer shall maintain records of any contracts or agreements established with end markets and intermediate supply chain entities.

Authority: Sections 40401, 40502, 42041, 42060 and 42057, Public Resources Code.

Reference: Sections 42041, 42051, 42051.1 and 42057, Public Resources Code.

§ 18980.4.2. End Market Verification

(a) A PRO or Independent Producer shall conduct an annual verification of each end market it uses. The verification shall include:

- (1) All information and evidence in a PRO's or independent producer's possession related to any failure of an end market to satisfy the requirements to be a responsible end market as specified in section 18980.4(a).
- (2) Descriptions of any corrective actions that were taken to ensure an end market became compliant.
- (3) Descriptions of any instances where a PRO or Independent Producer prohibits sending materials to an end market due to that entity's noncompliance.
- (4) Records of complaints made against the end market.

(b) A summary of the verification shall be included in the annual report.

Authority: Sections 40401, 40502, 42041 and 42060, Public Resources Code.

Reference: Sections 42051, 42051.1 and 42051.3, Public Resources Code.

§ 18980.4.3. End Market Audits and Investigations

(a) A PRO or Independent Producer shall have annual audits and investigations of responsible end markets conducted and completed. All investigations and audits shall be conducted by an independent third-party, with all financial audits being conducted by an independent public accountant certified in the United States.

(b) While investigating or auditing a responsible end market, a PRO or Independent Producer may employ randomized material tracking. Material tracking may include, without limitation, bale tracking and tracking of intermediate products.

(c) A PRO or Independent Producer shall include the results of an investigation and copies of any audits conducted in the annual report. The Department shall have full access to any results of an investigation or audit.

(d) If the Department deems necessary, the Department may require a PRO or Independent Producer to initiate an audit or investigation of a responsible end market.

- (e) The Department may request a PRO or Independent Producer to provide any records pertaining to responsible end markets. All requested records shall be unredacted. A PRO or Independent Producer may specify what information should be kept confidential and explain why that information should be kept confidential.
- (f) If the Department finds that a responsible end market identified by a PRO or Independent Producer fails to meet the standards specified in section 18980.4(a), the end market is no longer a responsible end market and any covered material sent to that end market shall not be considered recycled or composted for purposes of compliance with the Act.

Authority: Sections 40401, 40502, 42041 and 42060, Public Resources Code.

Reference: Sections 42041, 42051, 42051.1 and 42053, Public Resources Code.

§ 18980.4.4. End Market Viability

- (a) To ensure viability of responsible end markets, a PRO or Independent Producer shall:
 - (1) Provide financial support to end markets to assist them in satisfying the standards specified in section 18980.4(a).
 - (2) To facilitate material diversion and assist end markets in satisfying the standards specified in section 18980.4(a), provide financial support to local jurisdictions, recycling service providers, independent supply chain entities, and other entities that provide services used for the diversion of materials.
 - (3) Develop new responsible end markets for covered materials and explore alternatives for covered materials that do not have a responsible end market. Alternatives include, but are not limited to, investing in refill and reuse infrastructure to facilitate the phasing out of covered materials lacking responsible end markets.
 - (4) If the covered material is made of a material type that does not have a responsible end market, as described in section 18980.4(b), that is also viable, a PRO or Independent Producer shall:
 - (A) Conduct a study, within a two-year period, that:

- (i) Evaluates technology that could be used to recycle the covered material and ensure that the technology can constitute recycling, as defined in section 42041(aa) of the Public Resources Code.
 - (ii) Evaluates the feasibility of collecting, transporting, processing, and recycling the covered material.
 - (iii) Evaluates how the end market can meet the standards specified in section 18980.4(a).
 - (iv) May also include pilot programs to test components specified in clauses (i), (ii), or (iii).
- (B) If a PRO or Independent Producer believes a viable responsible end market exists for such covered material, a PRO or Independent Producer shall include in the plan or a plan amendment:
 - (i) Description of the end market.
 - (ii) Justification of how the end market meets the standards specified in section 18980.4(a).
 - (iii) Description of the viability of the end market.
 - (iv) Budget and investment strategy that describes how a PRO or Independent Producer will fund the development of the end market, along with any necessary development of collection, transportation, and processing infrastructure.
 - (v) Timeline detailing proposed end market development.
- (C) If a PRO or Independent Producer believes a viable responsible end market does not exist for such covered material, a PRO or Independent Producer shall invest in alternatives to that covered material to facilitate the phasing out of the covered material. Alternatives may include, but not be limited to, investing in refill and reuse infrastructure that reduces reliance on the covered material.
- (5) When a PRO or Independent Producer decides to conduct a study pursuant to paragraph (4), a PRO or Independent Producer shall notify the Department and disclose the date on which the study was initiated.

Authority: Sections 40401, 40502, 42041 and 42060, Public Resources Code.

Reference: Sections 42041, 42051, 42051.1 and 42053, Public Resources Code.

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Article 5: Requirements for Producers

§ 18980.5. Producer Compliance

- (a) Pursuant to section 42051(b) of the Public Resources Code, producers shall join an approved PRO as a participant producer or apply to become an Independent Producer pursuant to section 18980.5.1.
- (b) Entities that become producers after January 1, 2027, shall, within six months of becoming a producer, join an approved Producer Responsibility Organization as a participant producer or apply to become an Independent Producer pursuant to section 18980.5.1.
- (c) Participant producers that no longer participate in a PRO, shall within six months from the date of dismissal, or voluntary dissolution, apply to become an Independent Producer pursuant to section 18980.5.1, or shall cease selling, offering for sale, importing, or distributing covered materials in or into the state.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Section 42051, Public Resources Code.

§ 18980.5.1. Application for Independent Producer Compliance

- (a) A producer seeking to comply with the Act without joining a PRO shall submit an application for individual compliance to the Department and register with the Department pursuant to section 18980.10(a). The application shall be submitted electronically and shall, at minimum, include the following:
 - (1) Producer information:
 - (A) Legal entity name (a fictitious business name is not sufficient)
 - (B) Business mailing address
 - (C) Primary business address (physical address; must not be a post office box)
 - (D) Business phone number
 - (E) Business email address
 - (2) Types of covered material the producer is selling, offering for sale, importing, or distributing in or into the state.

- (3) Information that demonstrates compliance with the requirements of section 42051(b)(2)(A) of the Public Resources Code.
- (b) The Department shall approve or deny an application.
- (c) Upon denial of the application, the producer shall, within six months, join a PRO as a participant producer, or shall cease selling, offering for sale, importing, or distributing covered materials in or into the state.
- (d) Upon approval of the application, the producer shall comply with the requirements of this chapter as an Independent Producer.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42041 and 42051, Public Resources Code.

§ 18980.5.2. Exemptions for Small Producers

- (a) A producer seeking an exemption pursuant to section 42060(a)(5) of the Public Resources Code shall submit an application electronically to the Department. The application shall include but not be limited to the following:
 - (1) Producer Information:
 - (A) Legal entity name (a fictitious business name is not sufficient)
 - (B) Business mailing address
 - (C) Primary business address (physical address; must not be a post office box)
 - (D) Business phone number
 - (E) Business email address
 - (2) Proof showing the producer in the most recent calendar year, had gross sales of less than one million dollars (\$1,000,000) in the state.
 - (3) Nature of the producer's sales, distribution, or imports, including but not limited to storefront, internet website, or other online presence.
 - (4) The following information about each of the covered materials sold, offered for sale, distributed, or imported in or into the state:
 - (A) Covered material category
 - (B) Name and description

(C) Total quantity of covered material components and the weight of covered material components sold, offered for sale, distributed, or imported annually

- (b) The Department shall review and evaluate an application. The Department may approve an application if, in the Department's discretion, it meets the requirements of this section. If the application is approved, the exemption shall become effective on the date the application is approved and is valid for one year.
- (c) To maintain an exemption, the small producer shall, at least 90 days before the expiration date, provide updated information satisfying the requirements of subdivision (a). If approved, the exemption shall be extended for one additional year with the new expiration date being a year later from the original expiration date.
- (d) A producer no longer exempt pursuant to this section shall be subject to the requirements of the Act pursuant to section 18980.5.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42052 and 42060, Public Resources Code.

Article 6: Requirements for the Producer Responsibility Organization

§ 18980.6. General Requirements

(a) In notifying the Department of information required by section 42051(d) of the Public Resources Code, a PRO shall include the following information, as applicable:

- (1) For an instance of producer non-compliance, including producers that are non-compliant because they are the producer of covered material within a non-compliant covered material category, delineated by covered material category:
 - (A) The name of the producer.
 - (B) Name, description, and other information sufficient to uniquely identify each particular product using the involved covered material. Such identification may be achieved, for example, with respect to unique physical characteristics, such as the product's form, materials, and dimensions, or identifying information such as a unique stock keeping unit (SKU) or global trade item number, such as a universal product code (UPC).
 - (C) What covered material and covered material category was associated with that producer.
 - (D) The effects of PRO-identified producer non-compliance on the PRO's implementation and ability to implement this chapter, including how the PRO's approved plan is affected.
 - (E) What actions the PRO has taken or will take to ensure compliance with this chapter.
- (2) For a producer that no longer participates in the PRO's plan, including producers that are non-compliant because they are the producer of covered material within a non-compliant covered material category, delineated by covered material category:
 - (A) Information specified in subparagraphs (1)(A) through (C).
 - (B) The reason provided, if any, by the producer for ceasing to participate in the PRO's approved plan.

- (C) If the producer was dismissed by the PRO, provide reasons for dismissal along with any supporting documentation.
- (D) The effects of PRO-identified producer non-compliance or non-participation on the PRO's implementation and ability to implement this chapter, including how the PRO's approved plan is affected.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051 and 42051.1, Public Resources Code.

§ 18980.6.1. Producer Responsibility Plan Submission

- (a) A PRO approved by the Department pursuant to section 42061.5 of the Public Resources Code shall on or before April 1, 2026, prepare and submit a producer responsibility plan pursuant to section 42051.2 of the Public Resources Code.
- (b) A successor or additional PRO approved by the Department pursuant to section 18980.14, shall prepare and submit a producer responsibility plan pursuant to section 42051.2. of the Public Resources Code within six months of approval.
- (c) A producer responsibility plan shall meet all applicable requirements specified in section 18980.8 and section 18980.8.1.
- (d) Upon submittal of the producer responsibility plan to the advisory board, the PRO shall make the plan available for review and public comment by, at minimum, posting the plan to its internet website.
- (e) Upon submittal of the producer responsibility plan to the Department, the PRO shall include in the revised plan a summary of the comments received from the advisory board and from the members of the public, responses to any public comments, and any other steps taken by the PRO relative to those comments. Additionally, the PRO shall make the plan available for public review by, at minimum, posting the plan to its internet website until an approved plan is posted pursuant to section 42051.2(c) of the Public Resources Code.

Authority: Sections 40401, 40502, 42057 and 42060, Public Resources Code.

Reference: Sections 42051.1, 42051.2 and 42061.5, Public Resources Code.

