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:

The proposed amendments, referred to as the 15-Day Changes, to the originally proposed regulatory text are shown below. The originally proposed regulatory text made available for public comment for at least 45 days on August 22, 2025, referred to as the 45-Day Changes, is incorporated into this version as plain, clean text because it is not being made available for public comment by this Notice. The 15-Day Changes that are made public and available for comment by this Notice are shown in underline to indicate additions and strikethrough to indicate deletions from the 45-Day Changes.

TITLE 14

DIVISION 7

ADOPT

CHAPTER 11.1. Plastic Pollution Prevention and Packaging Producer Responsibility

ARTICLE 1-14

Adopt sections 18980.1, 18980.1.1, 18980.2, 18980.2.1, 18980.2.2, 18980.2.3, 18980.2.4,

18980.2.5, 18980.2.6, 18980.2.7, 18980.3, 18980.3.1, 18980.3.2, 18980.3.3, 18980.3.4,

18980.3.5, 18980.4, 18980.4.1, 18980.4.2, 18980.4.3, 18980.5,

18980.5.1, 18980.5.2, 18980.6, 18980.6.1, 18980.6.2, 18980.6.3, 18980.6.4, 18980.6.5, 18980.6.6, 18980.6.7, 18980.6.8, 18980.7, 18980.7.1, 18980.7.2, 18980.7.3, 18980.7.4,

18980.7.5, 18980.7.6, 18980.7.7, 18980.8, 18980.8.1, 18980.8.2, 18980.9,

DRAFT

18980.9.1, 18980.10, 18980.10.1, 18980.10.2, 18980.11, 18980.11.1, 18980.11.2, 18980.12, 18980.13, 18980.13.1, 18980.13.2, 18980.13.3, 18980.13.4, 18980.13.5, and 18980.14, California Code of Regulations, title 14

CHAPTER 11.5. Environmental Marketing and Labeling

Adopt section 18981, California Code of Regulations, title 14

Chapter 11.1 Plastic Pollution Prevention and Packaging Producer Responsibility

ARTICLE 1: Definitions

Section 18980.1. Definitions

(a) Except as otherwise noted, the following definitions shall govern the provisions of this chapter along with 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 regardless of the manner and location of collection, and is not "curbside collection," as defined in subdivision (g) of section 42041 of the Public Resources Code, because it is not conducted by a local jurisdiction or recycling or composting service provider under contract with a local jurisdiction.

(3) "Anaerobic Digestion" means the controlled biological decomposition of material in the absence of oxygen or in an oxygen-starved environment. Anaerobic digestion produces biogas and a residual digestate.

DRAFT

(4) “Component” and related terms are defined as follows:

(A) “Component,” with respect to covered material, means a covered material item that has no physically distinct subparts, or a piece or subpart of a covered material item, if the piece or subpart is distinct with respect to its composition or function or is otherwise physically distinct from other pieces or subparts. “Item” is defined in paragraph (12).

(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.

(C) A “detachable component” is one that may be completely detached from all other components or material and is either of the following:

(i) A component designed such that it may be detached by consumers or during or after collection without the use of tools, substances, or non-manual processes. A component shall not be considered designed to be detached merely because it may be detached from all other components or materials during processing.

(ii) Typically or necessarily detached through ordinary usage by the consumer before being discarded, regardless of whether the component is discarded attached to the other components.

(D) A “non-detachable component” is a component that is not detachable, as defined in subparagraph (C).

(E) The term “separable and distinct material component,” as stated in the definition of “packaging” in subdivision (s) of section 42041 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.

DRAFT

(5) “Covered material” has the same definition as in subdivision (e) of section 42041 of the Public Resources Code and encompasses materials that originated from covered material items. In the context of end-of-life handling and processing, if a substance comprises both materials that are covered material because they originated from such items and materials from other origins, only the portions originating from covered material items shall be considered covered materials.

(6) “Covered material category list” and “CMC list” mean the list, established pursuant to section 42061 of the Public Resources Code, containing elements evaluating recycling rates, recyclability, and compostability, by covered material category.

(7) “Food” has the same meaning as in section 113781 of the Health and Safety Code.

(8) “Food service ware” means the goods identified in subparagraphs (A) and (B). Plastic single-use food service ware is covered material and shall not be considered “packaging” for purposes of this chapter.

(A) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, straws, and other goods typically used with food, provided that such goods are intended or marketed to be used, or are customarily used, in the act of consuming food or providing to consumers food or beverages that require no further preparation or packaging prior to consumption. A good exclusively marketed and labeled as not intended for such uses shall not be considered customarily put to such use. To be a food service ware item, the good must either necessarily directly contact food when used to serve or consume food or be designed specifically for use in conjunction with food service ware items when the items are used to serve or consume food. Examples of goods designed specifically for such use include a cup sleeve or cup tray used with cups that contact beverages, trays used with liners that contact food, or a lid or cover that fits securely atop a tray that touches food. An item is not food service ware pursuant to this subparagraph

DRAFT

merely because it may be used to contain, store, handle, protect, or prepare food.

(B) Wraps, wrappers, and bags marketed, designed, or intended to be used in the manner described in clause (ii) of subparagraph (B) of paragraph (1) of subdivision (e) of section 42041 of the Public Resources Code: “used in the packaging of food offered for sale or provided to customers by food service establishments”. For purposes of section 42041 of the Public Resources Code:

(i) A food service establishment is a retail business that operates at a physical location, whether permanent or nonpermanent, and serves prepared 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 products that were not packaged by the operation and are not removed from their packaging by the operation, such as prepackaged, sealed food that was mass produced by a third party, shall not be considered food offered to consumers 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. For purposes of this clause, paragraphs (1) and (2) of subdivision (g) of section 42280 of the Public Resources Code shall not apply, such that retail establishments cannot be excluded from the definition of “store” based on their gross annual sales or square footage of the retail space.

(9) “Incompatible material” means covered material that a receiving responsible end market is not designed, permitted, or authorized to recycle, as defined in subdivision (aa) of section 42041 of the Public Resources Code, or does not recycle for any other

DRAFT

reason.

(10) “Independent Producer” means a producer that is approved by the Department to comply with the requirements of this chapter without being a participant producer.

(11) “Intermediate supply chain entity” means, with respect to certain materials, any facility or operation, excluding the end market, that receives the materials after they have been collected, except that a facility or operation of the person that collected the materials is an intermediate supply chain entity if the facility or operation conducts processing or receives the materials after any processing of the materials has occurred. A facility or operation is an intermediate supply chain entity, not an end market, with respect to material it transfers off-site for further processing or disposal, regardless of whether it is an end market with respect to other materials.

(12) “Item,” with respect to covered material, packaging, or food service ware, including packaging and food service ware that is excluded from the definition of covered material or exempt from requirements of the Act, means an individual physical embodiment of covered material, packaging, or food service ware, rather than a substance or material in general or an amount of material. A group of physically connected non-detachable components is a single item. Detachable components are distinct items.

(13) “Nonplastic,” as used in the Act, means that a material is not considered plastic under paragraph (15) of this subdivision and subdivision (t) of section 42041 of the Public Resources Code.

(14) “Participant,” “participant producer,” “participant of the PRO,” and “producer who participates in the PRO’s approved plan” all mean a producer, as defined in subdivision (w) of section 42041 of the Public Resources Code, approved by a PRO to participate in the PRO’s plan.

DRAFT

(15) “Plastic,” when used to describe a component of covered material or other physical object, means the component or object contains or is made partially or entirely of plastic, as defined in subdivision (t) of section 42041 of the Public Resources Code, unless the plastic is present solely 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 the component or object. Notwithstanding the foregoing, for purposes of subdivision (g) of section 18980.6.7, section 18980.7.6, 18980.9, and subdivisions (a) and (d) of section 18980.9.1, the weight of plastic covered material is the weight only of the plastic, as defined in subdivision (t) of section 42041 of the Public Resources Code, that the covered material comprises.

(16) “Plastic or polymers,” as used in subdivision (d) of section 42356.1 of the Public Resources Code, means a plastic component or any amount of plastic, as defined in subdivision (t) of section 42041 of the Public Resources Code, incorporated into a component. Notwithstanding the foregoing, contamination not caused by equipment or processes used in manufacturing shall not be considered plastic incorporated into a component.

(17) “Producer” has the same definition as provided in subdivision (w) of section 42041 of the Public Resources Code. For purposes of that definition and this chapter:

(A) “Person” means an individual, firm, limited liability company, association, partnership, public or private corporation, or any other legal entity.

(B) The terms “product that uses covered material” and “product using the covered material” refer to a good that uses covered material. A good uses covered material if its packaging is covered material or if the good itself is plastic single-use food service ware and thus constitutes covered material. Empty packaging materials not yet used by a good are not “single-use packaging” or otherwise “covered material” under the Act, such that a person is not a producer merely because they

DRAFT

manufacture, sell, offer for sale, or distribute such materials.

(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.

(D) If the product is physically provided to the consumer on the premises of a retail seller or other distributor where it is sold or distributed, only packaging associated with the product before the point of sale or distribution and before the initial physical display of the product to the consumer shall be considered the product's packaging.

(E) "Brand or trademark" means a trademark or service mark, as those terms are defined in subdivisions (a) and (b) of section 14202 of the Business and Professions Code. Use of a brand or trademark is only relevant to whether a person is a producer if the brand or trademark is the one, if any, identified pursuant to subdivision (b) of section 18980.1.1.

(i) Use of a brand or trademark with or on a good that uses covered material means the placement or display of the brand or trademark in a way that directly associates the brand or trademark with that good for the purpose stated in subdivision (a) of section 14202 of the Business and Professions Code. Without limitation, a brand or trademark is directly associated with a good if it is displayed or placed directly on the good, on the good's packaging, on tags or labels affixed to the good, or on documents (electronic or otherwise) associated with the goods or their sale.

(ii) Use of a brand or trademark with the sale or distribution of a good that uses covered material means display of the brand or trademark in a way that directly associates the brand or trademark with such sale or distribution for the purpose stated in subdivision (b) of section 14202 of the Business and Professions Code. Without limitation, such display may be in advertisements or other

DRAFT

promotional material (whether hard copy or electronic), business signs, catalogs, or web-based sales interfaces.

(iii) For the purpose of identifying the producer of covered material used by a good, the placement or display of a brand or trademark in any manner is not relevant unless it is for the purpose stated in subdivision (a) or (b) of section 14202 of the Business and Professions Code with respect to that good or its sale or distribution.

