

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

## Draft Regulations Questions and Answers Session

SB 54 (Allen, Chapter 75, Statutes of 2022)

Department of Resources Recycling and  
Recovery (CalRecycle)

February 01, 2024



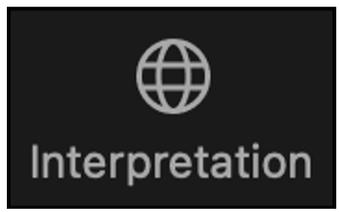
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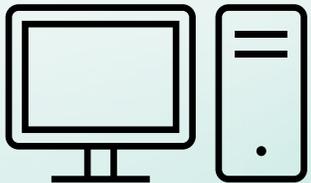
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# Purpose of this Q&A Session

- The purpose of this session is to:
  - Provide interested parties with an overview of the SB 54 statute.
  - Provide an overview of the Rulemaking Process.
  - Provide an opportunity for the public to ask clarifying questions about the draft regulatory text.
- Public comments will be accepted during the 45-day comment period when the formal rulemaking process is initiated with the Office of Administrative Law. The initiation of this comment window will be announced on the SB 54 Listserv.

# Agenda

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## **Opening Remarks**

Rachel Machi Wagoner, Director of CalRecycle

## **Part I. Overview of SB 54 (Allen, Ch. 75, Stat. 2022)**

Grant S. Hisao, Sr. Env. Scientist (Spec.) – Packaging EPR Section/Product Stewardship Branch

## **Part II. Overview of the Rulemaking Process in California**

Kate Nitta, Assistant Chief Counsel – Legal Affairs Office

## **Part III.**

Marcus Santillano, Program Manager – Packaging EPR Section/Product Stewardship Branch

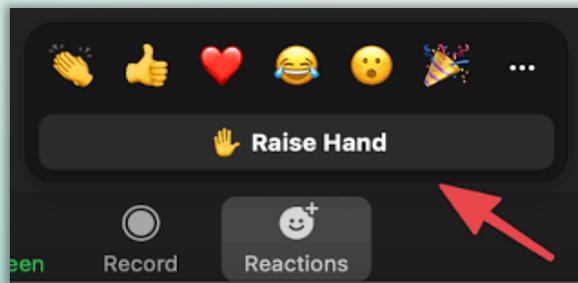
Robert Carlson, Program Manager – Product Stewardship Compliance Branch

## **Moderator**

Karen Kayfetz, Branch Chief – Product Stewardship Branch

# Questions

- To ask a question in-person, please line up at the podium.
- To ask a question via Zoom, please raise your hand and the host will unmute you.



- To ask a question (in writing) via Zoom, please use the chat box.

# Part I. Statutory Overview

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**Department of Resources Recycling and Recovery  
Packaging EPR Section/Product Stewardship Branch**

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**Grant S. Hisao**

Senior Environmental Scientist (Spec.)

# Plastic Pollution Prevention and Packaging Producer Responsibility Act – SB 54 (Allen, Ch. 75, Stat. 2022)

Establishes an extended producer responsibility program for covered material (materials regulated by the program).



**“Covered Material” includes:**

- Single-use packaging.
- Single-use plastic food service ware.



**CalRecycle is tasked with implementation and enforcement**



**Producer Responsibility Organization**



**Advisory Board**

Independent entity.

Program objectives on next slide →

# Program Objectives



Requires all covered material to be recyclable or eligible to be labeled “compostable” by 2032.



Establishes Recycling Rates for plastic covered material

- 30% by 2028
- 40% by 2030
- 65% by 2032



Source reduction of plastic covered material:

- 10% by 2027
- 20% by 2030
- 25% by 2032



Establishes Recycling Rates for expanded polystyrene (EPS):

- 25% by 2025
- 30% by 2028
- 50% by 2030
- 65% by 2032

Not meeting these rates would prohibit producers of EPS food service ware from selling, offering for sale, distributing, or importing in or into the state EPS food service ware.



# Producer Responsibility Organization (PRO)

A PRO is a 501(c)(3) nonprofit organization tasked with ensuring the program objectives are met and that producers are compliant with the statute and regulations.