§ 18980.6.2. Producer Responsibility Plan Approval

- (a) If the plan is conditionally approved by the Department, the PRO shall, on or before the last day of each following month from the date of conditional approval, provide the Department the following:
 - (1) Estimated date for resubmittal of the revised plan.
 - (2) Status updates of each condition specified by the Department and how it is being addressed.
- (b) For purposes of this section, conditional approval is a preliminary determination that certain elements of the plan do not meet applicable requirements, but that if certain conditions are met, final approval will be warranted. Such conditions may include, without limitation, clarification to remove ambiguities or addition of information or data demonstrating that particular requirements have been met.
- (c) A plan approved by the Department is valid for five years and the expiration date of the PRO's approved plan shall be five years from the date of approval by the Department.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051.2 and 42063, Public Resources Code.

§ 18980.6.3. Review of Updated Producer Responsibility Plan

- (a) A PRO shall submit a proposed updated plan at least one (1) year before the expiration date of their producer responsibility plan to the advisory board.
- (b) An updated plan shall meet all applicable requirements specified in section 18980.8, section 18980.8.1, and section 42051.2(d)(2) of the Public Resources Code.
- (c) Upon submittal of the producer responsibility plan to the advisory board, the PRO shall make the proposed updated plan available for review and public comment by, at minimum, posting the plan to its internet website. No later than 60 calendar days after the PRO's submission of the proposed updated plan, the advisory board shall provide any written comments to the PRO.

- (d) No later than 120 calendar days after receiving comments from the advisory board, the PRO shall provide their revised plan update proposal to the Department along with a summary of comments received by the advisory board and any steps taken by the PRO relative to those comments. In its submission, the PRO shall include in the revised, updated plan a summary of the comments received from the advisory board and from the members of the public, responses to any public comments, and any other steps taken by the PRO relative to those comments. Additionally, the PRO shall make the plan available for public review by, at minimum, posting the plan to its internet website until an approved updated plan is posted.
- (e) An updated plan approved by the Department is valid for an additional five years, and the expiration date of the PRO's revised plan shall be five years from the date of approval by the Department.
- (f) The PRO shall post the updated approved plan on the PRO's internet website within five calendar days of approval by the Department.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051.2, 42063 and 42070, Public Resources Code.

§ 18980.6.4. Producer Responsibility Plan Amendments

- (a) A proposed plan amendment that the PRO is required by section 42051.2(e)(1) of the Public Resources Code to submit to the advisory board shall not be considered by the Department until at least 60 calendar days after it was provided to the advisory board for review and comment.
- (b) The PRO shall include, with the amended plan submitted to the Department, a summary of the comments received by the advisory board and any steps taken by the PRO relative to those comments.
- (c) Approval of an amended plan shall not alter the expiration date of the approved plan that is the subject of the amendment.
- (d) The PRO shall post the amended plan on the PRO's internet website within five calendar days of approval by the Department.

Authority: Sections 40401, 40502, 42060, and 42063, Public Resources Code.

Reference: Sections 42051.1, 42051.2, and 42070, Public Resources Code.

§ 18980.6.5. Annual Report and Annual Budget

- (a) On or before April 1 of each year, a PRO shall submit to the Department an annual report and annual budget pursuant to section 42051.3 of the Public Resources Code.
- (b) Upon submittal of the annual report and annual budget to the Department, the PRO shall make the report and budget available for the public by, at minimum, posting it to its internet website until an approved annual report and annual budget is posted pursuant to subdivision (d).
- (c) The annual report and annual budget shall meet the requirements of section 18980.9.
- (d) Within five calendar days after approval of the annual report and annual budget by the Department, the PRO shall post the approved annual report and annual budget on the PRO's internet website.

Authority: Sections 40401, 40502, 42060, 42063 and 42057, Public Resources Code.

Reference: Section 42051.3, Public Resources Code.

§ 18980.6.6. Document Submittals

- (a) A producer responsibility plan, updated producer responsibility plan, plan amendments, initial program budget, annual report, annual budget, or any document associated with the preceding that is submitted to the Department by the PRO, shall meet all the requirements outlined in paragraphs (1) through (4) of this subdivision:
 - (1) The document shall be submitted electronically. The date of electronic submittal will be considered the date of receipt by the Department.
 - (2) Submittals are public documents subject to mandatory disclosure under the California Public Records Act (Division 10 of Title 1 of the Government Code (commencing with section 792.000)) unless an exemption from such

disclosure applies. The Department shall withhold from public disclosure records that the PRO appropriately identifies as trade secrets, subject to the requirements and limitations set forth in Article 15. In addition to identifying the particular content, as prescribed in Article 15, claimed to contain trade secrets and thus be non-disclosable, the PRO shall identify any portions of plans submitted to the Department that it claims to be non-disclosable because they contain financial, production, or sales data, and shall include with the submission a cover letter setting forth its basis for all such claims.

(3) The document shall be complete and correct.

(A) The Department shall consider a document to be complete if it contains provisions intended to meet all requirements in sections 18980.6.1, 18980.6.3, 18980.6.4, and 18980.6.5, as applicable to each document, and if it contains sufficient detail for the Department to determine if the requirements in the referenced sections have been met.

(B) A document is correct if all information provided is accurate, exact, and is certified as specified in subdivision (a)(4).

(4) The document shall be provided to the Department under penalty of perjury.

A party, with signatory authority, who is responsible for the contents of the document, shall sign the document and provide the following certification statement: "I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge."

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 40062, 42051.1, 42051.3 and 42063, Public Resources Code; Sections 7921.500 and 7922.530, Government Code.

§ 18980.6.7. Eco-modulated Fee and Fee Schedule

(a) Prior to approval of a plan, a PRO shall charge all participant producers a fee based on the following items as set forth in section 42053(b) of the Public Resources Code:

(1) Estimated costs of implementing the plan.

- (2) Operating costs of the PRO.
 - (3) Costs of completing the needs assessment.
 - (4) Costs to cover the environmental mitigation requirements of section 42064 of the Public Resources Code.
 - (5) Costs to reimburse the Department.
- (b) Upon approval of a PRO's plan, the PRO shall charge each participant producer annual fees that are eco-modulated as described in the plan. A PRO shall account for the costs to ensure each covered material and covered material category meet the requirements of this chapter, including minimization of environmental and public health impacts along the entire supply chain of covered materials and covered material category.
- (c) If a PRO, pursuant to section 42053(f) of the Public Resources Code, charges a participant producer a special assessment, the PRO shall include the special assessment in the fee schedule for participant producers.
- (d) In setting the individual assessments pursuant to section 42053(c)(1) of the Public Resources Code, a PRO shall:
- (1) Determine the base fee rate for each covered material category.
 - (A) In setting the base fee rates, a PRO shall include a justification of each rate. The justification shall address each factor specified in section 42053(d) of the Public Resources Code. The justification for fees shall be informed by the data contained in the most recent needs assessment, the most recent material characterization studies, source reduction data, data pertaining to recycling rates, data pertaining to the biodegradation or disintegration rates of compostable covered materials, and other verifiable data.
 - (B) If a PRO's justification contradicts the results of the most recent needs assessment or material characterization studies, the justification shall explain the discrepancy. The PRO shall provide evidence, such as records and data or other information, supporting the explanation.
 - (C) A PRO shall set higher base fee rates for covered material categories that lack a responsible end market. Monies collected from this fee will

be used to fund the necessary investments to develop viable responsible end markets for such covered material categories, implement source reduction measures for such covered material categories, or transition to reuse and refill systems to replace such covered material categories.

(D) A PRO may set an alternative reduced base fee rate for a select covered material category if an alternative collection program is utilized. The alternative reduced base fee rate shall consider the measurable performance of the alternative collection program relative to the statewide performance of curbside collection for those same materials. Measurable performance factors to consider include, but are not limited to, recovery rate, contamination rate, recycling rate, and environmental impacts. The alternative reduced base fee rate shall only apply to producers who utilize an alternative collection program for a specific covered material category. If a PRO sets an alternative reduced base fee rate, the PRO shall in their justification, pursuant to subparagraph (A), explain how the alternative collection program's measurable performance warrants a reduced base fee rate.

(2) Calculate the total individual assessment.

(A) A PRO shall first calculate the base fee for each covered material category applicable to the producer. The base fee for a covered material category shall be equal to the [base fee rate of a covered material category (BFRCMC)] times the [amount of covered material of that covered material category sold, distributed, or imported in or into the state within the previous calendar year (ACMSDI)]: $BFRCMC \times ACMSDI = \text{Base Fee}$.

(B) The total individual assessment shall be the sum of the base fees of each covered material category.

(e) In setting any adjustments pursuant to section 42053(c)(2) of the Public Resources Code, which includes malus fees charged to a producer and credits awarded to a producer, a PRO shall include a justification.

- (1) The justification shall be done by covered material category and shall address each factor specified in section 42053(e) of the Public Resources Code. The justification for malus fees and credits shall be informed by the data contained in the most recent needs assessment, the most recent material characterization studies, source reduction data, data pertaining to recycling rates, data pertaining to biodegradation or disintegration rates of compostable covered materials, and other verifiable data.
- (2) If a PRO's justification for malus fees or credits is in contradiction with the results of the most recent needs assessment or material characterization studies, the PRO in its justification shall provide an explanation of the discrepancy. A PRO shall provide supporting documentation and any data to justify the discrepancy.
- (f) In assessing fees pursuant to section 42053(c)(5) of the Public Resources Code, a PRO shall develop a formula to calculate the amount a producer should be assessed. Pursuant to section 42064(f) of the Public Resources Code, the formula shall be based on the number of plastic components and weight of plastic covered material a producer offers for sale, sells, distributes, or imports in or into the state. The PRO shall provide the formula to the Department.
- (g) For purposes of accounting for specific elements that are detrimental to recycling or composting pursuant to section 42053(d)(2) of the Public Resources Code, the publications incorporated into a plan pursuant to section 18980.8(e) shall apply. An element shall be considered detrimental to recycling according to the design guide incorporated pursuant to section 18980.8(e)(1) if, as described in the design guide, the element prevents covered material from being considered "preferred," is "detrimental," renders the covered material "non-recyclable," or "requires test results."
- (h) Pursuant to section 42053(e)(4) of the Public Resources Code, a PRO shall charge a malus fee to producers who use covered material that contains a chemical listed on the list established pursuant to section 25249.8 of the Health and Safety Code.
- (i) In awarding credits pursuant to section 42053(e)(6) of the Public Resources Code, a PRO shall:

- (1) Adjust credits based on the number of times a reusable or refillable alternative material is used in the supply chain prior to the end of life of the alternative material.
 - (2) If a material characterization study finds that a refillable or reusable alternative to a covered material is being frequently disposed for a product, the PRO shall stop providing credits to producers who use that alternative material.
- (j) Pursuant to section 42053(e)(7) of the Public Resources Code, a PRO shall provide a credit for producers who use plastic covered material derived from renewable materials.
- (1) "Renewable materials," for the purposes of section 42053(e)(7) of the Public Resources Code, means a material that is made of a natural resource that can be replenished and is not of petroleum origin. "Renewable material" includes but is not limited to materials derived from wood, mycelium, algae, or plants such as cotton, corn, sugar cane, or wheat.
 - (2) When awarding a credit to participant producers, the PRO shall in its justification specify the feedstocks used to produce the covered material.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42053 and 42064, Public Resources Code.