(F) "Distribution" and "distribute," as used in the Act and this chapter, mean the act of transferring products to another person within the supply chain or to the end user of the products, and "import" means the act of bringing products from outside the state into the state for purposes of sale or distribution, except that:

(i) If products are transported outside the state without being provided to users of the products in the state or discarded in the state, the products and the covered material used by the products shall not be considered distributed or imported in or into the state, provided that documentation of such transport is available upon request by the Department from the person who otherwise would be the producer of the covered material.

(ii) The mere transportation of products (e.g., parcel or freight shipping) on behalf of another person shall be deemed conducted by that person, not the transporter.

(G) "Offered for sale," when used in the Act and this chapter in reference to a quantity, amount, or proportion of covered material, refers to covered material that physically existed and was made available for purchase but was discarded in California by the producer without being sold or distributed.

(H) Pursuant to paragraph (4) of subdivision (w) of section 42041 of the Public Resources Code, "agricultural commodity" as used in paragraph (4) of subdivision

DRAFT

(w) of section 42041 of the Public Resources Code has the same meaning as in Title 7, section 5602 of the U.S. Code.

(18) “Product,” for purposes of this chapter, means a physical good and all of its packaging, if any.

(19) “Ratepayer,” as used in the Act, means a person that pays user fees for recycling, composting, or solid waste collection and handling services provided by a local jurisdiction and/or their designated recycling service provider.

(20) “Recycled organic product” means compost, digestate for land application, or biogas. To be considered a recycled organic product, the process producing it must be recycling, as defined in the Act.

(A) “Biogas” has the same meaning as provided in paragraph (3) of subdivision (a) of section 17896.2 of this division.

(B) “Compost” has the same meaning as provided in paragraph (4) of subdivision (a) of section 17896.2 of this division.

(C) “Digestate for land application” means digestate, as defined in paragraph (13.5) of subdivision (a) of section 17852 of this division, that meets the requirements of paragraph (24.5) of subdivision (a) of section 17852 of this division.

(21) “Recycling rate” has the meaning set forth in subdivision (ab) of section 42041 of the Public Resources Code, except that recycling rate shall be calculated as described in section 18980.3.2.

(22) “Reporting entity” means a PRO, which shall report all reportable activities by its participating producers on their behalf, and the producers identified in subparagraphs (B) and (C).

(A) Reportable activities are those required to be reported to the Department pursuant

DRAFT

to Article 9 and Article 10 of this chapter, as applicable. All reporting entities must register with the Department as set forth in section 18980.10.

(B) Independent Producers are reporting entities and must report all their reportable activities pursuant to this chapter.

(C) Producers participating in a PRO's approved plan are reporting entities if they choose to report any of their reportable activities directly to the Department or do not provide data to the PRO so that the PRO could report the activities on their behalf.

(23) "Responsible End Market" means an end market described in subdivision (ad) of section 42041 of the Public Resources Code that meets the criteria specified in section 18980.4.

(24) "Retailer" and "wholesaler" are defined as in subdivision (ae) of section 42041 of the Public Resources Code. A retailer or wholesaler is a producer only for covered material for which it meets the definition of producer pursuant to subdivision (w) of section 42041 of the Public Resources Code.

(25) "Reusable," "refillable," "reuse," and "refill" have the same definition as provided in subdivision (af) of section 42041 of the Public Resources Code. Determinations of whether packaging or food service ware items are reusable or refillable shall be subject to subdivision (b) of section 18980.2.1.

(A) The terms "reuse" and "refill" refer to usage of packaging or food service ware items after their initial use, where the items and the circumstances of such subsequent use satisfy the requirements for the items to be deemed reusable or refillable pursuant to paragraphs (1) or (2) of subdivision (af) of section 42041 of the Public Resources Code. The purpose and function of the subsequent usage must be the same as the purpose and function of the initial use, except that

DRAFT

subsequent uses of packaging or food service ware as described in paragraph (1) of subdivision (af) of section 42041 of the Public Resources Code need not be with respect to the same good previously associated with the packaging or food service ware.

(B) An item considered reusable or refillable pursuant to this paragraph and subdivision (af) of section 42041 of the Public Resources Code shall not be considered single-use pursuant to subdivision (ai) of section 42041 of the Public Resources Code.

(26) “Significant effect on the environment” means a substantial, or potentially substantial, adverse change in physical conditions, such as with respect to land, air, water, minerals, or animals, resulting from an operation, practice, product, substance, action, or any other cause. Mere disposal in a landfill does not necessarily constitute a significant effect on the environment.

(27) “Single use” and “single-use” are defined as provided in subdivision (ai) of section 42041 of the Public Resources Code for “single use.”

(A) With respect to packaging, an individual packaging item is disposed of after one use if it is discarded after it has served one or more of the purposes identified in subdivision (s) of section 42041 of the Public Resources Code with respect to the physical good originally associated with the packaging, without being reused for such purposes with respect to additional physical goods. Once use of the packaging begins, usage with respect to the specific physical good associated with it constitutes a single use, regardless of whether the usage is intermittent or continuous. Physical goods used to refill or reuse packaging are distinct from the specific physical good with which the packaging was originally associated, such that usage of the packaging with respect to such distinct goods constitutes a new use.

DRAFT

(B) With respect to food service ware, an individual item is disposed of after one use if it is discarded after serving one or more of the purposes identified in paragraph (8) of this subdivision once with respect to food goods without being subsequently washed and used again. Once initial usage of a food service ware item begins, any usage of it before it is washed and used with additional food goods constitutes a single use.

(C) A packaging or food service ware item shall be considered conventionally disposed of after a single use if it is not reusable or refillable according to paragraph (25) of this subdivision and paragraphs (1) or (2) of subdivision (af) of section 42041 of the Public Resources Code.

(28) "Small producer" means a producer that has a current exemption on file with the Department pursuant to section 18980.5.2.

(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.

(3) State Administrative Manual, section 9213.1, Allocation of Costs—Indirect Cost Rate Determination Methodology, California Department of General Services (as published on 01/2022).

(4) "ISO 59014" refers to the publication, which is incorporated by reference in its entirety,

DRAFT

titled “Environmental management and circular economy — Sustainability and traceability of the recovery of secondary materials — Principles, requirements and guidance,” International Organization for Standardization, October 2024.

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

Reference: Sections 41780.01, 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.

Section 18980.1.1. Producer Identification

(a) For purposes of paragraphs (1) and (2) of subdivision (w) of section 42041 of the Public Resources Code only, a person is in the state if the person is subject to the jurisdiction of California courts pursuant to section 410.10 of the Code of Civil Procedure with respect to the Act and any of the following is true:

(1) Service of summons, excluding service in a manner requiring a court order, on the person may be completed in the state pursuant to sections 413.10 through 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.

(2) The person consents to being considered in the state, being served notices and accusations by any means chosen by the Department pursuant to section 18980.13.3 and being personally subject to the jurisdiction of California courts. To be considered in the state, such person must be registered as a producer pursuant to section 18980.10 and must, upon demand, confirm the foregoing consent in writing, such as by affidavit or written agreement, and through conduct consistent with such consent. Conduct consistent with such consent includes responding to an accusation, filing a pleading, or

DRAFT

otherwise appearing in a legal proceeding in the state.

(b) One brand or trademark shall be designated as the one referred to in paragraphs (1) and (2) of subdivision (w) of section 42041 of the Public Resources Code, and the person deemed to be the producer of the covered material used by goods shall be identified according to subdivisions (c), (d), and (e), if possible.

(c) For covered material other than food service ware, the producer shall be determined in accordance with this subdivision.

(1) Subject to subdivision (e), the designated brand or trademark shall be one used with goods when they are first sold or distributed along with covered material or used with such initial sale or distribution, regardless of where such use occurs. The person who manufactured the goods is the producer, provided that the person is in the state and either owns the designated brand or trademark or is licensed to manufacture the goods. To be the producer, the licensee must have the legal right to use the brand or trademark on the goods in connection with manufacturing the goods and be entitled to be the only person with such right in the state or in a subregion of the state.

(2) If the person who manufactured the goods is not the producer pursuant to paragraph (1), and the owner of the designated brand or trademark is in the state, that owner is the producer.

(3) If there is no producer pursuant to paragraphs (1) and (2) of this subdivision, a licensee of the designated brand or trademark shall be identified as the producer, if possible, as follows:

(A) The licensee must be in the state.

(B) The licensee must have the legal right to use the brand or trademark or authorize others to do so, whether on the goods or with their sale, offer of sale, or distribution, and be entitled to be the only person with such right in the state or in a subregion of

DRAFT

the state. Such a licensee is the producer of the covered material used by the goods sold, offered for sale, or distributed in the state pursuant to their authority over the brand or trademark.

(C) Notwithstanding subparagraph (B), a person that otherwise would be the producer under this paragraph is not the producer if it acquired the right to use the brand or trademark under an agreement, such as a sublicense or franchise agreement, with another person in the state. That other person is the licensee for purposes of this paragraph and is the producer of the covered material used by the goods sold, offered for sale, or distributed pursuant to such an agreement.

(4) This subdivision does not apply to covered material packaging added to a good by a person other than the owner or licensee of the brand or trademark or someone acting on behalf of the owner or licensee. The producer of such covered material shall be determined as described in subdivision (f).

(d) For food service ware, the producer shall be determined in accordance with this subdivision.

(1) Subject to subdivision (e), the brand or trademark referred to in paragraphs (1) and (2) of subdivision (w) of section 42041 of the Public Resources Code shall be one used with the food service ware when they are first sold or distributed or used with such initial sale or distribution, regardless of where such use occurs. The person who manufactured the food service ware is the producer, provided that the person is in the state and either owns the designated brand or trademark or is licensed to manufacture the food service ware. To be the producer, the licensee must have the legal right to use the brand or trademark on the food service ware in connection with manufacturing the food service ware and be entitled to be the only person with such right in the state or in a subregion of the state.

(2) If the person who manufactured the goods is not the producer pursuant to paragraph

DRAFT

(1), and the owner of the designated brand or trademark is in the state, that owner is the producer.

(3) If there is no producer pursuant to paragraph (1) or (2) of this subdivision, a licensee of the designated brand or trademark shall be identified as the producer, if possible, as follows:

(A) The licensee must be in the state.

(B) The licensee must have the legal right to use the brand or trademark or authorize others to do so, whether on the food service ware or with its sale, offer of sale, or distribution, and be entitled to be the only person with such right in the state or in a subregion of the state. Such a licensee is the producer of the covered material used by the food service ware sold, offered for sale, or distributed in the state pursuant to their authority over the brand or trademark.