Develop and implement the producer responsibility plan and budget.



Pay:

- Administrative costs.
- Necessary investments.
- Environmental mitigation surcharge.



Register producers with CalRecycle and ensure participant producers comply with the program.



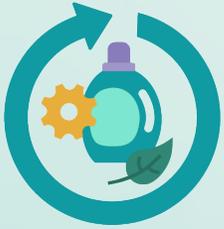
Annually report data to CalRecycle and submit annual reports.



# Requirements for Producers

Producers shall:

- Join the PRO as a participant producer and comply with the requirements of the PRO.
- Independently comply with the statute, pursuant to PRC 42051(b)(2).



Pursuant to PRC 42051(b), the compliance date for producers is January 1, 2027 or upon approval of the PRO's plan, whichever is sooner.

“Producer” is defined in PRC 42041(w).

- CalRecycle is unable to provide legal guidance to entities outside of the Department.
- If you think you may be a producer, we advise you consult your own legal counsel.



# Advisory Board

16-member independent board appointed by CalRecycle.

- 13 voting members.
- 3 non-voting members.



Review plans from PROs and Independent Producer



Advise on technical matters in support of the program.



Provide recommendations on the Needs Assessment



Advise CalRecycle on the adoption of the regulations.

# CalRecycle's Statutory Duties and Authority



Oversees Program



Appoints Advisory Board



Researches Packaging Waste Types



Feedback on Plan and Budget

- Promulgate regulations to implement the program.
- Develop a Statewide Needs Assessment.
- Covered Material Categories
  - Develop covered material categories.
  - Identify covered material categories deemed recyclable or compostable.
- Pertaining to Recyclability and Source Reduction
  - Conduct Material Characterization Studies.
  - Determine recycling rates.
  - Set the source reduction baseline.
- Pertaining to PRO(s) and producers:
  - Select the initial PRO.
  - Establish a process to register producers.
  - Establish a process to collect data from producers/PRO.
  - Review plans, plan amendments, annual reports and budgets.
  - Conduct oversight, enforcement, and audits.
- Appoint the Advisory Board.
- Develop and submit reports to the legislature.

# CalRecycle's Implementation Progress

- On June 30, 2023, CalRecycle appointed 15 of 16 members of the Advisory Board:
  - The 16<sup>th</sup> member, who represents the PRO, was appointed shortly after the appointment of the PRO.
  - The Advisory Board will have its first meeting February 2, 2023.
- Throughout 2023, CalRecycle informal regulatory and non-regulatory workshops and informational sessions pertaining to the implementation of the program.
- On December 28, 2023, CalRecycle:
  - Published the initial lists of recyclable covered material categories and compostable covered material categories pursuant to PRC 42061(c) and PRC 42061(d).
  - Published a Report to the Legislature pertaining to the recyclability status of covered material categories.
  - Released draft regulation text for public review ahead of filing with OAL.
- On January 5, 2024, CalRecycle appointed **Circular Action Alliance** to serve as the initial PRO.

# CalRecycle's Next Steps

- Continue with execution of developing the Statewide Needs Assessment.
- Host the first Advisory Board meeting on February 2, 2024.
- Start the Formal Rulemaking process and seek adoption of the regulations by January 1, 2025.
- Establish the source reduction baseline by January 1, 2025.

# Part II. Rulemaking Process

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**Department of Resources Recycling and Recovery  
Legal Affairs Office**

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**Kate Nitta**  
Legal Affairs Office

# Regulations and the Rulemaking Process

- Regulations are rules, orders, and standards that implement, interpret, and make specific a law that an agency administers or enforces.
- The rulemaking process is the process by which a governmental agency develops regulations. Generally, the rulemaking process must follow the requirements of the Administrative Procedures Act (Government Code 11340-11361).