§ 18980.6.8. Recordkeeping and Reporting Requirements

- (a) A PRO shall keep the following records, disaggregated by each participant producer where applicable:
- (1) Total weight of covered material, by covered material category sold, distributed, or imported in or into the state.
 - (2) Total number of plastic components, by covered material category sold, distributed, or imported in or into the state.
 - (3) Total weight of covered material, by covered material category recycled.
 - (4) Total number of plastic components, by covered material category recycled.

- (5) Total weight of covered material not recycled, including but not limited to, covered material disposed by processors and end markets.
 - (6) Total weight of expanded polystyrene food service ware, by covered material category, sold, distributed, or imported in or into the state.
 - (7) For each take-back, dropoff, or alternative collection program:
 - (A) The total weight of covered material, by covered material category that is collected by the program.
 - (B) The total number of plastic components, by covered material category that is collected by the program.
 - (C) The total weight of covered material, by covered material category collected by the program that is recycled.
 - (D) The total number of plastic components, by covered material category collected by the program that is recycled.
 - (8) Information pursuant to section 42054(a) of the Public Resources Code.
 - (9) All contracts or agreements established with entities including but not limited to end markets, recycling service providers and intermediate supply chain entities.
 - (10) Copies of supporting records that were used in creating those reports pursuant to section 18980.10.1.
 - (11) Records of information obtained pursuant to section 18980.4.2.
 - (12) Copies of audits and investigations pursuant to section 18980.4.3.
 - (13) Records required to be maintained pursuant to section 18980.3.3(c)(4)(D), if any.
- (b) All weights recorded pursuant to this article shall be recorded in tons.
- (c) All records required by this article or by the PRO's record maintenance protocol shall be maintained for at least three (3) years. An entity subject to requirements under this article or the Act shall, upon written request, immediately provide to the Department records necessary to determine compliance with such requirements. At the Department's option, records shall be provided either by allowing physical access during normal business hours to the Department or other duly authorized regulatory agency or by submitting them to the Department by electronic means.

Authority: Sections 40401, 40502, 42057 and 42060, Public Resources Code.

Reference: Sections 42051.1, 42052 and 42054, Public Resources Code.

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Article 7: Requirements for Independent Producers

§ 18980.7. Independent Producer Responsibility Plan Submission

- (a) An Independent Producer approved by the Department pursuant to section 18980.5.1 shall, within six months, prepare and submit a producer responsibility plan pursuant to section 42051.2 of the Public Resources Code.
- (b) A producer responsibility plan shall meet all applicable requirements specified in section 18980.8.
- (c) Upon submittal of the producer responsibility plan to the advisory board, the Independent Producer shall make the plan available for review and public comment by, at minimum, posting the plan to its internet website.
- (d) Upon submittal of the producer responsibility plan to the Department, the Independent Producer shall include in the revised plan, a summary of the comments received from the advisory board and from members of the public, responses to any public comments, and any other steps taken by the Independent Producer relative to those comments. The Independent Producer shall also make the revised plan available to the public by, at minimum, posting the plan to its internet website until an approved plan is posted pursuant to section 42051.2(c) of the Public Resources Code.
- (e) In the event of the termination of a plan by an Independent Producer, the entity shall submit a written notice of intent to terminate a plan to the Department. The effective date of the termination shall be the date the Department receives such written notice, except that, if the written notice indicates that the termination of the plan is conditioned upon the Independent Producer becoming a PRO participant, the termination shall only become effective as of the date the Department receives written notice that the entity has officially joined a PRO.

Authority: Sections 40401, 40502, 42057 and 42060, Public Resources Code.

Reference: Sections 42051, 42051.1 and 42051.2, Public Resources Code.

§ 18980.7.1. Independent Producer Responsibility Plan Approval

- (a) If the plan is conditionally approved by the Department, the Independent Producer shall, on or before the last day of each following month from the date of conditional approval, provide the Department the following:
 - (1) Estimated date for resubmittal of the revised plan.
 - (2) Status updates of each condition specified by the Department and how it is being addressed.
- (b) For purposes of this section, conditional approval is a preliminary determination that certain elements of the plan do not meet applicable requirements, but that if certain conditions are met, final approval will be warranted. Such conditions may include, without limitation, clarification to remove ambiguities or addition of information or data demonstrating that particular requirements have been met.
- (c) A plan approved by the Department is valid for five years and the expiration date of the Independent Producer's approved plan shall be five years from the date of approval by the Department.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051, 42051.2 and 42063, Public Resources Code.

§ 18980.7.2. Review of Updated Independent Producer Responsibility Plan

- (a) An Independent Producer shall submit a proposed updated plan at least one (1) year before the expiration date of their producer responsibility plan to the advisory board.
- (b) No later than 60 calendar days after the Independent Producer's submission of the proposed updated plan, the advisory board shall provide any written comments to the Independent Producer.
- (c) No later than 120 calendar days after receiving comments from the advisory board, the Independent Producer shall provide their revised plan update proposal to the Department along with a summary of comments received by the advisory board and any steps taken by the Independent Producer relative to those comments.
- (d) An updated plan shall meet all applicable requirements specified in section 18980.8, and section 42051.2(d)(2) of the Public Resources Code.

- (e) An updated plan approved by the Department is valid for an additional five years, and the expiration date of the Independent Producer's revised plan shall be five years from the date of approval by the Department.
- (f) The Independent Producer shall post the updated approved plan on the Independent Producer's internet website within five calendar days of approval by the Department.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051, 42051.2, 42063 and 42070, Public Resources Code.

§ 18980.7.3. Independent Producer Responsibility Plan Amendments

- (a) A plan amendment that is required by section 42051.2(e)(1) of the Public Resources Code to be submitted to the advisory board shall not be considered by the Department until at least 60 calendar days after it was provided to the advisory board for review and comment.
- (b) The Independent Producer shall include, with the revised plan submitted to the Department, a summary of the comments received by the advisory board and any steps taken by the Independent Producer relative to those comments.
- (c) Approval of an amended plan shall not alter the expiration date of the approved plan that is the subject of the amendment.
- (d) The Independent Producer shall post the amended plan on the Independent Producer's internet website within five calendar days of approval by the Department.

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 42051, 42051.1, 42051.2 and 42070, Public Resources Code.

§ 18980.7.4. Independent Producer Annual Report and Annual Budget

- (a) On or before April 1 of each year, an Independent Producer shall submit to the Department an annual report and annual budget pursuant to section 42051.3 of the Public Resources Code.
- (b) Upon submittal of annual report and annual budget to the Department, the Independent Producer shall make the annual report and annual budget available to

the public by, at minimum, posting the documents to its internet website until an approved annual report and annual budget is posted pursuant to subdivision (d).

- (c) The annual report and annual budget shall meet the requirements of section 18980.9.
- (d) Within five calendar days after approval of the annual report and annual budget by the Department, the Independent Producer shall post the approved annual report and annual budget on the Independent Producer's internet website.

Authority: Sections 40401, 40502, 42060, 42063 and 42057, Public Resources Code.

Reference: Sections 42051 and 42051.3, Public Resources Code.

§ 18980.7.5. Independent Producer Document Submittals

- (a) A producer responsibility plan, updated producer responsibility plan, plan amendments, initial program budget, annual report, annual budget, or any document associated with the preceding that is submitted to the Department by an Independent Producer, shall meet all the requirements outlined in subsections (1) through (4) of this section:
 - (1) The document shall be submitted electronically. The date of electronic submittal will be considered the date of receipt by the Department.
 - (2) Submittals are public documents subject to mandatory disclosure under the California Public Records Act (Division 10 of Title 1 of the Government Code (commencing with section 7920.000)) unless an exemption from such disclosure applies. The Department shall withhold from public disclosure records that the Independent Producer appropriately identifies as trade secrets, subject to the requirements and limitations set forth in Article 15. In addition to identifying the particular content, as prescribed in Article 15, claimed to contain trade secrets and thus be non-disclosable, the producer shall identify any portions of plans submitted to the Department that it claims to be non-disclosable because they contain financial, production, or sales data, and shall include with the submission a cover letter setting forth its basis for all such claims.

(3) The document shall be complete and correct.

(A) The Department shall consider a document to be complete if it contains provisions intended to meet all requirements in sections 18980.7, 18980.7.2, 18980.7.3, and 18980.7.4, as applicable to each document, and if it contains sufficient detail for the Department to determine if the requirements in the referenced sections have been met.

(B) A document is correct if all information provided is accurate, exact, and is certified as specified in subdivision (a)(4).

(4) The document shall be provided to the Department under penalty of perjury. A party, with signatory authority, who is responsible for the contents of the document, shall sign the document and provide the following certification statement: "I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge."

Authority: Sections 40401, 40502, 42060 and 42063, Public Resources Code.

Reference: Sections 40062, 42051, 42051.1, 42051.3 and 42063, Public Resources Code; Sections 7921.500 and 7922.530, Government Code.

§ 18980.7.6. Independent Producer Environmental Mitigation Fee

- (a) To determine the amount an Independent Producer shall pay towards the California Plastic Pollution Mitigation Fund, pursuant to section 42064(h) of the Public Resources Code, the Department shall calculate the amount using the formula provided to the Department by a PRO pursuant to section 18980.6.7(f).
- (b) The Department shall use information reported to the Department from an Independent Producer to calculate the amount. The Department may request additional information from an Independent Producer if necessary.

Authority: Sections 40401, 40502, 42060 and 42064, Public Resources Code

Reference: Sections 42051 and 42064, Public Resources Code

§ 18980.7.7. Independent Producer Recordkeeping and Reporting Requirements

(a) An Independent Producer shall keep the following records:

- (1) Total weight of covered material, by covered material category sold, distributed, or imported in or into the state.
- (2) Total number of plastic components, by covered material category sold, distributed, or imported in or into the state.
- (3) Total weight of covered material, by covered material category recycled.
- (4) Total number of plastic components, by covered material category recycled.
- (5) Total weight of covered material not recycled, including but not limited to, covered material disposed by processors and end markets.
- (6) Total weight of expanded polystyrene food service ware, by covered material category, sold, distributed, or imported in or into the state.
- (7) For each take-back, dropoff, or alternative collection program:
 - (A) The total weight of covered material, by covered material category that is collected by the program.
 - (B) The total number of plastic components, by covered material category that is collected by the program.
 - (C) The total weight of covered material, by covered material category collected by the program that is recycled.
 - (D) The total number of plastic components, by covered material category collected by the program that is recycled.
- (8) Records required pursuant to section 42054(a) of the Public Resources Code.
- (9) All contracts or agreements established with entities including but not limited to end markets, recycling service providers and intermediate supply chain entities.
- (10) Copies of supporting records that were used in creating the reports submitted pursuant to section 18980.10.1.
- (11) Records of information obtained pursuant to section 18980.4.2.
- (12) Copies of audits and investigations pursuant to section 18980.4.3.
- (13) Records required to be maintained pursuant to section 18980.3.3(c)(4)(D), if applicable.