(C) Notwithstanding subparagraph (B), a person that otherwise would be the producer under this paragraph is not the producer if it acquired the right to use the brand or trademark under an agreement, such as a sublicense or franchise agreement, with another person in the state. That other person is the licensee for purposes of this paragraph and is the producer of the covered material used by the food service ware sold, offered for sale, or distributed pursuant to such an agreement.

(e) If there are multiple brands or trademarks that may be designated for purposes of subdivisions (c) or (d), one of them shall be designated in accordance with this subdivision.

(1) If the covered material is food service ware, the brand or trademark directly associated with (as described in subparagraph (E) of paragraph (17) of subdivision (a) of section 18980.1) food or food service shall be designated. Otherwise, the designated brand or trademark shall be the one owned or licensed by the manufacturer or licensee,

DRAFT

provided that such person satisfies the requirements of paragraph (1) of subdivision (c) or paragraph (1) of subdivision (d) for being a producer of either food service ware or packaging.

(2) If no brand or trademark can be designated pursuant to paragraph (1) of this subdivision, the brand or trademark most prominently used with or on the goods or, if the covered material is food service ware, with or on the food service ware shall be designated.

(3) If no brand or trademark can be designated pursuant to paragraphs (1) and (2), the brand or trademark most prominently used with the initial sale or distribution of the goods, or, if the covered material is food service ware, with or on the food service ware shall be designated.

(4) For purposes of this subdivision, if any of the brands or trademarks are owned by the same person or used by the same licensee, the combination of them shall be considered a single brand or trademark.

(5) Notwithstanding paragraphs (1) through (4) of this subdivision, the owners of the brands or trademarks may agree among themselves to designate one of the brands or trademarks, provided that the owner or a licensee of that brand or trademark otherwise satisfies the criteria to be the producer under this subdivision.

(f) If no producer can be identified pursuant to subdivisions (c), (d), or (e), the producer of covered material used by a good shall be identified according to paragraph (3) of subdivision (w) of section 42041 of the Public Resources Code. What constitutes such covered material shall be evaluated as of the time a person sells, offers for sale, or distributes the good, and the person is the producer only with respect to covered material items for which there was not already a producer at such time. For example, for a branded good that is packaged using covered material and is sold or distributed in the state:

DRAFT

(1) If the brand owner or licensee is in the state, it is the producer of all covered material items used by the good when the good is sold or distributed by the owner or a person acting on the behalf of the owner or licensee. It is the producer, for example, of the sales packaging or primary packaging described in paragraph (1) of subdivision (s) of section 42041 of the Public Resources Code, as well as any additional covered material items, such as transport or tertiary packaging, used by the good before it is received by any person who subsequently sells or distributes it. If a person subsequently sells or distributes the good using additional covered material packaging (e.g., transport or tertiary packaging), that person is the producer of the additional covered material items. That person is not the producer of the packaging items for which the brand owner was already the producer when the person received the product.

(2) If there is no brand owner or licensee in the state, the person who first sells or distributes the good in the state is the producer of all covered material items, including any covered material items added by such person, used by the good at the time of such sale or distribution.

(3) If a wholesaler or retailer in the state subsequently obtains the good and causes it to use additional items of covered material packaging, the wholesaler or retailer is the producer of such additional items, and the producer of the other covered material items used by the good is either the person identified according to subdivisions (c) or (d), or, if there is no such person, the person identified in paragraph (2) of this subdivision.

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

Reference: Sections 42040, 42041, 42051 and 42052 Public Resources Code.

DRAFT

ARTICLE 2: Covered Material and Covered Material Categories

Section 18980.2. Categorically Excluded Materials

(a) The following are not covered material:

(1) Packaging and other items identified in paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code.

(2) In accordance with paragraphs (1) and (2) of subdivision (b) and with subdivision (d) of section 42060 of the Public Resources Code, packaging or packaging components used by a food or agricultural commodity (without regard to its origin) if it is not reasonably possible to use ~~other~~ packaging or packaging components that~~to~~ comply with both the Act and mandatory regulations, rules, or guidelines issued by the United States Department of Agriculture or the United States Food and Drug Administration. A determination of exclusion pursuant to this paragraph may consider ~~standards~~ mandatory regulations, rules, or guidelines to prevent microbial contamination or to maintain the safety or structural integrity of packaging under the Food, Drug, and Cosmetic Act~~;~~, the FDA Food Safety Modernization Act~~;~~, the Poultry Products Inspection Act~~;~~, the Federal Meat Inspection Act~~;~~, or the Egg Products Inspection Act~~;~~, or other applicable mandatory food or agricultural regulations, rules, or guidelines.

(A) Any entity that has determined that packaging or packaging components are~~is~~ not covered material pursuant to paragraph (2) ~~of subdivision (a)~~ shall provide written notice to~~notify~~ the Department electronically via email. If the Department has published a notice via its website that an online portal is available for use, the notice required by this subparagraph shall instead be submitted electronically via that portal. ~~and provide both a specification for the packaging or packaging component and the associated product(s) along with a summary of the basis for its determination.~~

DRAFT

(B) The notice~~basis~~ shall identify all~~the~~ specific provisions of the~~is~~ ~~Chapter~~Act and the mandatory ~~that causes a conflict, cite the conflicting~~ federal regulations, rules, or guidelines that are in conflict, specifically describe all packaging and packaging components to be excluded and the associated products, and demonstrate that it is not reasonably possible to use any ~~explain why no reasonably possible~~ alternative packaging or packaging components that would avoid the conflict ~~is available~~. It is not reasonably possible to use any such alternative if all of the following are true:

(i) There is no such alternative that satisfies all applicable mandatory standards for safety and structural integrity of packaging, creates no new unavoidable legal conflict with any law, and otherwise is lawful to use in California;

(ii) it is not possible to avoid all legal conflicts by eliminating or replacing the components that cause the conflict cited in the notice; and

(iii) it is not possible to avoid all legal conflicts by redesigning or replacing the packaging as a whole.

(C) Upon receipt of the notice, the Department shall confirm that the notice is for a food or agricultural commodity and that it contains all elements described in subparagraph (B). If the notice does not contain all such elements or if the Department identifies packaging or packaging components that the notice did not address but that would avoid the cited conflict, the Department shall notify the entity within 90 days of receipt of the notice that the notice is incomplete and requires resubmission pursuant to subparagraphs (A) and (B).

(D) The Department shall maintain on its website a publicly available electronic database identifying~~of~~ each ~~such determination~~complete notice, including the packaging or packaging components and associated products identified in the notice, the~~that includes the~~ date the notice was deemed complete, ~~entity name, the specification for the packaging and the associated product(s),~~ and the status of any

DRAFT

review of the notice by the Department~~ of such determination~~. Packaging or packaging components identified in the database shall be deemed not covered material unless and until the Department makes a determination pursuant to subparagraph (E) that the notice and any additional information submitted pursuant to that subparagraph fail to demonstrate that the packaging or packaging components qualify for the exclusion.

(E)~~(B)~~ At any time, the Department may request from an entity additional information supporting that entity's determination, which must be provided within 60 days. If such information is not provided, or if the Department believes the information provided is incomplete or insufficient as a basis for the determination, it shall notify the entity, which shall respond within 60 days. Following review of the information provided by the entity, and any further consultation with the entity and any state or federal government agencies (including the California Department of Food and Agriculture and the California Department of Public Health) that the Department deems advisable, the Department shall determine whether the notice and additional information have demonstrated that each~~the~~ packaging or packaging component qualifies for the exclusion. If the Department determines that the notice and additional information fail to demonstrate that certain packaging or packaging components identified in the notice ~~does not~~ qualify for the exclusion, the Department shall notify the entity via email and update the database accordingly. Those packaging or packaging components shall then ~~it shall~~ be considered covered material 180 days following such notification~~the Department's decision~~.

(F) If an entity submits a notice concerning the same or substantially the same packaging or packaging components during or after the 180-day period described in subparagraph (E), the packaging or packaging components shall be considered not covered material, with the database updated accordingly, only upon a determination by the Department that the notice and any additional information

DRAFT

have demonstrated that the packaging or packaging components qualify for the exclusion.

(G)~~(C)~~ In implementing this paragraph, the Department shall withhold from public disclosure any information that the entity appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.14.

(3) Packaging that is “refillable” or “reusable,” as defined in subdivision (af) of section 42041 of the Public Resources Code.

(4) Packaging used for “devices,” as defined in subsection (h) of section 321 of Title 21 of the United States Code.

(5) Packaging used for “drugs,” as defined in subsection (g) of section 321 of Title 21 of the United States Code, that require a prescription pursuant to subsection (b) of section 353 of Title 21 of the United States Code.

(6) Packaging for medical products. “Medical products” means products that are “drugs,” as defined pursuant to paragraph (5), that do not require a prescription and satisfy at least one of the following criteria:

(A) They are neither “cosmetics,” as defined in subsection (i) of section 321 of Title 21 of the United States Code, nor “soap,” as defined in section 701.20 of Title 21 of the Code of Federal Regulations.

(B) They are not a drug solely by virtue of containing a “sunscreen active ingredient,” as defined in section 352.3 of Title 21 of the Code of Federal Regulations.

(b) For purposes of subparagraphs (A) through (D) of paragraph (2) of subdivision (e) of section 42041, packaging used for a good or used to contain a good includes primary, secondary, and tertiary packaging. Notwithstanding the foregoing, tertiary packaging used for goods not identified in those subparagraphs is covered material regardless of whether the packaging also contains goods identified in those subparagraphs.

DRAFT

(c) For purposes of subparagraph (E) of paragraph (2) of subdivision (e) of section 42041, "[b]everage containers subject to the California Beverage Container Recycling and Litter Reduction Act" is defined according to sections 14504 and 14505 of the Public Resources Code and regulations adopted pursuant thereto.

(d) Nothing in this section precludes the Department from conducting investigations pursuant to subdivision (a) of section 42080 of the Public Resources Code, including to determine whether any packaging or other item qualifies for an exclusion identified in this section, or from taking any enforcement action consistent with its authority pursuant to this Act.

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

Reference: Sections 42040, 42041, 42060, 42080 and 42081, Public Resources Code.

Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware

(a) Packaging and food service ware that meet the requirements to be deemed "reusable" or "refillable" pursuant to this subdivision and subdivision (af) of section 42041 of the Public Resources Code are not covered material.