# Rulemaking Process at CalRecycle – 1

1

## Concept Development

- Develop regulatory concepts
- Hold informal workshops
- Stakeholder outreach

2

## Informal Rulemaking

- Develop rulemaking documents
- Hold informal workshops
- Stakeholder outreach
- Initial Economic Impact analysis
- Department and Agency approval

3

## Formal Rulemaking

- Publication in the Notice Register
- Send notice package to interested stakeholders
- Post on Department webpage
- Begin 45 Day Public Comment period

4

## 45-Day Public Comment Period

- Opportunity to provide written comments
- Public Hearing
- Review public comments and revise regulations

Process continued on next slide →

# Rulemaking Process at CalRecycle – 2

5

## Additional Comment Period(s)

- Propose changes to regulatory language
- Review public comments and revise regulations

6

## Final Approvals and Adoption

- DOF approval of Fiscal and Economic Impact Assessments
- Department Adoption of regulation text

7

## Submit Final Rulemaking Package to OAL

- Must be within one year of the Notice publication date
- OAL 30 working day Review Period

8

## Regulations Become Effective

# Current Status of the SB 54 Regulations

- 2023: Concept Development and Informal Rulemaking
- Draft regulations were publicly shared on December 28, 2023
- Standardized Regulatory Impact Assessment sent to Department of Finance
- Formal rulemaking process to begin in early 2024
- CalRecycle intends to have regulations adopted by our statutory deadline of January 1, 2025.

# Next Steps for the SB 54 Regulations

- Finalize rulemaking package and submit to the Office of Administrative Law (OAL).
- Rulemaking Noticed
  - Publication in the California Notice Register
  - Notice via CalRecycle listservs
  - Publication on CalRecycle website
- Public Comment Period
  - At least 45 calendar days
- Public Hearing
- Potential revisions to the text and additional comment periods

**The only way for your feedback and comments on the proposed regulations to be considered and included in the rulemaking record is if your feedback and comments are submitted through one of these comment periods.**

# Part III. Overview of Draft Regulations

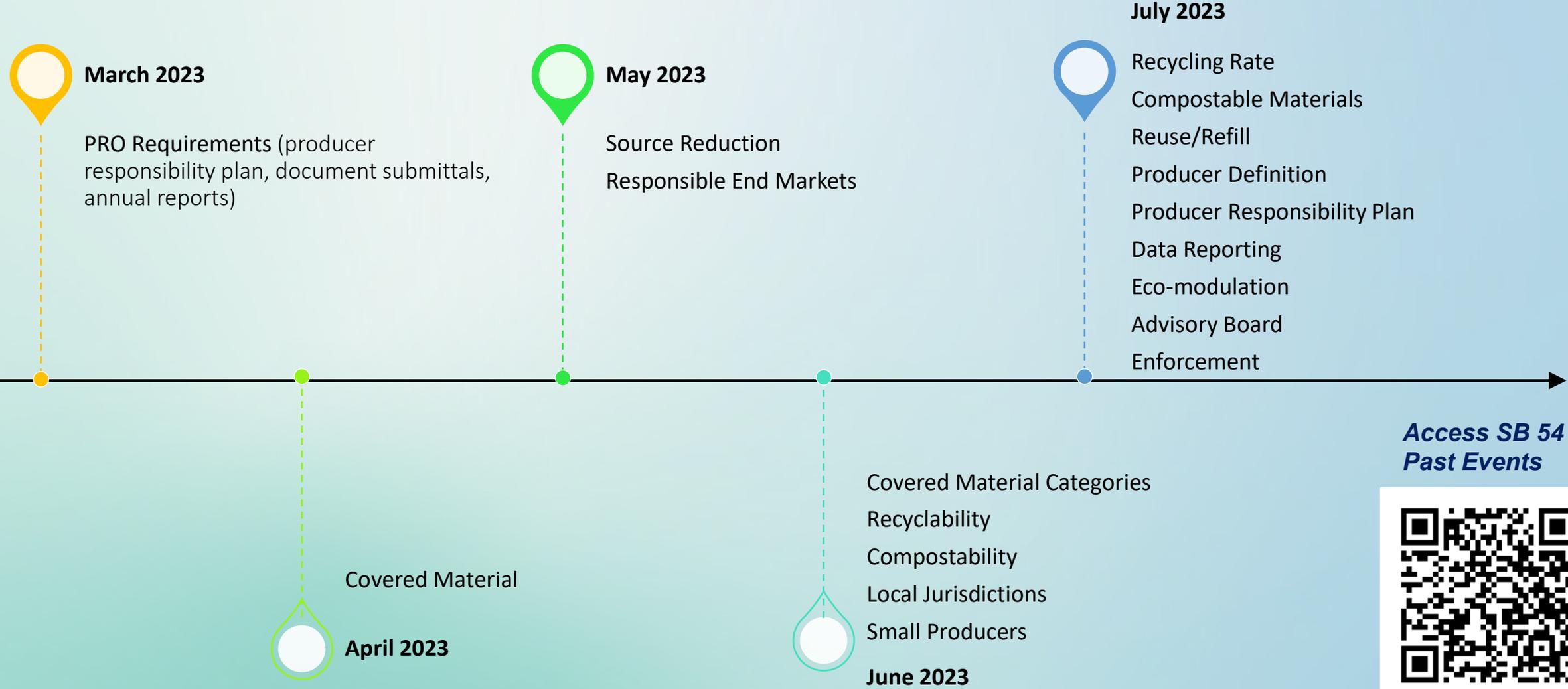
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**Department of Resources Recycling and Recovery  
Packaging EPR Section/Product Stewardship Branch  
Product Stewardship Compliance Branch**