- (b) All weights recorded pursuant to this article shall be recorded in tons.
- (c) All records required by this article or by the Independent Producer's record maintenance protocol shall be maintained for at least three (3) years.
- (d) An entity subject to requirements under this article or the Act shall, upon written request, immediately provide to the Department records necessary to determine compliance with such requirements. At the Department's option, records shall be provided either by allowing physical access during normal business hours to the Department or other duly authorized regulatory agency or by submitting them to the Department by electronic means.

Authority: Sections 40401, 40502, 42057 and 42060, Public Resources Code.

Reference: Sections 42051, 42051.1 and 42052, Public Resources Code.

Article 8: Producer Responsibility Plan Requirements

§ 18980.8. Producer Responsibility Plan

- (a) A producer responsibility plan shall meet all of the requirements outlined in section 42051.1 of the Public Resources Code and all requirements applicable to the plan. An Independent Producer shall only include applicable requirements specified in section 42051.1 of the Public Resources Code and requirements applicable to the plan.
- (b) Pursuant to section 42051.1(b)(3) of the Public Resources Code, for each technology, the plan shall additionally include:
- (1) An explanation of how the technology is employed in recycling.
 - (2) A specification of the covered materials that are recycled by utilizing the technology.
 - (3) A description of the level of contamination the technology is able to tolerate.
 - (4) A list of overall inputs, including chemicals, if applicable.
 - (5) An account of end products, including quantities of by-products or residuals produced by the technology, along with their disposition (i.e., further processing, landfill disposal).
 - (6) Current operational status, including location of current and proposed sites.
 - (7) An assessment of potential environmental impacts to disadvantaged, low-income or rural communities.
 - (8) An evaluation of the efficiency of the technology in achieving recycling rates.
 - (9) Information on financial viability, capacity, and cost-effectiveness.
 - (10) A demonstration that the means and technologies meet the conditions specified in the definition of “recycle” or “recycling” pursuant to section 42041(aa) of the Public Resources Code.
- (c) In addition to the examples provided in section 42051.1(e)(1) through (4) of the Public Resources Code, the plan may include the following education and promotion efforts:
- (1) A description of performance measures, which shall evaluate performance of the comprehensive education and outreach program including, but not limited to, ultimate user awareness, program usage, and accessibility.

- (2) Provision of educational and outreach materials for consumers that are accessible in languages suited to local demographics, consistent with section 7295 of the Government Code.
- (d) All information specified in section 18980.4.1.
- (e) If the plan is a PRO plan, the plan shall establish the process required pursuant to section 18980.3(f)(1)(A). If the plan is an Independent Producer, it shall instead include the information required pursuant to section 18980.3(f)(2)(A) for any covered materials claimed to be recyclable pursuant to section 42355.51(d)(4) or 42355.51(d)(5) of the Public Resources Code.
- (f) The plan shall additionally include:
- (1) The then-current version of the design guide referenced in section 42355.51(d)(3)(A) of the Public Resources Code and includes it in its entirety. Such version shall apply to determinations of recyclability of covered materials, as set forth in section 18980.3(e), and to the requirement under section 42053(d)(2) of the Public Resources Code that the PRO's fees account for the difficulty of recycling covered material caused by elements that are detrimental to recycling, as set forth in section 18980.6.7(d)(1)(E).
- (2) Any other publications, in their entirety, that the PRO may rely on pursuant to section 42053(d)(2) of the Public Resources Code to account for the difficulty of recycling or composting covered material caused by elements that are detrimental to recycling or composting.
- (g) If the Department determines that the plan fails to comply with the Act, the Department shall disapprove the plan and issue a notice of violation to the PRO or Independent Producer explaining how the plan does not comply with the Act. The PRO or Independent Producer shall submit a revised plan with any additional information, modifications, or corrections to the Department. Penalties shall begin accruing according to section 42081(a)(3) of the Public Resources Code and continue accruing until a revised plan is approved by the Department.

Authority: Sections 40401, 40502, 42041, 42060 and 42063, Public Resources Code.

Reference: Sections 42041, 42051, 42051.1, 42051.2, 42063, 42080 and 42081, Public Resources Code; section 7295, Government Code.

§ 18980.8.1. Plan Requirements Specific to a PRO

(a) A PRO shall in addition to the requirements specified in section 18980.8:

- (1) Pursuant to section 42051.1(f) of the Public Resources Code, the plan shall additionally include a closure and transfer plan, as specified in section 18980.8.2.
- (2) Pursuant to section 42051.1(d) and section 42053(c) of the Public Resources Code, the plan shall additionally include a fee schedule. The fee schedule shall be developed using the requirements specified in section 18980.6.7.
- (3) Pursuant to section 42051.1(m) of the Public Resources Code, the plan shall additionally include criteria and methodology that producers must use to demonstrate that items considered reusable or refillable by the producers meet the requirements outlined in section 42041(af) of the Public Resources Code and section 18980.2(a)(2)(A) of this chapter.

Authority: Sections 40401, 40502, 42060, Public Resources Code.

Reference: Sections 42051.1, 42053, 42057, Public Resources Code.

§ 18980.8.2. Closure and Transfer Plan Requirements

(a) The Closure and Transfer Plan shall:

- (1) Identify the following persons or entities:
 - (A) The Initial Trustee or Agent who will implement the Closure and Transfer Plan if the plan is activated.
 - (B) The Successor Trustee or Agent who will implement the Closure and Transfer Plan if the Initial Trustee or Agent is unable to serve.
 - (C) The Department as the Trust Protector or Escrow Account Protector, which may provide direction to the Trustee or Agent and may remove and replace a Trustee or Agent at its discretion.
 - (D) The Department as the Beneficiary of the Trust or Escrow Account.

- (E) Key Closure and Transfer Entities who may be affected by or have responsibilities pursuant to the initiation of the Closure and Transfer Plan, including but not limited to participant producers, intermediate supply chain entities, local jurisdictions, recycling service providers, responsible end markets, and any other entity contracted with the PRO.
- (2) Be capable of being fully executed through a Trustee or Agent according to the requirements of this chapter, with the direction of the Department.
- (3) Empower the Trustee or Agent to satisfy the obligations of the PRO and implement the Closure and Transfer Plan.
- (4) Facilitate the Trustee's or Agent's transfer of administration to the successor PRO or PROs.
- (5) Ensure that all contracts are fully assignable to the Trustee or Agent and fully assignable by the Trustee or Agent to the successor PRO or PROs.
- (6) Create and maintain the Closure Fund, a trust fund or escrow account established pursuant to section 42056 of the Public Resources Code:
 - (A) Providing at all times for the full funding of the activities necessary to perform the PRO's obligations during, at minimum, a twelve-month period in which the Closure and Transfer Plan may be active.
 - (B) Existing continuously from the time at which the PRO Plan is first approved to the transfer to the Trustee or Agent in an account dedicated solely to satisfying the obligations of the PRO during the closure period and maintained separately from the PRO's other accounts.
 - (C) Supplemented by the deposit of additional unexpended funds in order to ensure that the requirements of sub-paragraph (A) of this paragraph are met.
 - (D) Into which all other unexpended funds shall be deposited in the event that closure is initiated.
- (7) Explain the following:

- (A) How the PRO will provide the Department and Trustee or Agent with all necessary documents and information pursuant to subdivision (b) of this section.
 - (B) The PRO's methodology for its financial computation and modeling assuring fund solvency, including how it calculates the cost of satisfying its obligations over a twelve-month period.
 - (C) The PRO's plans for communicating with Producers, responsible end markets, materials recovery facilities (MRFs), contractors, local jurisdictions, and other Key Closure and Transfer Entities about the activation and carrying out of the Closure and Transfer Plan and directing communications to the Department.
 - (8) Describe how the Trustee or Agent will perform its tasks and receive payment for its services. The description shall include:
 - (A) The Trustee or Agent's statement of work.
 - (B) The process for revising a Trustee or Agent's statement of work.
 - (C) How the PRO and Trustee or Agent will independently confirm payment of the Trustee or Agent.
 - (9) Self-execute no more than 30 business days following notice of pending termination or revocation of the PRO Plan, or no more than five business days after actual termination or revocation of the PRO Plan, whichever is earlier.
- (b) The PRO shall:
- (1) Ensure that all its contracts and other agreements are assignable to and assumable by the Trustee or Agent, assignable by the Trustee or Agent to the successor PRO or PROs, and assumable by the successor PRO or PROs.
 - (2) Provide evidence that, at any given time, the current contents of the Closure Fund can fully satisfy the PRO's obligations during a twelve-month period in which the Closure and Transfer Plan may be active. Such evidence shall:
 - (A) Include financial modeling that assures fund solvency through twelve months of Closure and Transfer Plan implementation, based on current program activity levels and most recent cost data.

- (B) Be provided to the Department on a quarterly basis and at any time upon the request of the Department.
- (3) Notify the Department of any proposed changes to its scope of work and seek the approval of the Department.
- (4) Notify the Department when changes to the scope of work are finalized.
- (5) Notify the Department of any of the following circumstances at the time specified:
 - (A) Immediately upon discovery that the current contents of the Closure Fund are insufficient to support the estimated cost to fulfill the PRO's obligations over the next twelve months.
 - (B) No more than five business days after the PRO determines that the Trustee or Agent has breached its contract.
- (6) Immediately cease spending and deposit an amount that will establish Closure Fund solvency if the PRO believes that the Closure Fund is underfunded or if the Department notifies the PRO that it lacks sufficient information to verify the Closure Fund is solvent.
- (7) In the event of the dissolution of a PRO, submit a written notice of intent to dissolve a PRO which shall include, at a minimum, a detailed description of how the entity shall meet the requirements pursuant to section 42051.1(f) of the Public Resources Code and provide the Department with progress updates of the implementation of the closure and transfer plan at a frequency approved by the Department. The effective date shall be the postmarked date that the Department responds in writing to the notice of intent to dissolve a PRO.
- (8) The PRO shall notify the Department immediately in any of the following circumstances:
 - (A) The governing board or members of the organization serving as the PRO, by vote, consent, adoption of resolution, or any other method, take affirmative steps to dissolve the organization.
 - (B) In pursuit of dissolution, an organization serving as the PRO seeks a waiver concerning dissolution from the California State Attorney

General or the Attorney General of the state in which the organization is incorporated or organized.

(C) In pursuit of dissolution, an organization serving as the PRO files documents related to dissolution with the California Secretary of State or any other governmental agency, including tax authorities providing tax clearances and governmental agencies in the state in which the organization is incorporated or organized.

(9) Upon closure, carry out all actions assigned to it under the Closure and Transfer Plan, unless directed otherwise in writing by the Department.

(10) No later than five working days of notice of pending termination or revocation of the PRO plan, or no later than five working days of actual termination or revocation of the PRO plan, whichever is earlier, provide the Department and the Trustee or Agent with all records necessary to implement the Closure and Transfer Plan, including contract records.

(11) Immediately cease spending upon notification of revocation or termination.

(12) Provide the Department and Trustee or Agent with a preliminary accounting of the Closure Fund, including its balance and status, and any other PRO accounts and assets no later than five working days of notice of pending termination or revocation of the PRO plan, or no later than five working days of actual termination or revocation of the PRO plan, whichever is earlier.