(1) For purposes of this subdivision and subdivision (af) of section 42041 of the Public Resources Code:

(A) The term "producer" includes a person that would be a producer pursuant to subdivision (w) of section 42041 of packaging and food service ware items that are reusable or refillable if the items were instead single-use and thus covered material items. The term "producers" also includes retailers and wholesalers that are alleged by the Department to be producers under subdivision (w) of section 42041 of the Public Resources Code because packaging or food service ware they claim to be

DRAFT

reusable or refillable do not satisfy the applicable requirements under subdivision (af) of section 42041 and this subdivision.

(B) The term “consumer” means the end user of an item, or the last person in the supply chain who acquires and uses an item. For example, a retailer that obtains and uses a covered material item in its business operations, without selling or otherwise further distributing the item, is the consumer of the item.

(2) Whether packaging or food service ware is reusable or refillable shall be assessed with respect to the circumstances under which items of the packaging or food service ware are potentially reused or refilled. Packaged goods or food service ware items sold, offered for sale, or distributed under circumstances that cause the good’s packaging or the food service ware items not to satisfy a requirement of subdivision (af) of section 42041 of the Public Resources Code shall be considered covered material, despite otherwise identical items being reusable or refillable because they satisfy the applicable requirements under the different circumstances present where they are sold, offered for sale, or distributed.

(3) For purposes of paragraphs (1) and (2) of subdivision (af) of section 42041 of the Public Resources Code:

(A) To be considered “reused or refilled by a producer,” packaging or food service ware items must be recovered from users of the items and returned into the supply chain. Subject to the limitations in this subdivision, recovery of items must use any systematic means, such as drop-off locations, return to the original point of sale, and pickup directly from consumers. Packaging or food service ware recovered through systems operated by third parties in the supply chain at the direction of, on behalf of, or otherwise directly or indirectly for a producer shall be considered returned to and reused or refilled by that producer.

(B) To be considered “reused or refilled by a consumer,” packaging or food service

DRAFT

ware items must be utilized multiple times by consumers for the same good without being recovered from the consumers or returned into the supply chain.

(4) For purposes of subparagraph (C) of paragraph (1) of subdivision (af) of section 42041 of the Public Resources Code, “infrastructure to ensure the packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles” is adequate if the requirements of this paragraph are met when an item is offered for sale, sold, or distributed.

(A) Unless the item was delivered directly to a consumer, there is at least one location for returning the item that is either:

(i) the same location where the item was obtained or delivered; or

(ii) within one mile of the location where the original item was obtained and has hours of operation that encompass, at a minimum, the hours of operation of the location where the item was obtained.

(B) If the item was ordered via remote means (e.g., Internet, phone, or any method not requiring the purchaser to visit any particular physical location) and was delivered directly to a consumer, the same means must be available for return of the item without requiring travel to a location other than the delivery location. If the item was ordered by visiting a particular physical location, such as a retail store, and was delivered directly to a consumer, return of the item must be able to be arranged via remote means or by visiting that physical location or a location described in clause (ii) of subparagraph (A).

(5) For purposes of subparagraph (C) of paragraph (2) of subdivision (af) of section 42041 of the Public Resources Code, the “infrastructure for bulk or large format packaging that may be refilled” is adequate and convenient, such that it enables the original packaging or food service ware item associated with a particular physical good to be

DRAFT

conveniently and safely reused or refilled by the consumer multiple times with that good, if it meets the requirements of this paragraph. Meeting the requirements of this paragraph does not necessarily require that the original item be returned or brought back to a store or other location.

(A) The good must be readily available (i.e., in stock), in a form that enables the original item to be reused or refilled with it, at one or more of the following locations:

(i) the same physical location where the original item is available;

(ii) a physical location within one mile of the location where the original item is available, provided that such location's hours of operation encompass, at a minimum, the hours of operation of the location where the original item is available;

(iii) the website where the original item is available; or

(iv) a website to which the consumer is directed, by labeling on the item or by the website specified in clause (iii), for purposes of obtaining the good.

(B) Notwithstanding subparagraph (A), this requirement shall be deemed fulfilled with respect to food service ware items that, by their nature, do not require infrastructure for bulk or large format packaging to be conveniently and safely used multiple times. Without limitation, such items include food service ware items used multiple times with food provided directly to consumers by food service establishments, food service ware items not sold or distributed in association with food, and food service ware items that are reused or refilled only at the same location where it is first used.

(b) The producer of items sold, offered for sale, or distributed in the state is in violation of the Act if, despite the producer's claim that such items are reusable or refillable for purposes of the Act, the items are not reusable or refillable and selling, offering for sale, or distributing them results in a violation of the Act. Violations may result from conditions that

DRAFT

exist throughout the state or conditions present only at certain locations or in geographic regions where the criteria for items to be considered reusable or refillable are not satisfied.

(c) Nothing in this section precludes the Department from conducting investigations pursuant to subdivision (a) of section 42080 of the Public Resources Code, including to determine whether packaging or food service ware is covered material.

Authority: Sections 40401, 40502, 42060, 42080 and 42081, Public Resources Code.
Reference: Sections 40062, 42040, 42041, 42050, 42057, 42080 and 42081 Public Resources Code.

Section 18980.2.2. Exclusion of Certain Types of Packaging

(a) Pursuant to subparagraph (F) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code, packaging used for the long-term protection or storage of a good having a lifespan of not less than five years is not covered material. Upon request by the Department, any person claiming not to be subject to the Act with respect to particular packaging on the basis that subparagraph (F) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code excludes the packaging from the definition of covered material shall substantiate such a claim. To be excluded, the packaging and the good associated with it must meet the following requirements:

(1) The good must be one that is not ingested, irreversibly used, destroyed, or expended through its ordinary use.

(2) For the packaging to be considered used for the long-term protection or storage of a good, the packaging must be more commonly retained and used for storage or protection of the good for at least five years, without being discarded, than discarded within five years. Such five-year period shall begin when the good and the packaging are sold or distributed to the user of the good.

DRAFT

(3) For the good to be considered to have a lifespan of not less than five years:

(A) The good must reasonably be expected to remain usable for at least five years after it is sold or distributed, as determined with respect to the totality of the circumstances, such as the good's marketing, evidence of the actual average duration of use, and the duration of use of similar goods under similar circumstances. This requirement shall be considered satisfied if the good is covered by an express, written five-year warranty with no exclusion for ordinary wear and tear. The warranty must guarantee that the consumer can obtain a full refund or replacement, with no cost for returning the good, if the good does not remain usable at least five years when subject to ordinary or foreseeable use.

(B) Use of the good must not be limited by the depletion of nonreplaceable constituent parts, pieces, or other materials, so that the duration of its usability depends on its continued ability to function rather than on how quickly such materials are depleted or discarded. Examples of such goods include, but are not limited to: multi-piece toys sold in containers and designed to be stored in the containers when not in use; tools sold in rigid containers and designed to be stored in the containers when not in use; and board games or puzzles contained in paperboard boxes.

(b) Pursuant to subparagraph (A) of paragraph (4) of subdivision (s) of section 42041 of the Public Resources Code, material that is part of or directly connected to packaging but is of de minimis weight or volume is not itself packaging for purposes of the Act.

(1) For purposes of this subdivision, the following definitions apply:

(A) "Component" refers both to a component, as defined in paragraph (4) of subdivision (a) of section 18980.1, and to material that would be a packaging component if it were not of de minimis weight or volume.

(B) "Independent plastic component" is a packaging component, or a group of

DRAFT

components, that wholly or partially comprises plastic and for which both of the following are true:

(i) It is a detachable component, or a group of components that, if considered a single component, would satisfy the criteria for being a detachable component.

(ii) It is not a coating, film, tape, sticker, label, or other sheet-like material adhered to the surface of another component or group of components.

(2) A component or group of components is of de minimis weight or volume if it satisfies the following requirements:

(A) It is not an independent plastic component.

(B) Due to its small size or weight and other relevant characteristics, if any, it has no effect on whether any covered material satisfies any of the recyclability criteria provided in section 42355.51 of the Public Resources Code.

(C) Due to its small size or weight and other relevant characteristics, if any, it does not prevent recyclability pursuant to subdivision (c) of section 18980.3 or make recycling or composting more difficult pursuant to subdivision (h) of section 18980.6.7.

(D) Designating it as having a de minimis weight or volume enables usage of recyclable, compostable, reusable, or refillable packaging.

(E) Its disposal, processing, and handling does not create health or safety risks or have a significant effect on the environment.

(F) Its use in packaging is not prohibited under any law of this state or federal law.

(3) The PRO or an Independent Producer may request that the Department deem certain components or groups of components to be of de minimis weight or volume. Requests must be in writing and describe each component or group of components at issue with

DRAFT

sufficient detail, such as its purpose, range of physical characteristics, and the types of packaging or goods with which it is conventionally used, to clearly distinguish it from other materials. The request must include supporting evidence and explanation establishing that the component or group of components meets the requirements of paragraph (2).

(4) The Department shall publish on its website a list of ~~its~~ components and groups of components, whether proposed in requests submitted pursuant to paragraph (3), alleged to be of de minimis weight or volume in response to a notice of violation, or otherwise identified by the Department, that it has determined to be of de minimis weight or volume. The Department shall reevaluate each determination no more frequently than every five years.

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

Reference: Sections 40062, 42040 and 42041, 41780.01 and 42355.51 Public Resources Code.

Section 18980.2.3. Exemptions for Specific Material with Demonstrated Recycling Rates

(a) For purposes of the exemption from the definition of “covered material” pursuant to subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code:

(1) The person seeking to demonstrate that packaging or food service ware is entitled to the exemption shall be considered the “producer” of such packaging or food service ware.

(2) The person shall also be considered a producer for purposes of the registration requirements provided in section 18980.10, regardless of whether the Department

approves the exemption.

(3) As provided in clause (ii) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041, only the particular packaging or food service ware items that satisfy the requirements of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 are deemed not covered material. For particular items to satisfy those requirements, all the following must be true:

(A) The items are collected by alternative collection programs or programs that collect the items at non-residential sites.

(B) After being collected, none of the items are commingled with unsorted material collected by curbside programs.

(C) Some or all of the materials originating from the items are accepted by the end market. This requirement must be shown to have been satisfied as of no later than January 1, 2027, and as of every two years thereafter.

(4) To satisfy the annual recycling rate requirements of subclause (IV) of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code, the packaging or food service ware must be shown to have had a recycling rate of at least 65 percent for 2024, 2025, and 2026, and at least 70 percent for 2027 and each year thereafter. The rate for each year shall be determined as of January 1 of the following year, calculated as described in subdivision (b) of section 18980.3.2. The recycling rates shall be with respect only to materials originating from the items that satisfy the requirements of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041, as described in paragraph (3) of this subdivision.