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**Marcus Santillano – Program Manager, PEPR  
Robert Carlson – Program Manager, PSCB**

# Informal Rulemaking Process



*Access SB 54  
Past Events*



# Outline of Draft Regulations

## Chapter 11.1 – Plastic Pollution Prevention and Packaging Producer Responsibility

- 15 Articles

## Chapter 11.5 – Environmental Marketing and Labeling

- 1 Article

Copy of draft regulation text can be accessed on CalRecycle's website:

<https://www2.calrecycle.ca.gov/Docs/Web/126588>



# List of Articles

## Chapter 11.1:

- 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:

- Third-party Certification Entity Criteria and Approval Process

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# **Chapter 11.1 Plastic Pollution Prevention and Packaging Producer Responsibility**

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# Chapter 11.1 – List of Articles

- 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
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- Article 14 – Additional PROs
- Article 15 – Public Records

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# Article 1 – Definitions

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## Sections:

18980.1. Definitions

# 18980.1 Definitions

- Act
- Alternative collection
- Anaerobic Digestion
- Biogas
- Brand or trademark
- Component
- Compost
- Covered Material Category List
- Digestate for land application
- Discrete
- Food
- Food packaging
- Food service ware
- Incompatible material
- Independent producer
- Intermediate product
- Intermediate supply chain entity
- In the state
- Mixed material
- Nonplastic
- Organic waste
- Participant, participant producer, participant of the PRO and producer who participates in the PRO's approved plan
- Person
- Plastic
- Plastic or polymers
- Processor
- Product
- Ratepayer
- Recycled organic product
- Recycling rate
- Reporting entity
- Responsible end market
- Retailer or Wholesaler
- Reusable, refillable, reuse and refill
- Single use and single-use
- Small producer
- Ton or tons
- Viable responsible end market

# Break

**Please return by:  
1:00 PM**

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# Article 2 – Covered Materials and Covered Material Categories

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## Sections:

- 18980.2. Categorically Excluded Materials
- 18980.2.1. Exemptions for Long-Term Storage Materials
- 18980.2.2. Exemptions for Product-Specific Material
- 18980.2.3. Exemptions for Certain Covered Materials
- 18980.2.4. Covered Material Category List Updates
- 18980.2.5. Covered Material Category List Recommendations
- 18980.2.6. Effective Scope of Exemptions

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# Article 3 – Evaluations for Covered Material Categories

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## Sections:

18980.3. Recyclability

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

18980.3.2. Methodology for Recycling Rate Determination

18980.3.3. Eligibility to be Labeled Compostable

18980.3.4. Independent Third-Party Validation for Postconsumer Recycled Content

18980.3.5. Disposal of Covered Material

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# Article 4 – Responsible End Markets