(13) Immediately upon self-execution of the Closure and Transfer Plan:

(A) Deliver all necessary contact information for Producers, responsible end markets, materials recovery facilities (MRFs), contractors, local jurisdictions, and other Key Closure and Transfer Entities to the Department, to allow the Department to effectively communicate with stakeholders.

(B) Transfer the Closure Fund, complete with all unexpended funds, on the execution date of the Closure and Transfer Plan and provide a complete accounting of the fund balance, along with accounts payable and receivable. Thereafter, the PRO shall provide to the Department

any additional financial information concerning the plan received by the PRO.

(C) Assign all third-party contracts to the Trustee or Agent contemporaneously with the transfer of the Closure Fund.

(c) Prior to the adoption of the Closure and Transfer Plan, the PRO shall propose an Initial Trustee or Agent and Successor Trustee or Agent to the Department for its approval.

(1) Proposed Trustees or Agents shall have the requisite industry knowledge, financial experience, and skill in contract administration to carry out the Closure and Transfer Plan.

(2) At the time of the Closure and Transfer Plan's proposal, the PRO shall furnish the credentials of its proposed Initial Trustee or Agent and Successor Trustee or Agent and sufficient evidence of their willingness and ability to carry out all duties required by the Act, these regulations, and the Closure and Transfer Plan if approved by the Department.

(3) The Closure and Transfer Plan shall not be deemed complete until the Trustees or Agents and their scope of work have been approved by the Department.

(d) Annually and as otherwise directed by the Department, the PRO shall confirm the credentials of the Initial Trustee or Agent and Successor Trustee or Agent and their willingness and ability to carry out all duties required by the Act, these regulations, and the Closure and Transfer Plan. The PRO shall furnish the Department with this information. The PRO shall immediately notify the Department if the Initial Trustee or Agent or Successor Trustee or Agent becomes unwilling or unable to serve.

(e) The Trustee or Agent shall:

(1) Notify the Department within five business days if it believes that the PRO has breached its contract.

(2) Notify the Department of any proposed changes to its scope of work and seek the approval of the Department.

(3) Receive the Closure Fund on the effective date of closure and administer it thereafter.

- (4) As appropriate, assume or accept the assignment of all PRO contracts and agreements.
 - (5) Implement the PRO's most recent PRO Plan, as modified by the Department.
 - (6) Make changes to the fee schedule and all appropriate components thereof to ensure that the plan operates as written and further modified by the Department.
 - (7) Upon written request, immediately provide to the Department records necessary to determine compliance with the Act and its implementing regulations. At the Department's option, records shall be provided either by allowing physical access during normal business hours to the Department or other duly authorized regulatory agency or by submitting them to the Department by electronic means.
 - (8) Meet weekly, or more frequently as may be required by the Department, to receive advice on the administration of the Closure and Transfer Plan.
 - (9) At least monthly, or more frequently as may be required by the Department, submit a written report on the Trustee or Agent's implementation of the Closure and Transfer Plan to the Department.
 - (10) Oversee the dissolution of the trust or escrow account and settle the obligations of the trust or escrow account if the Trustee or Agent and the Department concur that funds are insufficient to continue the implementation of the Closure and Transfer Plan or if the Department exercises its discretion not to continue the Closure and Transfer Plan beyond the initial twelve-month period.
 - (11) Transfer all responsibilities to the Successor PRO or PROs if they are approved prior to the end of the Closure and Transfer Plan and assign all contracts and agreements to the appropriate entity.
- (f) The Department may:
- (1) Direct the Trustee or Agent.
 - (2) Dismiss a Trustee or Agent.
 - (3) Appoint a Trustee or Agent upon its dismissal of a Trustee or Agent or the Trustee's or Agent's inability to serve.

- (4) Concur with or dispute the Trustee or Agent's preliminary finding that the Closure Fund is insufficient to continue implementation of the Closure and Transfer Plan.
- (5) During the period from the self-execution of the Closure and Transfer Plan through the approval of a Successor PRO's plan, modify the PRO Plan.
- (6) Extend or extinguish the Closure and Transfer Plan pursuant to subdivision (c) of section 42056 of the Public Resources Code.

Authority: Sections 40401, 40502, 42056 and 42060, Public Resources Code.

Reference: Sections 42051.1 and 42056, Public Resources Code.

§ 18980.8.3. Source Reduction Adjustments

- (a) Subject to the limitations of this section, a source reduction plan developed pursuant to section 42057 of the Public Resources Code may utilize adjustment factors and methods to account for fluctuations in economic conditions and the increase or decrease in the number of producers participating in the PRO plan for determining whether the PRO has met its source reduction obligation relative to the baseline established by the Department under section 42057(b) of the Public Resources Code.
- (b) All adjustment factors and methods must meet the following requirements:
 - (1) The adjustment factors and methods shall not result in bias with respect to their effect on the measurement of source reduction. For example, whether applying the factors has the effect of increasing or decreasing the amount of covered material considered to be sold, offered for sale, or distributed in or into the state shall not be considered by the factors, affect the magnitude of their effect, or otherwise affect their application.
 - (2) Once an adjustment factor and method are included as an element of an approved source reduction plan, the factor and method must continue to be used according to that plan and may only be modified or removed as part of a newly approved producer responsibility plan.

- (3) Previous applications of adjustment factors and methods since the most recent plan approval shall be reviewed every year to determine whether any information or data on which they were based is no longer accurate or has changed or been updated for any reason. If such changes affect the source reduction information and assessments included in previous annual reports, subsequent annual reports shall note such effect and provide updated information and assessments concerning the affected years.
 - (4) In the event the PRO or the Department identifies any error made in the PRO's methods of calculating or applying adjustment factors, all previous source reduction measurements where the error occurred shall be updated accordingly and noted in the next annual report.
- (c) Adjustment factors and methods accounting for fluctuations in economic conditions must meet the following requirements:
- (1) They must have the effect of controlling for the effect of economic factors on the amount of covered material sold, offered for sale, or distributed in or into the state in a calendar year compared to the effect of the same economic factors on the amount of covered material in the 2023 calendar year.
 - (2) They may not rely on economic indicators other than those published by California or federal government agencies, such as the State of California Department of Finance, the State of California Department of Industrial Relations, the Bureau of Economic Analysis of the United States Department of Commerce, or the United States Department of Labor.
 - (3) The source reduction plan shall demonstrate how such indicators reflect market conditions, such as consumer demand, that affect the amount of covered material sold, offered for sale, or distributed in or into the state, and the extent of such effect.
 - (4) Factors involving dollar amounts shall account for inflation.
- (d) Adjustment factors and methods accounting for the increase or decrease in the number of producers participating in the PRO plan must meet the following requirements:

- (1) Applying the factors and methods shall not have the effect of merely adjusting the PRO's source reduction burden in proportion to changes in the number of participating producers.
 - (2) The factors and methods shall have the effect of controlling for changes in the overall amount of covered material sold, offered for sale, or distributed across all PRO participants caused solely by increases or decreases in the number of participating producers, such that the PRO more accurately measures source reduction resulting from the measures described in section 42057(d) of the Public Resources Code.
 - (3) Factors involving dollar amounts shall account for inflation.
- (e) Subject to the limitations of this section, an Independent Producer may, at its option, incorporate adjustment factors adopted under a then-effective PRO plan pursuant to this section into the plans they develop pursuant to section 42051.1(b)(2)(B)(i) of the Public Resources Code.

Authority: Sections 40401, 40502, 42057 and 42060, Public Resources Code.

Reference: Sections 42041, 42050, 42051, 42051.1, 42057 and 42060, Public Resources Code.

Article 9: Annual Report and Program Budget

§ 18980.9. Source Reduction Baseline Reporting

- (a) All reporting entities must include in their annual reports for 2027 the total amount of plastic covered material by weight and number of plastic components for which they were the producer in the 2023 calendar year.
- (b) The PRO must disaggregate the amounts specified in subdivision (a) by participant producer.
- (c) The Department shall use the information reported pursuant to this section to update the source reduction baseline pursuant to section 42057(b) of the Public Resources Code.

Authority: Sections 40401, 40502, 42041, 42057 and 42060, Public Resources Code.

Reference: Sections 42041, 42051, 42052(a) and 42057 Public Resources Code.

§ 18980.9.1. Annual Report and Annual Budget

- (a) An annual report and annual budget shall include information specified in section 42051.3(a)(2) and (a)(3) of the Public Resources Code. For Independent Producers, however, the annual report and annual budget are not required to address the information specified in section 42051.3(a)(2)(A) and (a)(3)(B) of the Public Resources Code.
- (b) The annual report shall additionally include:
 - (1) For the PRO, fee schedule amendments pursuant to section 42053(e) of the Public Resources Code as a result of adjustments including calculations for malus fees or credits.
 - (2) Pursuant to section 42057(i) of the Public Resources Code, provide the recycling rate for all expanded polystyrene by covered material category.
 - (3) Information required pursuant to section 18980.4.2(b).
 - (4) For the PRO, with respect to source reduction, the annual report shall additionally include:

- (A) Percentage of reduction across all participant producers, including, if applicable, the application of the adjustment factors and methods, pursuant to section 18980.8.3.
 - (B) A qualitative assessment of the successes and challenges achieving source reduction goals, delineated by plastic covered material category, which ranks the relative frequency of use of each source reduction strategy.
- (5) For the PRO, information pursuant to 18980.3(f)(1)(B).
 - (6) For Independent Producers, information pursuant to 18980.3(f)(2)(B).
- (c) Within 90 calendar days of receiving an annual report submitted pursuant to section 42051.3(a) of the Public Resources Code, the Department shall review the annual report to determine if it is complete or incomplete.
- (1) If the annual report is deemed incomplete, the Department shall issue a notice of violation to the PRO or Independent Producer for failure to comply with the Act. The violation shall be deemed to occur each day following the submission of the incomplete report, until the submission of an annual report that has been deemed complete by the Department.
 - (2) After the annual report has been deemed complete, the Department shall review the annual report for compliance with applicable requirements of the Act and this article, as set forth in section 42051(b)(2) through (5) of the Public Resources Code.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42051, 42051.3, 42053, 42057, 42080 and 42081, Public Resources Code.

Article 10: Data Reporting Requirements

§ 18980.10. Registration and Maintaining Address on File

- (a) Pursuant to section 42051(c) of the Public Resources Code, all producers shall register electronically in a manner established by the Department and maintain its most current address on file with the Department.
- (1) To register, a producer shall file at least the following information:
- (A) Point of contact, including name, title, email, and phone number
 - (B) Legal entity name (a fictitious business name is not sufficient)
 - (C) Business mailing address
 - (D) Primary business address (physical address; must not be a post office box)
 - (E) Business phone number
 - (F) Business email address
- (2) A PRO shall register on behalf of each of its participant producers, except for those participant producers who choose to be reporting entities.
- (3) A producer shall ensure that the contact information on file with the Department is current and accurate.
- (A) Upon request by the Department, a producer shall resubmit the information required pursuant to paragraph (1) or (2) or verify that the information previously submitted remains accurate. Not complying with such a request or otherwise not cooperating with the Department's exercise of its investigatory authority under section 42080 of the Public Resources Code is a violation of the Act.
 - (B) The failure to notify the Department of a change in its primary business address within 30 days is a violation of section 42051(c) of the Public Resources Code regardless of whether the Department requests resubmittal or verification pursuant to subparagraph (A).
 - (C) A PRO may satisfy the requirement in subparagraph (B) on a producer's behalf by including the producer's primary business address in its PRO plan, plan update, annual report, or other written notification to the Department. The submission of a primary business

address or other contact information by a PRO on behalf of a producer shall not relieve the producer of its obligation to ensure that the producer's contact information, including its primary address, on file with the Department is current and accurate.