(5) The producer must maintain complete, up-to-date data regarding collection and recycling for purposes of demonstrating that the packaging or food service ware items

DRAFT

meet the requirements of this section. If complete data for a certain calendar year is not yet available, data for a twelve-month period partially encompassing that year and the preceding year may be used to calculate the recycling rate for that year.

(b) The person seeking the exemption shall ~~electronically~~ submit an application to the Department electronically via email. If the Department has given notice via its website that an online portal is available for application submittal, the application shall instead be submitted electronically via that portal. The Department shall grant the exemption if the application establishes that the packaging or food service ware items satisfy each criterion in subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code. The application shall include, but not necessarily be limited to the following:

(1) Name, description, and other information sufficient to uniquely identify the packaging or food service ware items for which an exemption is sought.

(2) Description of how and where the packaging or food service ware items are collected, processed, and recycled, including:

(A) All means through which the packaging or food service ware items, including materials originating from them, are collected, and the entities, programs, locations, and types of locations that collect them. Such information must demonstrate that the packaging or food service ware items to be exempted are collected as described in subparagraph (A) of paragraph (3) of subdivision (a).

(B) All means through which the packaging or food service ware items, including materials originating from them, are processed and the entities that process them. Such information shall demonstrate that, after being collected, none of the items are commingled with unsorted material collected by curbside programs.

(C) A list of responsible end markets where the packaging or food service ware items,

DRAFT

including materials originating from them, are accepted.

(D) If any of the end markets identified pursuant to subparagraph (C) are not identified as responsible end markets in an approved PRO or Independent Producer annual report, information demonstrating that those end markets meet the criteria set forth in subdivision (a) of section 18980.4.

(3) Data and calculations demonstrating that the items satisfy the recycling rate requirements of subclause (IV) of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code, as further described in paragraph (4) of subdivision (a) of this section, through the most recently concluded calendar year.

(c) 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 mandatory disclosure applies. The Department shall withhold from public disclosure portions of the application that the applicant appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.14.

(d) For any producer that is a participant of a PRO with respect to the covered material to be exempted, the PRO may submit the application on behalf of the producer.

(e) When approving the exemption, the Department may supplement or modify the description of the items to ensure that it clearly describes the material to which the exemption applies and distinguishes such material from covered material to which it does not apply, such as covered material items that do not satisfy the requirements of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e) of section 42041 of the Public Resources Code.

(f) If approved, an exemption pursuant to this section shall be deemed effective as of the

DRAFT

application submittal date. If the application was submitted before January 1, 2028, such that it was based only on pre-2027 recycling rates, it shall be valid for one year from the submittal date. The exemption is otherwise valid for two years from the submittal date.

(g) To renew an exemption granted pursuant to this section, the producer must submit a renewal request before the exemption expires. For an exemption that expires during 2028, a renewal request may be based only on pre-2027 recycling rates, but a renewal request based on the 2027 recycling rate must be submitted no later than January 1, 2029. If approved, renewed exemptions are deemed effective as of the request submittal date and expire according to the same terms described in subdivision (f) for initial application. To request renewal, the applicant must do the following:

(1) If the applicant believes the information provided in the application for the exemption pursuant to paragraphs (1) and (2) of subdivision (b) remains accurate and valid, submit a certification to such fact. The certification shall be ~~submitted electronically~~ in the form of a letter to the Department and shall be submitted electronically via email. If the Department has given notice via its website that an online portal is available for letter submittal, the letter shall instead be submitted using that portal. The Department shall grant renewal unless it determines that information or evidence included in the application is no longer accurate and valid, that information or evidence in the application is out of date, or that changed circumstances have otherwise rendered the previous basis for granting the exemption invalid or insufficient. If the producer cannot provide such certification, a new application pursuant to subdivision (b) is required.

(2) If the information submitted pursuant to paragraphs (1) and (2) of subdivision (b) is no longer accurate and valid, submit an updated application. The Department shall evaluate the application in the same manner as it reviews initial applications.

(3) Provide the most up-to-date available data demonstrating recycling rates for purposes of subclause (IV) of clause (i) of subparagraph (H) of paragraph (2) of subdivision (e)

DRAFT

of section 42041 of the Public Resources Code, as described in paragraphs (4) and (5) of subdivision (a), from 2024 through the most recently concluded calendar year.

(4) For end markets not already identified by a PRO or Independent Producer pursuant to an approved plan, verify that the end markets used by the applicant continue to meet the criteria specified in 18980.4(a). Each verification shall be submitted with the renewal and include at minimum, the following:

(A) Information demonstrating that a responsible end market met or exceeded its average recycling yield threshold, including a detailed explanation of how the entity measured and calculated the amount of material that was accepted and the amount of covered material that was successfully recycled by the responsible end market.

(B) All information and evidence related to any failure of an end market to satisfy the requirements to be a responsible end market, as described in subdivision (a) of section 18980.4.

(C) Descriptions of any corrective actions that were taken.

(D) Descriptions of any instances where the applicant prohibited sending materials to an end market due to that entity's noncompliance.

(E) Records of complaints made against the end market, including records described in subparagraph (B) of paragraph (2) of subdivision (a) of section 18980.4 maintained by the end market.

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

Reference: Sections 40062, 42040 and 42041, Public Resources Code.

DRAFT

Section 18980.2.4. Exemptions for Certain Covered Materials

(a) Only a PRO or an Independent Producer may submit a request for an exemption pursuant to paragraph (3) of subdivision (a) of section 42060 or paragraph (4) of subdivision (a) of section 42060 of the Public Resources Code. The effect of such an exemption is that exempted covered material may be sold, offered for sale, imported, or distributed regardless of whether the covered material complies with section 42050 or subdivision (i) of section 42057 of the Public Resources Code. The exemption does not affect the status of the single-use packaging or single-use plastic food service ware as covered material and does not otherwise change the obligations of producers with respect to the covered material, such as reporting and payment of PRO fees.

(b) A PRO or an Independent Producer registered with the Department pursuant to subdivision (a) of section 18980.10 may request an exemption under this section by ~~electronically~~ submitting an application to the Department as described in subdivision (c). The Department shall only consider an application if it contains all the elements prescribed in this section.

(1) A PRO may establish any procedure it deems appropriate for receiving applications prepared in whole or part by a producer or group of producers and deciding whether to submit the applications to the Department.

(2) Notwithstanding paragraph (1), a PRO shall not submit to the Department an application unless the PRO has reviewed the application and considers it to meet the standards set forth in this section for approval.

(c) The application shall be submitted ~~electronically~~ to the Department electronically via email. If the Department has given notice via its website that an online portal is available for application submittal, the application shall instead be submitted electronically via that portal.~~in a form and manner prescribed by the Department~~ The application shall ~~and~~ include all the following:

DRAFT

(1) Name, description, and other information sufficient to uniquely identify the packaging or food service ware for which an exemption is sought.

(2) 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.

(3) Except as otherwise provided with respect to entire classes of products or covered materials under section 18980.2.7, identification of all products or potential products that would be covered by the exemption because they use or constitute covered material. Products shall be identified by name, description, and other information sufficient to uniquely identify the products. 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 a global trade item number, such as a universal product code (UPC).

(4) Depending on the basis for the exemption, the following information and analyses:

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

(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, including, but not limited to: how they are unique; the circumstances that render them unique; their technical, legal, and financial elements, as applicable; and how the characteristics of the covered material cause the challenges.

(iii) The practical necessity of the covered material that justifies exempting the covered material from the Act despite it not complying with the requirements

DRAFT

identified according to clause (i). Without limitation, the justification shall address the extent to which the exemption is necessary to minimize risks 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 infeasible or unreasonable. At a minimum, such description shall address technological or financial limitations, if any, and the extent to which the alternatives present challenges or risks similar to those described pursuant to clauses (i) through (iii).

(v) To the extent not otherwise addressed, potential impacts of the covered material on disadvantaged communities, low-income communities, or rural areas from exempting or not exempting the covered material.

(vi) Current impacts of the covered material on the existing collection, processing, recycling infrastructure, and the effect that the exemption may have on those impacts.

(vii) If applicable, a description of why the covered material cannot be recycled, composted, or source reduced.

(viii) A proposed plan pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of section 42060 of the Public Resources Code to phase the covered material into the requirements of the Act, or an explanation of how 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 to prevent the exemption, if granted, from interfering with the intent of the Act, including achievement of the requirements of section 42050 of the Public Resources Code and the policy goal established in section 41780.01 of the

DRAFT

Public Resources Code as it relates to covered material. 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 progress requirements 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. The proposed plan shall also provide for periodic reporting to the Department demonstrating implementation of the phase-in plan and the extent to which the plan's yearly progress requirements have been met.

(B) An application for an exemption pursuant to paragraph (3) of subdivision (a) of section 42060 of the Public Resources Code may be based on the challenges involved in establishing an alternative collection program that satisfies the requirements of paragraph (5) of subdivision (d) of section 42355.51 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 program that satisfies the applicable requirements of paragraph (5) of subdivision (d) of section 42355.51.

(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 to be exempted, a complete description of the program, its

DRAFT

current status, and plans for further development. Such description shall include, but not necessarily be limited to:

(I) since the program's inception, the amount of the covered material being collected, by month or year, as necessary to provide details about the program's performance over time, 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 explanation of the efficacy of such efforts;

(IV) details regarding consumer convenience, efforts to facilitate and incentivize participation, and the extent to which consumer behavior, rather than the collection program's infrastructure and operations, is a barrier to recovery of the covered material;

(V) educational outreach and marketing activities to raise awareness of the program;

(VI) names of entities that operate or partner with the program, including recycling service providers, if any, and any planned partnerships or agreements with additional entities;

(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).

DRAFT

(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 paragraph (4) of subdivision (a) of section 42060 of the Public Resources Code based on health and safety reasons:

(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 (vii) of subparagraph (A), but with respect to the health and safety concerns asserted in the request and the challenges related to them, rather than to the unique challenges referred to in that subparagraph.

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

(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.

DRAFT

(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 (vii) of subparagraph (A), but with respect to the safety issues asserted pursuant to this subparagraph rather than to the unique challenges referred to in 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.

(E) For an application requesting an exemption pursuant to paragraphs (3) or (4) of subdivision (a) of section 42060 of the Public Resources Code, the application shall include an analysis of:

(i) whether the justification for the exemption would necessarily apply to any other products or covered material, such as those having the same or similar composition, facing similar compliance challenges, or presenting similar health or safety concerns as the ones for which the exemption is sought;

(ii) the likely consequences of the same exemption being approved for all such products or covered materials; and

(iii) circumstances, if any, that the applicant contends justify a duration of longer

DRAFT

than two years pursuant to paragraph (1) of subdivision (g).