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## Sections:

18980.4. Responsible End Market Criteria

18980.4.1. End Market Identification

18980.4.2. End Market Verification

18980.4.3. End Market Audits and Investigations

18980.4.4. End Market Viability

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# Article 5 – Requirements for Producers

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## Sections:

18980.5. Producer Compliance

18980.5.1. Application for Independent Producer Compliance

18980.5.2. Exemption for Small Producers

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# Article 6 – Requirements for the Producer Responsibility Organization

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## Sections:

18980.6. General Requirements

18980.6.1. Producer Responsibility Plan Submission

18980.6.2. Producer Responsibility Plan Approval

18980.6.3. Review of Updated Producer Responsibility Plan

18980.6.4. Producer Responsibility Plan Amendments

18980.6.5. Annual Report and Program Budget

18980.6.6. Document Submittals

18980.6.7. Eco-Modulated Fee and Fee Schedule

18980.6.8. Recordkeeping and Reporting Requirements

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# Article 7 – Requirements for Independent Producers

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## Sections:

- 18980.7. Independent Producer Responsibility Plan Submission
- 18980.7.1. Independent Producer Responsibility Plan Approval
- 18980.7.2. Review of Updated Independent Producer Responsibility Plan
- 18980.7.3. Independent Producer Responsibility Plan Amendments
- 18980.7.4. Independent Producer Annual Report and Program Budget
- 18980.7.5. Independent Producer Document Submittals
- 18980.7.6. Independent Producer Environmental Mitigation Fee
- 18980.7.7. Independent Producer Recordkeeping and Reporting Requirements

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# Article 8 – Producer Responsibility Plan Requirements

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## Sections:

- 18980.8. Producer Responsibility Plan
- 18980.8.1. Plan Requirements Specific to PRO
- 18980.8.2. Closure and Transfer Plan Requirements
- 18980.8.3. Source Reduction Adjustment

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# Article 9 – Annual Report and Program Budget

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## Sections:

- 18980.9. Source Reduction Baseline Reporting
- 18980.9.1. Annual Report and Program Budget

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# Article 10 – Data Reporting Requirements

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## Sections:

18980.10. Registration and Maintaining Address on File

18980.10.1. Data Reporting Submission

18980.10.2. Data Reporting Contents

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# Article 11 – Requirements for Local Jurisdictions and Recycling Service Providers

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## Sections:

18980.11. Exemption for Local Jurisdictions and Recycling Service Providers

18980.11.1. Exemption for Rural Counties and Rural Jurisdictions

18980.11.2. Data Reporting Contents

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# Article 12 – Requirements for the Advisory Board

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## Sections:

18980.12. Membership Terms and Appointments

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# Article 13 – Enforcement Oversight by the Department and Administrative Civil Penalties

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## Sections:

18980.13. Compliance Evaluation and Determination

18980.13.1. Corrective Action Plan (CAP)

18980.13.2. Administrative Civil Penalties

18980.13.3. Notices

18980.13.4. Procedure for a Hearing

18980.13.5 Disciplinary Actions

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# Article 14 – Approval of Additional PROs

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## Sections:

18980.14. Approval of Additional PROs

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# Article 15 – Public Records

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## Sections:

18980.15 Designation of Trade Secrets and other Non-Disclosable Information

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# Chapter 11.5 Environmental Marketing and Labeling

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# Article 1 – Approval of Certification Entities

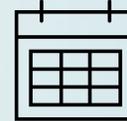
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## Sections:

18981. Third-party Certification Entity Criteria and Approval Process



[Sign-up for our SB 54 Listserv](#)



**Advisory Board Meeting**

**February 2, 2024**

**10:00am**

**Byron Sher Auditorium (this room)**



More information will be distributed through our [listserv](#) and available on the [SB 54 Webpage](#).

Email: [Packaging@CalRecycle.ca.gov](mailto:Packaging@CalRecycle.ca.gov)