- (4) If an entity becomes a producer after January 1, 2027, and joins a PRO within six months, as required by section 42051(b)(1) of the Public Resources Code, the PRO shall register the producer with the Department within 30 days of the producer joining the PRO.
- (5) If an entity becomes a producer after January 1, 2027, and seeks to become an Independent Producer, the entity shall register with the Department when they apply to become an Independent Producer pursuant to Article 5.
- (b) A producer whose registration status was inactivated pursuant to subdivision (c) or (d) shall request the Department to reactivate their registration status within 30 days of their activities changing such that they are subject to the reporting requirements of this chapter and shall resume reporting in the following reporting cycle.
- (c) If a participant producer's activities have changed such that they are no longer subject to the registration and reporting requirements:
 - (1) If a participant producer is a reporting entity, the producer shall submit a request to the Department to inactivate their reporting system registration within 30 days. The request shall demonstrate to the Department why their registration should be inactivated.
 - (2) If a participant producer is not a reporting entity:
 - (A) The participant shall notify the PRO within 30 days.
 - (B) The PRO shall submit a request to the Department to inactivate their reporting system registration for the participant within 30 days of receiving notification from the participant producer. The request shall demonstrate to the Department why their registration should be inactivated.
- (d) If an Independent Producer's activities have changed such that they are no longer subject to the registration and reporting requirements, the Independent Producer shall submit a request to the Department to inactivate their reporting system

registration within 30 days. The request shall demonstrate to the Department why their registration should be inactivated.

- (e) The effective date of inactivation shall be no earlier than the date on which the Department receives the request from the producer.
- (f) The Department may withhold complete inactivation of a registration until all reports for when the producer was required to report have been submitted.
- (g) No exemption from any other requirement of the Act or this chapter shall be construed as an exemption from the requirements of this section. In particular, the registration requirements and the requirement that producers maintain an address on file with the Department apply to all producers, even if they are granted an exemption from all other requirements of the Act and this chapter.

Authority: Sections 40401, 40502, 42051 and 42060, Public Resources Code.

Reference: Sections 42051, 42052 and 42060, Public Resources Code.

§ 18980.10.1. Data Reporting Submission

- (a) Reporting entities shall submit data reports to the Department annually starting in 2026. The reporting entity shall certify that the information they submit is accurate and complete.
 - (1) A reporting entity shall use the most current information available at the time the report is due.
 - (2) If a reporting entity identifies an error in a previously submitted report, they shall notify the Department and correct the error within 10 business days.
 - (3) If the Department notifies a reporting entity in writing of an error in a previously submitted report, the reporting entity shall revise the report to correct the error within 10 business days.
- (b) Reports shall:
 - (1) Be due on April 1.
 - (2) Be submitted electronically using the Department's online reporting system or in another manner established by the Department.

- (3) Report data pertaining to the previous calendar year. The reporting entity shall use the covered material category list that was current as of December 31 of the previous calendar year for purposes of reporting.
- (c) If a producer that conducts reportable activities that are not reported by a PRO on its behalf is approved to be inactivated from the reporting system, the producer is still required to submit a report for such activities covering the partial year preceding the effective date of the inactivation. If a participant producer conducts reportable activities that are reported on its behalf becomes no longer subject to registration and reporting requirements, and the Department grants a request by the PRO to have the registration for the participant producer to be inactivated pursuant to section 18980.10(c)(2)(B), the producer shall provide the PRO all information necessary for the PRO to report such activities data on behalf of the participant covering the partial year preceding the effective date of the inactivation.
- (d) The data report shall contain the elements specified in section 18980.10.2.

Authority: Sections 40401, 40502, 42051 and 42060, Public Resources Code.

Reference: Sections 42051, 42052 and 42060, Public Resources Code.

§ 18980.10.2. Data Report Contents

- (a) Pursuant to section 42052(a)(1) of the Public Resources Code, a reporting entity shall register with the Department's online reporting system and submit the data reports required pursuant to 18980.10.1. The reports shall contain the following for all covered material for which the reporting entity is the producer and that was first sold, distributed, or imported in or into the state during the previous calendar year:
- (1) The total weight of covered material, by covered material category.
 - (2) Total number of plastic components, by covered material category.
- (b) Pursuant to section 42052(a)(2) of the Public Resources Code, the data report shall contain the total weight of covered material recycled by covered material category and the total number of plastic components recycled by covered material category.
- (c) Pursuant to section 42052(a)(3) and section 42052(a)(4) of the Public Resources Code, the reporting entity shall report the following information pertaining to covered

material collected and recycled through a program other than curbside collection programs.

- (1) The report shall identify the take-back, dropoff, or alternative collection program for each covered material category.
- (2) For each take-back, dropoff, or alternative collection program, the report shall include the following data, reported by covered material category:
 - (A) The total weight of covered material that is collected by the program.
 - (B) The total number of plastic components that is collected by the program.
 - (C) The total weight of covered material collected by the program that is recycled.
 - (D) The total number of plastic components collected by the program that is recycled.
- (d) Pursuant to section 42052(a)(4) of the Public Resources Code, the data report shall include the total weight of covered material not recycled, including but not limited to covered material disposed by processors and end markets.
- (e) Producers of expanded polystyrene food service ware shall provide the total weight of expanded polystyrene food service ware sold, distributed, or imported in or into the state by covered material category.
- (f) All weights reported pursuant to this chapter shall be reported in tons.
- (g) All data reported pursuant to this chapter shall be reported in monthly increments.
- (h) For the purposes of this article, “recycled” has the same meaning as 18980.3.2.(a)(1).

Authority: Sections 42041, 42057 and 42060, Public Resources Code.

Reference: Sections 42041, 42052 and 42060, Public Resources Code.

Article 11: Requirements for Local Jurisdictions and Recycling Service Providers

§ 18980.11. Exemption for Local Jurisdictions and Recycling Service Providers

(a) A local jurisdiction or recycling service provider seeking an exemption pursuant to section 42060.5(b) of the Public Resources Code, shall submit an application to the Department. The application shall include but not be limited to the following, and shall be submitted electronically:

- (1) The specific identified covered materials, which may be expressed as a covered material category or categories.
- (2) A description, with any available supporting documentation, of the specific local conditions, circumstances, or challenges, that make it impracticable for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their existing collection and recycling programs. The description must demonstrate why the plan requirements in section 42051.1(l)(1) of the Public Resources Code for the identified material cannot be met in terms of program efficacy but also considering any applicable environmental, environmental justice, worker health, or public health impacts; generation of hazardous waste or greenhouse gasses; and transportation safety standards.
- (3) The contact information for the person(s) who represent the local jurisdiction and recycling service provider, if designated by the local jurisdiction, to whom the Department shall direct future communication relating to the extension or exemption, shall include but not be limited to the following:
 - (A) For the person responsible for signing and submitting the request:
 - (i) Name
 - (ii) Title
 - (iii) Phone number
 - (iv) Email address
 - (B) For the entity or entities represented:
 - (i) Name
 - (ii) Mailing Address

(iii) Physical Address

- (b) Prior to submitting the application to the Department, the local jurisdiction or recycling service provider shall send the application to the PRO(s) and all Independent Producers for review and comment.
 - (1) The PRO(s) and any Independent Producers shall have 90 calendar days to:
 - (A) Confer with the applicant as necessary
 - (B) Respond in writing to the applicant
 - (C) Mutually agree with the applicant on an extended timeline, if necessary
 - (2) The application to the Department, pursuant to subsection (a), shall additionally include:
 - (A) Any comments received by a PRO or Independent Producer
 - (B) How those comments were addressed or considered
- (c) The Department shall review and evaluate whether an application meets the requirements of this section. If the Department approves the application, the exemption is effective on the date the application is approved and is valid for two years.
- (d) A local jurisdiction or recycling service provider may extend their exemption pursuant to section 42060.5(b) of the Public Resources Code by conducting the following:
 - (1) Notify the PRO(s) and all Independent Producers of the intent to apply for an exemption extension.
 - (2) If the conditions, circumstances, or challenges described in the application have not changed, the applicant shall submit a request electronically in the form of a letter to the Department, signed by the applicant under penalty of perjury, stating as such. If the information included in the application pursuant to (a)(3) is no longer current, the letter shall provide updated information. The request letter shall be submitted between 120 and 90 calendar days before the expiration date. If approved, the exemption shall be extended for another two years, with the new expiration date being two years later from the previous two-year expiration date.

- (3) If the conditions, circumstances, or challenges described in the application have changed, the applicant shall submit a new request pursuant to subdivision (a).

Authority: Sections 42060 and 42060, Public Resources Code.

Reference: Section 42060.5, Public Resources Code.

§ 18980.11.1. Exemption for Rural Counties and Rural Jurisdictions

- (a) A rural county or rural jurisdiction that has adopted a resolution pursuant to section 42060.5(c) of the Public Resources Code shall notify the Department and provide a copy of the resolution within 14 calendar days of the adoption date.
- (b) If the Department finds that the rural county or rural jurisdiction that has adopted a resolution does not meet the definition of “rural county” or “rural jurisdiction” pursuant to section 42649.8 of Public Resources Code, the rural county or rural jurisdiction shall not be exempt from the requirements of section 42060.5(a) of the Public Resources Code pursuant to section 42060.5(c) of the Public Resources Code.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42041, 42060 and 42060.5, Public Resources Code.

Article 12: Requirements for the Advisory Board

§ 18980.12. Membership Terms and Appointments

- (a) Membership on the advisory board shall commence upon notice to the Department that an individual accepts an appointment by the director. The director may revoke the appointment of any member. Upon sending of written notice to the individual that the appointment has been revoked, the individual shall no longer be a member of the advisory board.
- (b) Each member's term shall be as prescribed in section 42070 of the Public Resources Code. An appointee's term shall be deemed to have commenced as of the beginning of the then-current fiscal year (*i.e.*, the most recent July 1), and shall terminate upon expiration of the term.
- (c) Pursuant to section 42070(b) of the Public Resources Code, subject to the discretion of the director, a member may be reappointed for additional terms. Each such additional term shall be deemed to commence upon expiration of the previous term.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 42060 and 42070, Public Resources Code.