(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 mandatory disclosure applies. The Department shall withhold from public disclosure portions of the application that the applicant appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.14.

(e) Except as otherwise provided in section 18980.2.7, if an application is approved by the Department, the exemption for covered material shall apply only to the products and covered material identified in the application. When approving the exemption, the Department may, in its sole discretion, supplement or modify the application's descriptions of the covered material and products as necessary to ensure that the application describes the covered material and products to which the exemption applies.

(f) The Department shall evaluate applications as follows:

(1) The Department shall reject any application that does not contain the required elements described in this section.

(2) For an exemption request based on unique challenges (paragraph (3) of subdivision (a) of section 42060 of the Public Resources Code):

(A) The request must clearly and convincingly establish that compliance with the Act is impractical due to challenges unique to the covered material or related circumstances.

(B) The request must clearly and convincingly establish that the exemption and the accompanying phase-in plan, if any, will promote achievement of the requirements of section 42050 of the Public Resources Code in a manner consistent with the intent of the Act, as described in section 42040 of the Public Resources Code, and

DRAFT

the policy goal established in section 41780.01 as it relates to covered material.

(C) If the exemption request does not include a phase-in, it shall be rejected unless a phase-in plan would be unfeasible or would be unnecessary to prevent the exemption from harming implementation or enforcement of the Act or otherwise interfering with the intent of the Act, including achievement of the requirements of section 42050 of the Public Resources Code and the policy goal established in section 41780.01 as it relates to covered material.

(D) Notwithstanding subparagraph (B), the Department may approve the exemption based on an alternative phase-in plan developed by the Department that it determines satisfies the requirement of that subparagraph more clearly than the plan submitted by the applicant, and approval of the exemption shall be conditioned on the applicant's acceptance of such phase-in plan.

(E) Unless the exemption was approved without a phase-in plan, its approval is conditioned on successful implementation of such plan and compliance with all its requirements. In the reports required under the phase-in plan, the applicant shall report to the Department the extent to which it has implemented the phase-in plan and satisfied its progress requirements. If implementation has been unsuccessful or any requirement has not been satisfied, the applicant shall explain the reasons for such noncompliance. The Department shall terminate the exemption unless it determines that the noncompliance was reasonably unavoidable due to economic, technological, legal, or other impediments not caused by the applicant and that the exemption is still appropriate for the reasons required pursuant to subparagraphs (A) and (B).

(3) An exemption request based on section 42060(a)(4) of the Public Resources Code) shall be approved if the application clearly and convincingly establishes both of the following:

DRAFT

(A) Compliance with the Act is not possible without increasing overall risks to health or safety or risks of significant effects on the environment compared to the risks posed by exempting the packaging or food service ware.

(B) The exemption will not make it more difficult for any other producer to satisfy the requirements of section 42050 of the Public Resources Code.

(g) Upon approval, the exemption is valid for two years, except that:

(1) The Department may deem the exemption valid for a longer period, which shall be no longer than five years, if it determines that there is no reasonable likelihood that the circumstances justifying the exemption will change and render exemption no longer justified within the longer period.

(2) Subject to the termination provisions in subparagraph (E) of paragraph (2) of subdivision (f), a phase-in plan may establish a longer duration.

(3) All exemptions are subject to the termination provisions of subdivision (i).

(h) To renew an exemption, the PRO or Independent Producer must request renewal between 120 days and 90 days before the exemption would otherwise expire. If approved for renewal, the exemption shall be valid for an additional two years or more, as described in subdivision (g), from the date the exemption otherwise would have expired.

(1) If all the information and evidence submitted with the application remains accurate and valid, such that the original justification for the exemption remains current and sufficient, the PRO or Independent Producer may request renewal by certifying as such in writing. The certification shall be in the form of a letter to the Department, submitted electronically <u>via email</u>. <u>If the Department has given notice via its website that an online portal is available for letter submittal, the letter shall instead be submitted electronically via that portal.</u> The Department shall grant renewal unless it determines that information or evidence included in the application is no longer

DRAFT

accurate and valid, that information or evidence in the application is out of date, or that changed circumstances have otherwise rendered the previous basis for granting the exemption invalid or insufficient.

(2) If any information or evidence in the application is no longer accurate and valid, or changed circumstances have otherwise rendered the original justification for the exemption no longer sufficient, the PRO or Independent Producer must file a new application to renew the exemption. The Department shall evaluate the application in the same manner as it reviews initial applications.

(i) Notwithstanding any other provision of this section, the Department shall terminate an exemption if it determines any of the following:

(1) The information provided in the application for the exemption was incomplete, or false, or the relevant circumstances have materially changed such that the information is no longer accurate;

(2) The exemption harms implementation or enforcement of the Act, or the basis for granting the exemption is otherwise no longer valid; or

(3) Conditions or requirements of a phase-in plan established pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of section 42060 of the Public Resources Code have not been satisfied.

(j) The Department shall provide written notice of a termination pursuant to subdivision (i). If the basis for termination is that the PRO or Independent Producer negligently or intentionally submitted incomplete or false information, termination shall be effective immediately upon receipt of the notice. Otherwise, termination shall be effective as of 120 days after receipt of the notice, except that, if the PRO or Independent Producer submits a new application at least 90 days before the effective date of the termination, termination shall be delayed until the Department approves or denies the application.

DRAFT

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

Reference: Sections 40062, 42053, 42060 and 42355.51, Public Resources Code.

Section 18980.2.5. Covered Material Category List Updates

(a) The Department shall review and, if necessary, update the CMC list within the applicable timeframe specified by subdivisions (e) or (f) of section 42061 or subdivision (a) of section 42082 of the Public Resources Code. The period during which the list must be reviewed and updated pursuant to subdivisions (e) or (f) of section 42061 of the Public Resources Code shall be based on calendar years, not the date of the most recent review or update.

(b) For purposes of subdivision (a), updates are necessary if new information or changed circumstances renders the list out of date, incomplete, or otherwise inaccurate with respect to how it relates to waste generation and the handling and end-of-life management of covered material.

(c) To update covered material category recycling rates, the Department shall review the sources of information identified in paragraph (2) of subdivision (b) of section 42061 of the Public Resources Code and any additional information submitted pursuant to paragraph (3) of subdivision (f) of section 42061 of the Public Resources Code. Data and information obtained by the Department through characterization studies, needs assessments, or other studies shall be considered data and information received by the Department for purposes of subparagraph (I) of paragraph (2) of subdivision (b) of section 42061 of the Public Resources Code.

(d) To update the compostability determinations of the CMC list pursuant to subdivision (e) of section 42061 of the Public Resources Code, the Department shall apply the criteria set

DRAFT

forth in subdivision (b) of section 18980.3.3 of these regulations.

(e) To update the recyclability determinations of the CMC list pursuant to subdivision (e) of section 42061 of the Public Resources Code, the Department shall follow the requirements and apply the criteria set forth in section 18980.3 of these regulations.

(f) Subject to the following restrictions, persons may submit information to the Department for consideration.

(1) If the information is submitted after April 1 in a given year, the Department will consider the information for purposes of updates made during that year only if it determines that the information is sufficiently limited such that the Department can evaluate it before January 1 of the next calendar year.

(2) Information intended to inform the Department's review of, or updates to, the CMC list shall be submitted electronically via email. If the Department has given notice via its website that an online portal is available for submittal of the information, the information shall instead be submitted electronically via that portal.~~in a form and manner prescribed by the Department.~~

(g) Notwithstanding any other provision of this chapter, updates to the CMC list that impose additional obligations on local jurisdictions or recycling service providers under subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect with respect to those obligations until one year after the CMC list incorporates the change or, if the Department publishes the updated list with an effective date later than the publication date, one year after such publication.

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

Reference: Sections 42041, 42060.5 and 42061, Public Resources Code.

DRAFT

Section 18980.2.6. Covered Material Category List Recommendations

(a) A PRO, participant producer, or Independent Producer may recommend changes to the CMC list, subject to the same time constraints applicable to information submissions under subdivision (f) of section 18980.2.5.

(b) All recommendations shall be submitted electronically via email. If the Department has given notice via its website that an online portal is available for submittal of recommendations, recommendations shall instead be submitted electronically via that portal. ~~and~~ Recommendations shall include the following:

(1) A description of the recommended changes, specifying which elements of the CMC list are impacted by the recommended changes.

(2) An identification of covered material categories affected by the recommended changes, including those suggested for addition to or removal from the CMC list.

(3) An explanation of how any changes resulting from accepting the CMC list recommendations will impact the producer responsibility plan, and how the plan must be adapted, if at all, to ensure that producers continue to meet the requirements of section 42050 of the Public Resources Code. As part of this explanation, the PRO shall describe the financial implications, if any, of the recommended changes on the fee schedule for participant producers and eco-modulated formulas.

(4) A list of additional producers, if any, supporting the recommendation, including contact information for each.

(5) An explanation of the necessity of the recommended changes. Such explanation may include, without limitation, data not considered in the existing evaluations, changes in infrastructure, updated acceptance rates at responsible end markets, and new

DRAFT

innovations in materials, products, or technologies.

(c) Participant producers that submit recommendations to the Department shall additionally submit a copy of such recommendations to any PRO in which they participate. Independent Producers shall submit recommendations to the Department.

(d) The Department may request additional information from a PRO, participant producer, or Independent Producer as necessary to decide whether to update the list pursuant to section 18980.2.5 in the manner recommended, such as:

(1) Data, analysis, forecasting, or projections pertaining to the recommendations and a description of the methodologies relied upon.

(2) Financial implications of recommended changes on affected entities, including potential effects of the recommended changes on existing responsible end markets and intermediate supply chain entities and the extent to which the changes will necessitate expansion of existing facilities or creation of new ones.

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

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

Section 18980.2.7. Scope of Exemptions

(a) Applications for exemptions pursuant to this article may request that the exemption be applicable to an entire class of products or covered materials having certain characteristics in common. The class must be clearly defined according to the combination of characteristics that justify the exemption, so that items to which the exemption would apply are readily distinguishable from those to which it would not apply. The Department shall deem the exemption to apply to such class if the application's

DRAFT

justification for the exemption necessarily applies to all products or covered material within the class.

(b) If the Department determines that an application asserts a justification that necessarily applies to a class of products or covered materials, the applicant shall be required to amend the application to cover such class as described in subdivision (a).

(c) An exemption for a class of products or covered materials may not necessarily cover all covered materials in a particular covered material category.

(d) When granting a class-wide exemption, the Department may supplement or modify the definition of the class set forth in the application to ensure that it clearly identifies the items to which it applies and distinguishes them from the items to which it does not apply.

(e) A class-wide exemption shall apply to all products or covered materials within the class, regardless of whether the products or covered materials were in existence when the Department issued the exemption.

(f) The Department shall publish on its website all issued exemptions that apply to classes of products or covered materials.

(g) The provisions of this article concerning expiration, renewal, and termination of exemptions apply to an exemption for a class of products or covered materials, except that an Independent Producer of the exempted covered material may request that the exemption be renewed by submitting a new application meeting the applicable requirements of this article, regardless of whether it had submitted the application on which the exemption was originally based.

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

Reference: Sections 42040, 42041, 42050, 42051, 42051.1, 42053, 42057, 42060, 42061 and

DRAFT

42067, Public Resources Code.

ARTICLE 3: Evaluations of Covered Material and Covered Material Categories

Section 18980.3. Recyclability

(a) For the purposes of this chapter and the Act, and subject to paragraph (2) of subdivision (b), a covered material category shall be considered recyclable only if all covered material items within the category necessarily satisfy the categorical requirements for being considered recyclable as set forth in paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code.

(b) To be considered recyclable for purposes of subdivision (b) of section 42050 of the Public Resources Code, covered material items 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, satisfy the additional criteria listed in paragraph (3) of subdivision (d) of section 42355.51 of the Public Resources Code, and, if applicable, satisfy the requirements of subdivision (d); or

(2) be excepted from the requirements of paragraphs (2) and (3) of subdivision (c) of section 42355.51 of the Public Resources Code pursuant to paragraphs (4), (5) or (6) of subdivision (d) of section 42355.51 of the Public Resources Code.

(c) For purposes of determining compliance with the criteria identified in subparagraphs (A) and (B) of paragraph (3) of subdivision (d) of section 42355.51 of the Public Resources Code, plastic covered material includes components, inks, adhesives, or labels that prevent recyclability pursuant to the design guide incorporated into a producer responsibility plan pursuant to paragraph (1) of subdivision (j) of section 18980.8 if,

DRAFT

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 paragraph (1) of subdivision (b) of section 18981) and provided such results to the PRO (for PRO plan participants) or to the Department (upon request by the Department).

(d) In addition to meeting the requirements of subdivision (c), covered material that is packaging used with food or food service ware must comply with the material composition restrictions set forth in paragraphs (1) and (3) of subdivision (a) of section 17989.2 of this division. Packaging is considered used with food if it is used for the containment, protection, handling, delivery, or presentation of food and may come in direct contact with food through ordinary usage. 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 paragraph (1) of subdivision (b) of section 18981) verifying compliance with this subdivision. A PRO may provide such test results on behalf of a producer.

(e) For purposes of paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code:

(1) The “product or packaging in the program” encompasses all the covered material items sold or distributed in the state that are eligible for recovery by the program.

(2) The percentage of the items recovered by the program is the percentage of the total weight of the items sold or distributed during the one-year period described in subparagraph (3) that was collected by the program during the most recent one-year period. That percentage shall be used for determining whether the minimum recovery percentage requirement has been met.

DRAFT

(3) To minimize inclusion of items not both sold or distributed and collected during the periods used in the percentage calculation, the one-year period used in the calculation for sales or distribution shall precede the one-year period used for collection according to the average time between the items' sale or distribution and collection.

(4) If the program has not been in existence for at least one year, the calculation shall be applied to the partial year of its existence. The program shall be considered to have begun on the date the items were first sold or distributed.

(f) For purposes of paragraphs (4) and (5) of subdivision (d) of section 42355.51 of the Public Resources Code:

(1) Participant producers shall demonstrate to their PRO how the covered materials meet the requirements of paragraphs (4) or (5) of subdivision (d) of section 42355.51 of the Public Resources Code. The "product or packaging in the program" encompasses all the covered material items sold or distributed in the state that are eligible for recovery by the program.

(A) A PRO shall establish a process for evaluating whether a particular covered material meets the requirements. The process shall be described in the PRO plan. The description shall demonstrate how the PRO will obtain and use reliable data and reasonably calculate the relevant rates.

(B) A PRO shall specify in its annual report which covered materials are considered recyclable pursuant to paragraphs (4) or (5) of subdivision (d) of section 42355.51 of the Public Resources Code and which participants are producers of the covered materials.

(C) A PRO shall conduct annual audits and investigations of participant producers to ensure that the covered materials identified pursuant to subparagraph (B) continue to meet the requirements specified in paragraphs (4) or (5) of subdivision (d) of

DRAFT

section 42355.51 of the Public Resources Code. The scope of these audits and investigations shall, at a minimum, include verification of data received from the PRO or participant producers and visits to at least two intermediate supply chain entities and two end markets that collect, process, or recycle the material under investigation, unless there is only one intermediate supply chain entity or one end market, in which case the audit shall visit that entity or end market. 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. 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 they claim meet the requirements of paragraphs (4) or (5) of subdivision (d) of section 42355.51 of the Public Resources Code and provide data supporting such claims.

(B) Annually demonstrate to the Department that the covered material continues to meet the requirements of paragraphs (4) or (5) of subdivision (d) of section 42355.51 of the Public Resources Code. The annual report shall include, at a minimum, 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.

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

(a) The Department's identification of covered material categories that are trending towards

DRAFT

being considered recyclable as described in subparagraph (B) of paragraph (3) of subdivision (a) of section 42061 of the Public Resources Code shall be subject to this section.

(b) To be considered recyclable under this section, a covered material category must first be preliminarily identified by the Department when the Department publishes a material characterization study update or additional information pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) of subdivision (d) of section 42355.51 of the Public Resources Code. The Department may preliminarily identify a covered material category only if it preliminarily concludes 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 within the covered material category.

(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 paragraph (2) of subdivision (d) of section 42355.51 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 and ~~. The Department shall provide an opportunity for public engagement and~~ allow 30 days for public review and submission of comments and ~~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

DRAFT

paragraph (2) of subdivision (d) of section 42355.51 of the Public Resources Code before the next mandatory update to the material characterization study.

(2) The extent to which statewide recycling programs and alternative collection programs, such as take-back systems, as a whole have contributed to the increases in statewide collection and sorting recognized by the Department. For purposes of this section, “statewide recycling programs” refers to the aggregate of all recycling programs throughout the state administered by local jurisdictions or recycling or composting service providers under contract by a local jurisdiction.

(3) How designation of the covered material category as recyclable on the list maintained pursuant to subdivisions (c) and (e) of sections 42061 of the Public Resources Code is necessary to avoid disruption of ongoing increases in collection, sorting, and development of 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 paragraphs (1) through (3):

(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 subdivision (d) 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 responsible end markets will increase.

DRAFT

(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 collection programs, such as takeback systems, or will affect anticipated alternative collection 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 withdrawn unless it is confirmed within one year after the Department publishes it pursuant to subdivision (b). If the Department confirms any preliminary identification of a covered material category, the Department shall update the status of the covered material category on the list maintained by the Department under subdivisions (c) and (e) of section 42061 of the Public Resources Code. The preliminary identification shall be deemed confirmed when the Department either updates the covered material category on the list maintained pursuant to subdivisions (c) and (e) of section 42061 of the Public Resources Code or publishes on its internet website its decision to do so.

(e) The Department shall confirm the identification of a covered material category pursuant to subdivision (d) if the following criteria have been met:

(1) The comments and submissions received pursuant to this section clearly demonstrate, with reference to specific information and evidence, that:

(A) Improvements in statewide recycling programs or alternative collection 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 maintained by the Department

DRAFT

pursuant to subdivisions (c) and (e) of section 42061 of the Public Resources Code will result in disruption of increased collection or sorting of covered materials, or 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) Identification of a covered material category pursuant to this section shall be reconsidered by the Department according to the process set forth in this section upon each update to the study or publication of additional information pursuant to clauses (ii) or (iii) of subparagraph (B) of paragraph (1) of subdivision (d) of section 42355.51 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 subparagraph (B) of paragraph (3) of subdivision (a) of section 42060 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.

Section 18980.3.2. Methodology for Recycling Rate Determination

(a) For purposes of calculating recycling rates, any process meeting the definition of recycling in subdivision (aa) of section 42041 of the Public Resources Code is recycling, including the production of compost.

(b) Unless otherwise provided in this chapter, recycling rate shall be calculated using data

DRAFT

and methodology as described below:

(1) Recycling rate shall be calculated as the weight of covered material that is recycled divided by the sum of the total weight of covered material disposed of, as described in paragraph (3), and the weight of covered material recycled, as described in paragraph (2). The recycling rate as of a particular date shall be calculated over the latest twelve-month period before such date for which sufficient data to make the calculation exists.

(2) For the purposes of this calculation, the weight recycled shall be determined as follows:

(A) For end markets specified in paragraphs (1) through (5) of subdivision (b) of section 18980.4, the weight recycled shall be calculated at the point that the material is sold or transferred by a responsible end market as recycled content feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products. The weight recycled shall be adjusted as necessary to exclude the proportion of the recycled content feedstock derived from materials other than covered material.

(B) For end markets specified in paragraph (6) of subdivision (b) of section 18980.4, the weight shall be calculated at the point that the material is accepted by the responsible end market. Covered material removed for further processing or disposal by the responsible end market after acceptance shall not be included. The disposal portion shall be included in the calculation pursuant to subparagraph (3).

(C) For end markets not specified in paragraphs (1) through (6) of subdivision (b) of section 18980.4, the PRO or Independent Producer shall identify in their study conducted pursuant to paragraph (1) of subdivision (b) of section 18980.4.3 whether subparagraph (A) or (B) above is most appropriate for estimating the weight recycled for that end market.

DRAFT

(3) For the purposes of this calculation, the weight disposed of is the sum of the following:

(A) Weight of covered material that is sent to an end market that does not qualify as a responsible end market pursuant to section 18980.4.

(B) Weight of covered material disposed of.

(4) The Department shall consider the following sources of data when calculating recycling rates:

(A) Data from a PRO regarding recycling and generation of covered materials, submitted 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 local jurisdictions, producers, or other entities.

(D) Data described in paragraph (2) of subdivision (b) of section 42061 of the Public Resources Code that it deems relevant. Data may include information obtained through characterization studies, needs assessments, and other studies.

(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, except as established in subdivisions (f) and (g).

(1) For covered material components that are not detachable, a single recycling rate shall be calculated for the covered material category applicable to the item comprising those components rather than calculating a recycling rate for each component.