**Article 13: Enforcement Oversight by the Department and Administrative Civil
Penalties**

§ 18980.13. Compliance Evaluation and Determination

- (a) The Department may conduct investigations in order to examine operation activities and records to determine compliance with this chapter or the Act pursuant to section 42080(a) of the Public Resources Code. The investigation may require, for example, entities subject to this chapter and the Act to produce to the Department records and information regarding compliance. The investigation may also require cooperation with onsite inspections by the Department. An authorized Department employee or agent shall be allowed to enter the premises of any entity subject to this chapter and the Act during normal working hours to conduct inspections. Methods may include, but are not limited to, the review and copying of any records required by this chapter. Notices of violation issued by the Department may identify additional records and information that the entity must produce regarding such noncompliance.
- (b) For purposes of assessing administrative civil penalties pursuant to section 42081(a)(1) of the Public Resources Code, the Department shall determine the number of violations committed and the number of days on which the violations occurred as set forth in this section.
- (c) Except as specifically set forth in this section, for each discrete requirement of the Act, this chapter, or a PRO plan, each distinct condition, action, or course of action constituting or resulting in a violation of the requirement shall constitute a single violation of the Act.
- (d) Except as otherwise provided in this chapter, for purposes of assessing penalties, penalties shall accrue as follows:
 - (1) For violations committed through discrete actions, such as an action prohibited under the Act, penalties shall accrue on each day on which the actions are committed following the thirtieth day after the Department issues a notice of violation for the previous violations.
 - (2) For continuous violations based on the persistence of a particular condition or course of action, such as an ongoing failure to satisfy reporting, plan implementation, source reduction, or other obligations under the Act, the

violation shall be deemed to occur each day such conditions or courses of action persist after the thirtieth day after the Department issues a notice of violation.

(e) If a producer fails to maintain records or other evidence sufficient to demonstrate compliance with any requirement of the Act or fails to provide such records upon demand by the Department, penalties for the absence of or failure to provide records shall accrue as follows:

(1) Violations based on the failure to maintain records shall be deemed to have occurred on each day for which a PRO or producer failed to maintain sufficient evidence to demonstrate compliance. Each such day is subject to the per-day penalties set forth in section 42081 of the Public Resources Code, and such penalties shall not further accrue until the thirty-first day following issuance of a notice of violation.

(2) Violations based on the failure to provide records to the Department upon request shall be deemed to begin on the date of the request. Penalties shall begin accruing as of the thirty-first day following issuance of a notice of violation, such that no penalties shall be imposed if the records demanded are provided before such date.

(f) Except as provided in subdivision (g), if a PRO violates the Act or this chapter, such as by not implementing a discrete requirement of its plan, in a manner that results in particular producers being out of compliance with a discrete requirement of the Act or this chapter that the PRO otherwise would have satisfied on their behalf, each discrete instance a producer is out of compliance is a violation of the Act by the PRO, except for violations for which the Department has issued a notice of violation directly to such producers.

(g) For requirements of the Act or this chapter that apply to all participants in a PRO plan, such as the requirement to ensure that covered material sold, offered for sale, imported, or distributed in the state achieves the goals set forth in section 42050 of the Public Resources Code, the failure to meet such requirements is a violation by the PRO for each plan participant that is a producer of the covered material at issue, except those to which the Department has issued an individual notices of violation

for such failure. For example, if participating producers continue offering for sale products using material in a particular covered material category that does not meet the recycling rate requirements of section 42050(c) of the Public Resources Code, all producers of products in that category have violated their obligation under that section, and either the PRO or the individual producers may be penalized pursuant to section 42080 of the Public Resources Code for each such violation.

(h) For purposes of assessing penalties for violations of section 42050 of the Public Resources Code by a producer or PRO relating to a non-compliant product:

- (1) Each non-compliant product, without regard to the distribution or sales of discrete instances of the product, shall constitute a distinct violation. The non-compliant product shall be identified according to the characteristics listed in section 42081(a)(2) of the Public Resources Code, using as many characteristics as necessary to uniquely identify it. Where appropriate, the Department may deem a unique stock keeping unit (SKU) or a global trade item number, such as a universal product code (UPC), to uniquely identify the noncompliant product according to such characteristics. If the Department determines characteristics listed in section 42081(a)(2) of the Public Resources Code are not sufficient to uniquely identify a product, other characteristics may be considered. Multiple variations of a product, such as those identified by multiple SKUs or UPCs, may constitute the same non-compliant product, provided that they use the same amounts and types of covered material but differ in trivial ways not affecting their end-of-life management.
- (2) The violation shall be deemed to occur on each day that the non-compliant product is in distribution or offered for sale in the state, except that the violation shall be deemed to end as of the date the producer of the product ceases further manufactures and distribution of the non-compliant product.
- (3) A producer shall not be considered to be in violation of section 42050(c) of the Public Resources Code based solely on a product that has achieved the applicable recycling rate stated in that subdivision. To not be considered in violation pursuant to this paragraph, the producer shall demonstrate in an

annual report to the Department that the product has achieved such recycling rate, as calculated using the methods consistent with those described in section 18980.3.2 applied solely to the product.

- (i) For violations of section 42060.5 of the Public Resources Code by a local jurisdiction:
 - (1) The number of violations shall be the number of covered material categories contained on the list published pursuant to section 42060.5(a) of the Public Resources Code that are not included in their collection and recycling programs.
 - (2) Penalties for each violation shall accrue on each day any covered material category is not included, regardless of the reason, in their collection and recycling programs, except in the case that the Department has granted an extension or exemption from the requirements pursuant to 42060.5(b) of the Public Resources Code.
- (j) The number of violations of section 42060.5 of the Public Resources Code by a recycling service provider and the days on which each violation occur shall be calculated in the same manner as would apply under subdivision (i) for local jurisdictions committing the same violations.

Authority: Sections 40401, 40502, 42057, 42060 and 42080, Public Resources Code.

Reference: Sections 42050, 42057, 42060.5, 42080 and 42081, Public Resources Code.

§ 18980.13.1. Corrective Action Plan

- (a) The Department may, in a notice of violation issued pursuant to section 42081(a) of the Public Resources Code or in response to a written request submitted to the Department, grant permission for an entity to propose a corrective action plan pursuant to section 42081(b) of the Public Resources Code. The Department may require proposals to satisfy certain conditions, such as addressing specific matters related to compliance with the Act, additional reporting requirements, consent to the imposition of certain penalties if the corrective action plan fails to result in

compliance, disclosure of information related to noncompliance with the Act, including noncompliance not identified in the notice of violation, or implementation of particular elements of the plan regardless of whether the Department approves the plan. The Department may refuse to review a proposed action plan unless it satisfies those conditions and all the requirements of this section.

(1) A corrective action plan submission shall, at a minimum, satisfy the following requirements:

(A) The requester shall provide the contact information described in section 18980.10(a)(1).

(B) The requester shall indicate which of the violations cited in the notice of violation the entity will correct through the corrective action plan.

(C) The requester shall provide a description of the actions the entity will take to correct the violations and how the actions will facilitate resolution of the violations, including a proposed timeline, milestones, and a specific end date for the corrective action plan.

(D) Explanation of whether the requester consents to the imposition of penalties, and if so, the amount of such penalties, for past violations or for violations that may persist despite approval of the corrective action plan and full compliance with it, such as violations that the corrective action plan does not address or that potentially require more than 24 months to fully correct.

(E) Additional requirements as identified by the Department.

(2) The Department shall approve or deny the corrective action plan and provide written notice of such decision. If the Department denies the plan, it may specify conditions, such as proposal of a more detailed plan, mitigation of ongoing noncompliance, or implementation of particular elements of the plan regardless of whether the Department approves the plan, under which it will consider a modified proposal.

(3) The Department's granting of permission to submit a corrective action plan proposal, the submission of such a proposal, and the Department's consideration of it, including the denial of it with permission to submit a

modified one, shall not be construed as excusing any violation, pausing accrual of penalties, or otherwise affecting the Department's authority to enforce penalties for violations addressed in the proposed plan.

- (4) By submitting a corrective action plan, the entity acknowledges that the Department may, when approving the plan or any other time, impose reasonable conditions concerning demonstration of adherence to the plan, such as document submittals or reporting related to the effectiveness of the plan, and that such conditions shall be considered part of the plan, and consents to be bound by the plan upon approval by the Department.
 - (5) The Department shall include a copy of the approved corrective action plan with written notification of approval. The copy included with the notice shall be the official governing document for the plan.
 - (6) The approval of a corrective action plan does not in any way relieve a producer or PRO from meeting the requirements of this chapter or the Act, except to the extent an approved corrective action plan may enable the avoidance of penalties under section 42081(b) of the Public Resources Code for the particular violations covered by the plan.
- (b) If an entity was unable to comply with an approved correction action plan, such that the plan failed to result in compliance with the Act and this chapter, it may submit a written request for an extension demonstrating that the requirements of section 42081(b)(2) of the Public Resources Code have been met. The Department may, in its sole discretion, either consider such a request or initiate enforcement proceedings for the outstanding violations as described in this article. If the Department approves the request, the corrective action plan shall be modified to incorporate the timeline and additional requirements imposed by the Department in its approval of the request. Extensions shall be subject to the same conditions and limitations set forth in paragraphs (2) through (6) of subdivision (a) with respect to the initial submission and approval of the plan and shall include, at a minimum:
- (1) A description of the substantial effort made to comply with the corrective action plan's requirements and the extent to which such efforts will be modified to comply with the corrective action plan.

- (2) Explanation of extenuating circumstances, including how they were beyond the control of the entity, and how they prevented compliance with the corrective action plan or otherwise prevented the plan from resulting in full compliance with the Act and this chapter.
- (3) Any updates, if any, to the content included in the original proposal for the corrective action plan pursuant to paragraph (1) of subdivision (a).
- (c) Each corrective action plan shall identify the specific violations, cited in a notice of violation, that it will address. If the Department approves a corrective action plan, accrual of penalties for the violations to be corrected shall be tolled for as long as the corrective action plan remains in effect and is complied with.
- (d) Failing to comply with a corrective action plan is a violation of the Act subject to the penalty provisions of section 42081 of the Public Resources Code, and the Department may issue a notice of violation for any such violation, including during pendency of the corrective action plan.
- (e) The Department may issue notices of violation for failure to comply with the plan, and penalty accrual for the violations cited in the notice of violation shall resume as described in section 42081(a)(3) of the Public Resources Code, and the Department may initiate enforcement proceedings for such violations as described in this article. The Department may, upon demonstration by the entity that it has remedied the violations cited in the notice, reinstate tolling of penalties, and deem the corrective action plan still in effect.

Authority: Sections 40401, 40502, 42060 and 42081, Public Resources Code.

Reference: Sections 42040, 42080 and 42081, Public Resources Code.

§ 18980.13.2. Administrative Civil Penalties

- (a) Any entity, including, but not limited to, a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to section 42081(a) of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation in the Act or this chapter, such participants shall not be exempt from

penalties on the grounds that their noncompliance was caused by the PRO's conduct.

- (b) A penalty order shall be served in the manner as provided for accusations in section 18980.13.3(c).
- (c) Subject to the procedural requirements in this chapter, and except as otherwise permitted pursuant to section 11520 of the Government Code, penalty determinations shall be made by the director or the director's designee based on evidence presented in hearings conducted pursuant to section 18980.13.4 addressing, at a minimum, the factual factors identified in section 42081(c) of the Public Resources Code.

Authority: Sections 40401, 40502, 42060, 42081 and 42081, Public Resources Code; Sections 11415.10 and 11440.20, Government Code.

Reference: Sections 42080 and 42081, Public Resources Code; Sections 11415.10, 11440.20 and 11505, Government Code.

§ 18980.13.3. Notices

- (a) Notices of violation, notices of a disciplinary action, and all accompanying documents shall be delivered to the address on file with the Department pursuant to section 42051(c) of the Public Resources Code by one of the following means:
 - (1) First-class mail, registered mail, or certified mail;
 - (2) Commercial carrier;
 - (3) Personal delivery;
 - (4) Email to the address currently on file with the Department pursuant to section 42051(c) of the Public Resources Code, or, for entities not required to maintain an address on file with the Department, to the entity's last-known email address.
- (b) For persons not required to file a primary business address with the Department pursuant to section 42051(c) of the Public Resources Code or that have failed to do so, notices of violation and all accompanying documents shall be delivered using

any of the methods described in subdivision (a) to at least one of the following addresses:

- (1) The person's mailing address on file with the Secretary of State;
 - (2) The person's last known business or mailing address.
 - (3) The business or mailing address of the attorney, if any, who acknowledges in writing their representation of the person with respect to the Department's allegations, or any other party authorized in writing to receive notices on behalf of the person;
 - (4) The person's email address, with written consent or written acknowledgment of receipt.
- (c) An accusation commencing an administrative proceeding to impose administrative civil penalties shall be served on the person to be penalized using any of the following means:
- (1) For persons required to have an address on file with the Department pursuant to section 42051(c) of the Public Resources Code, by registered or certified mail;
 - (2) By personal service in any manner as provided for service of summons pursuant to sections 413.10 through 416.40 of the Code of Civil Procedure;
 - (3) By any of the means provided in subdivisions (a) and (b) for delivery of notices, provided that the respondent subsequently files a notice of defense or otherwise appears in the administrative proceeding.
- (d) For purposes of imposing penalties pursuant to section 42081 of the Public Resources Code, notices of violation are deemed to be issued on the fifth calendar day or, for notices delivered outside the State of California, the 10th calendar day, after the date on which the Department deposits it with the United States Postal Service for delivery via certified mail, unless a notice is delivered by another method permitted pursuant to this section, in which case the notice is deemed to be issued upon delivery.

Authority: Sections 40401, 40502, 42060, 42080 and 42081, Public Resources Code; Sections 11415.10 and 11440.20, Government Code.

Reference: Sections 42080 and 42081, Public Resources Code; Sections 413.10, 413.20, 413.30, 413.40 and 416.40, Code of Civil Procedure; Sections 11415.10, 11440.20 and 11505, Government Code.

§ 18980.13.4. Procedure for a Hearing

- (a) All administrative hearings shall be conducted by the department and heard by the Director or Director's designee according to Article 10 of Chapter 4.5 of the Government Code, and the procedures and requirements set forth in section 11505 and section 11506 of the Government Code shall apply.
- (b) A respondent may submit to the Department a request for a hearing to contest the proposed action within fifteen (15) days of receipt of the notice issued pursuant to subdivision (a). Failure to submit a timely hearing request shall waive the right to a hearing.
- (c) After conducting a hearing on the merits, or if no hearing is requested, the Department may take any disciplinary or remedial action authorized under the Act, including those described in section 18980.13.5.

Authority: Sections 40401, 40502 and 42060, Public Resources Code; Section 11415.10, Government Code.

Reference: Sections 42041, 42080 and 42081, Public Resources Code; Sections 11505 and 11506, Government Code.

§ 18980.13.5. Disciplinary Actions

- (a) If the Department finds that a PRO or Independent Producer has failed to meet a requirement of this article or this chapter, the Department may, in addition to imposing any civil penalties or taking any other action authorized under the Act, take one or more of the following actions:
 - (1) Revoke a previously approved plan,
 - (2) Revoke its approval of the PRO,
 - (3) Require additional reporting relating to compliance with the requirements of this Act or this chapter that were not met.

(b) Upon the decision to revoke a previously approved plan or revoking approval of the PRO, or as of a later effective date specified in the decision, the entity shall implement the transfer and closure plans in the previously approved plan and pursuant to section 42051.1(f) of the Public Resources Code.

Authority: Sections 40401, 40502, 42060(a), 42061.5 and 42080, Public Resources Code; section 11445.20, Government Code.

Reference: Sections 42051.1, 42051.2, 42051.3, 42056, 42061.5, 42080 and 42081, Public Resources Code.

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Article 14: Additional Producer Responsibility Organizations

§ 18980.14. Approval of Additional Producer Responsibility Organizations

- (a) If the director of the Department determines that an additional PRO or additional PROs is beneficial, pursuant to section 42061.5(b) of the Public Resources Code, the Department shall develop an application and accept applications from prospective PROs for consideration. The application shall demonstrate that the organization can effectively implement this chapter and must address at least the following elements:
- (1) The organization's minimum qualifications to serve as a PRO, including, but not limited to, the requirements specified in section 42041(x) and section 42061.5(a) of the Public Resources Code.
 - (2) The requirements specified in section 42061.5(b)(1) through section 42061.5(b)(4) of the Public Resources Code.
- (b) If the Department is required to appoint a new PRO because it has revoked approval of an existing PRO, the Department shall open an application for prospective PROs and appoint a new PRO or PROs pursuant to section 42061.5(c) of the Public Resources Code. The Department shall employ the same application described in subdivision (a), except that the requirements identified in paragraph (2) of that subdivision shall not apply.

Authority: Sections 40401, 40502, 42060 and 42061.5, Public Resources Code.

Reference: Sections 42061.5 and 42061.5, Public Resources Code.

Article 15: Public Records

§18980.15. Designation of Trade Secrets and other Non-Disclosable Information

- (a) All records submitted to the Department pursuant to the Act or this chapter are subject to mandatory disclosure under the Public Records Act, Division 10 (commencing with section 7920.000) of Title 1 of the Government Code, unless an express exemption from mandatory disclosure applies under the Act or the Public Records Act.
- (b) The Department shall not disclose information that constitutes a trade secret, as defined in subdivision (d) of section 3426.1 of the Civil Code, in response to public records requests, or are exempt from mandatory disclosure under the Public Records Act as described in section 42051.2(b)(5) of the Public Resources Code, as demonstrated pursuant to section 18980.6.6(a)(2).
- (c) For any information submitted to the Department that is claimed by the person submitting it to constitute a trade secret, the person shall:
 - (1) Specifically designate as “trade secret” each portion of the submission containing such information. Such designation may be made by directly labeling the portion as such or, if direct labeling is impractical, by submitting written explanation clearly explaining what portions of the submission contain trade secrets.
 - (2) At the time of submission, provide the name, address, and telephone number of the individual to be contacted regarding requests received by the Department for disclosure of the information, unless such individual’s contact details are already on file with the Department pursuant to section 18980.10 of this chapter.
- (d) Any portions of submissions that are not specifically designated as containing a trade secret shall be considered not to contain trade secrets and, unless some other express exemption or prohibition applies, shall be deemed subject to mandatory disclosure under the Public Records Act.
- (e) The Department shall follow the procedures set forth in section 40062 of the Public Resources Code when determining whether information has been properly identified a trade secret.

- (f) Data submitted to the Department shall be considered information subject to section 40062 of the Public Resources Code, regardless of the form in which it is maintained by the Department, and sections 17044 through 17047 of Title 14 of the California Code of Regulations shall not apply to such information.

Authority: Sections 40401, 40502 and 42060, Public Resources Code.

Reference: Sections 40062, 42060 and 42080, Public Resources Code; Sections 7921.500 and 7922.530, Government Code; Section 3426.1, Civil Code.

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CHAPTER 11.5 Environmental Marketing and Labeling

Article 1. Approval of Certification Entities

§ 18981. Third-Party Certification Entity Criteria and Approval Process

(a) For purposes of this section:

- (1) "The Department" means the California Department of Resources Recycling and Recovery.
- (2) "ISO/IEC 17025:2017" refers to the publication, which is incorporated by reference in its entirety, titled "General requirements for the competence of testing and calibration laboratories," International Organization for Standardization/ International Electrotechnical Commission, November 2017.

(b) For purposes of approval pursuant to section 42357(g)(1)(A) of the Public Resources Code, a third-party certification entity must satisfy the following criteria:

- (1) Has an ISO/IEC 17025:2017 accreditation issued by an accrediting body that is a signatory member of either the International Accreditation Forum or the International Laboratory Accreditation Cooperation, or both, or is a signatory to a mutual recognition arrangement established by either organization.
- (2) Must be independent, impartial, and not have any conflict of interest with respect to granting the certification required by section 42357(g)(1)(A) or 42053(e)(1) of the Public Resources Code. Without limitation, the entity shall be deemed not to satisfy this requirement if any of the following are true:
 - (A) It holds any financial interest, whether direct or indirect, in any entity that is the producer of any product having the required certification.
 - (B) Other than for its services as a testing lab, transacts business with any producer of a product subject to the certification requirement, whether such business is with the person directly or indirectly, such as through affiliates of the person.
 - (C) Is party to any agreement under which any other entity agrees to refer persons to it, whether specifically or as one of a subset of the accredited entities on the list published pursuant to list section, for purposes of the required certification.

- (c) A third-party certification entity shall request approval, or renewal of a prior approval, by submitting the following in the manner prescribed by the Department:
- (1) Contact information.
 - (2) Documentation of the accreditation required pursuant to subdivision (b)(1).
Identifying an accrediting body's directory or other publication.
 - (3) Identifying the entity as holding the accreditation required under this section shall be deemed sufficient documentation.
 - (4) An affidavit, subject to the penalty of perjury, that the entity satisfies the requirements for approval pursuant to subdivision (b)(2).
- (d) The Department's approval of a third-party certification entity shall expire on January 1 of the fifth calendar year following the calendar year in which the Department approved the entity or as of the date the entity's accreditation expires or otherwise becomes invalid.
- (e) No earlier than one year before expiration of the Department's approval, the entity may request renewal. Renewed approvals shall expire in the same manner as initial approvals, as described in subdivision (d).
- (f) The Department shall maintain on its website a list of currently approved third-party certification entities. Notwithstanding a third-party certification entity's presence on the list, it shall be deemed not approved as of the date it no longer holds a valid and unexpired accreditation as prescribed in subdivision (b)(1). A person selling or offering for sale products labeled with terms restricted pursuant to section 42357 of the Public Resources Code shall be responsible for ensuring that a third-party certification entity held a valid accreditation as of the date it issued a certification.
- (g) For the purpose of determining whether there has been an approved third-party certification entity for at least one year pursuant to section 42357(g)(1)(A) of the Public Resources Code, a third-party certification entity shall be deemed to have been approved as of the date it was added to the list. For all other purposes, however, regardless of when a third-party certification entity is added to that list, the Department's approval shall be retroactive as of the date the entity satisfied the requirements of subdivision (b) of this section.

Authority: Sections 40401, 40502 and 42060, Public Resources Code

Reference: Sections 42041, 42050, 42061, 42355, 42355.5, 42356, 42356.1, 42356.2 and 42357, Public Resources Code.

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