(2) For covered material components that are detachable, a recycling rate shall be calculated using the covered material category applicable to each component.

DRAFT

(3) If the Department determines that a recycling rate can be calculated for a group of components representing more than one covered material category and that 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.

(e) If recycling rate cannot be calculated because data have not been reported to the Department, then the recycling rate shall be marked as “unreported.” This rate will be assumed not to meet the required rate under subdivision (c) of section 42050 of the Public Resources Code.

(f) For a new covered material category created after 2024 for which insufficient information exists to calculate the recycling rate, the recycling rate shall be marked as “'pending”' and assumed to achieve the required rate under subdivision (c) of section 42050 of the Public Resources Code, as may be adjusted pursuant to section 42062 of the Public Resources Code. The “'pending”' status shall apply until one year of data is available for the covered material category, at which point the recycling rate shall be calculated using that data. The “pending” status shall not be construed as having any effect on whether covered material is considered recyclable or compostable for purposes of subdivision (c) or (d) of section 42061 of the Public Resources Code, or for any other purpose.

(g) When a PRO or Independent Producer calculates an estimated recycling rate and reports it to the Department, the methodology described in subdivision (b) or an alternative methodology described in the PRO’s or Independent Producer’s approved plan shall be used. The Department will approve an alternative methodology as part of a plan if the plan demonstrates that the methodology is the most accurate way to calculate the recycling rate, as defined in subdivision (ab) of section 42041 of the Public Resources Code. The description of the methodology shall explain why the methodology is necessary or otherwise preferable, including any practical limitations on available data underlying the

DRAFT

necessity or preferability, and disclose the data and assumptions used in the calculation.

(h) For purposes of demonstrating recycling rates pursuant to subdivision (i) of section 42057 of the Public Resources Code:

(1) "All expanded polystyrene" means covered material comprising expanded polystyrene. It does not refer to materials that are not covered materials.

(2) The recycling rate for all expanded polystyrene shall be calculated using the data and methodology set forth in subdivision (b), unless the Department approves an alternative methodology pursuant to subdivision (g). The recycling rate for all expanded polystyrene shall be calculated in a manner consistent with this section.

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

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

Section 18980.3.3. Eligibility for Being Labeled "Compostable"

(a) To be considered "eligible for being labeled 'compostable'" pursuant to subdivision (b) of section 42050 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 lawful labeling of commercial goods using the word "compostable." The criteria concerning the lawfulness of discrete labels themselves, such as restrictions on the manner of labeling pursuant to subparagraph (D) of paragraph (1) of subdivision (g) or paragraph (2) of subdivision (g) of section 42357 of the Public Resources Code, shall not be construed to concern eligibility.

DRAFT

(b) The list published by the Department pursuant to subdivision (d) of section 42061 of the Public Resources Code shall identify each covered material category that satisfies both of the following conditions:

(1) There is any covered material within the covered material category that satisfies the requirements set forth in subparagraph (B) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code.

(2) The covered material category may encompass any covered material that, if used by individual items that meet the requirements set forth in paragraphs (3) through (5) of subdivision (c), would be eligible for being labeled compostable.

(c) To be eligible for being labeled compostable, individual covered material items must satisfy the following criteria, as applicable:

(1) They must be within one of the covered material categories listed pursuant to subdivision (d) of section 42061 of the Public Resources Code.

(2) They must not have characteristics that cause them not to satisfy the requirements under subparagraph (B) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code.

(3) They must be certified as required by subparagraph (A) of paragraph (1) of subdivision (g) of section 42357 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 of this division. This requirement shall not apply to covered materials that are exempt from this paragraph according to paragraph (4).

(4) If the covered material items do not satisfy the requirements of paragraph (3), they must be exempt from the certification requirement pursuant to subdivision (d) of section 42356.1 of the Public Resources Code because they comprise fiber and do not

DRAFT

incorporate any plastics or polymers, as defined in paragraph (16) of subdivision (a) of section 18980.1. For the purposes of this exemption:

(A) Producers shall maintain documentation demonstrating that this exemption applies while the covered material items are offered for sale, sold, or distributed and for three years thereafter. The documentation must:

(i) Demonstrate that the manufacture of the items does not incorporate plastics or polymers, as defined in paragraph (16) of subdivision (a) of section 18980.1, into the item through an intentional process or combination of processes, such as lamination, extrusion, and mixing.

(ii) Identify all substances present in the covered material items, including those that are used as ingredients to produce the items or are adhered to the items. Upon request by the Department, the Independent Producer, PRO, or producers of the covered material shall provide a written description of any substance identified pursuant to this paragraph. The description shall demonstrate that the substance does not constitute plastic.

(B) Upon request by the Department, a person claiming not to be a producer with respect to single-use food service ware items on the basis that the items do not incorporate plastic or polymers, as defined in paragraph (16) of subdivision (a) of section 18980.1, and are thus not covered material shall provide documentation satisfying the requirements of clauses (i) and (ii) or subparagraph (A).

(5) They must satisfy the requirement set forth in subparagraph (E) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code concerning association with the recovery of desirable organic wastes. For purposes of this requirement an item is designed to be associated with the recovery of desirable organic waste if it is desirable organic waste itself or is marketed, labeled, or otherwise sold or distributed in a manner that directs or otherwise causes users of the item to use and discard it with

DRAFT

desirable organic waste.

(6) The requirements of this section govern whether covered material items satisfy the requirements of section 42357 of the Public Resources Code only for the purposes of determining whether the items comply with subdivision (b) of section 42050 of the Public Resources Code. No requirement of this section or any other provision of this article shall be construed as governing compliance with section 42357 of the Public Resources Code for any other purpose.

(d) 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.

(e) Satisfying the legal requirements for being labeled “home compostable” pursuant to sections 42355 through 42357.5 of the Public Resources Code or any other law shall not be construed to mean that any covered material is eligible for being labeled “compostable” for purposes of section 42050(b).

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

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

(a) A PRO shall not apply the source reduction credit based on incorporation of postconsumer recycled content, as described in section 42057(a)(2)(B)(i) of the Public Resources Code, unless the alternative compliance formula described for doing so has been proposed and

DRAFT

approved as part of a PRO's plan in accordance with this section.

(b) The Department shall approve an alternative compliance formula as part of a PRO's plan only if the plan establishes the following:

(1) That the formula will accurately and reliably assess the reduction, by weight, in the use of virgin plastic through incorporation of postconsumer recycled content. To measure source reduction, it will compare the amount of postconsumer recycled content used to the amount used in the 2023 calendar year. The plan shall include a detailed description of the formula, including all assumptions, estimates, and supporting information.

(2) That data to be reported to the Department or otherwise available to the PRO will enable the PRO to perform the measurement described in paragraph (1). The plan must describe how it will identify the producers for which there is sufficient data and apply the formula only with respect to those producers.

(3) That the formula will give a source reduction credit for the use of postconsumer recycled content in lieu of virgin plastic no greater than the source reduction credit that would be achieved by eliminating use of both the recycled content and virgin plastic altogether.

(4) That postconsumer recycled content used in covered material can be validated by the Association of Plastic Recyclers through its APR Postconsumer Resin Certification Program for purposes of validating the comparison described in paragraph (1). Alternatively, the plan may propose a different third party to perform the validations. The plan may do so only if the plan and the alternative third-party validation entity meet the following requirements:

(A) The plan must explain with specificity the differences between the alternative third party and the APR program and demonstrate how the alternative third party's

DRAFT

validations will result in more consistent and accurate assessments of postconsumer recycled content used in covered material. The explanation must, for example, show that the standards used by the other third party are at least as stringent as those employed by the APR program.

(B) The third party must be independent and impartial, and it must not have any conflict of interest with respect to validating postconsumer recycled content. Without limitation, the entity shall be deemed not to satisfy this requirement if either of the following is true:

(i) It holds any ownership interest, whether direct or indirect, in any person that is a PRO participant and a producer of plastic covered material.

(ii) Other than for services related to verification or certification programs, market research, advocacy, education, scientific or policy research or studies, scientific testing, or industry development, it transacts business with any person that is a PRO participant and a producer of plastic covered material, regardless of whether such business is with the producer directly or indirectly, such as through subsidiary or parent companies of the producer. Merely purchasing items for purposes unrelated to the activities identified in this clause, without any further contractual or other relationship related to the purchase, shall not be considered transacting business with any person for purposes of this clause.

(C) The alternative third party or entities that conduct validations on its behalf have ISO/IEC 17065:2012 accreditation issued by an accrediting body that is a signatory member of the International Accreditation Forum or is a signatory to a mutual recognition arrangement established by that organization.

(5) How the formula will grant source reduction credit only for usage of postconsumer recycled content that contains no intentionally added perfluoroalkyl and polyfluoroalkyl substances.

DRAFT

(c) Except under the following conditions, a formula and, if any, an alternative third-party validation entity approved as part of a producer responsibility plan shall be considered approved for inclusion in an updated or amended version of the plan.

(1) At least one year before the expiration date of a currently approved PRO plan, the Department may notify the PRO that the Department has identified evidence, information, or circumstances that were not considered in connection with the Department's approval of the plan's alternative compliance formula or alternative third-party validation entity and potentially render the basis for that approval out of date or otherwise insufficient. The subsequent plan update pursuant to section 42051.2(d)(2) of the Public Resources Code must reestablish the elements to comply with subdivision (b) of this section. The plan must specifically address the new evidence, information, or circumstances or information identified by the Department.

(2) If the Department determines that the PRO negligently or intentionally included false information, relied on false evidence, failed to incorporate or consider known information or evidence not supportive of the PRO's proposal, or otherwise negligently or intentionally obscured potential flaws in its proposal, the formula and, if applicable, the alternative third- party validation entity shall be deemed no longer approved.

(d) For purposes of section 42053(e)(1) of the Public Resources Code, a third party shall be deemed approved to perform validation services under either of the following circumstances:

(1) The entity is the entity included in the PRO's current plan for purposes of section 42057(a)(2)(B)(i) of the Public Resources Code.

(2) The third party satisfies the requirements of subparagraphs (B) and (C) of paragraph (4) of subdivision (b), and the PRO opts to rely on the third party's validation services.

DRAFT

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

Reference: Sections 42053 and 42057, Public Resources Code.

Section 18980.3.5. Disposal of Covered Material

For the purposes of this chapter, any amount of covered material that is disposed of shall not be considered recycled. Disposal includes any of the following activities in or outside of the state.

(a) Final deposition at a landfill.

(b) Use 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 activities that involve directly depositing the material onto land, into the atmosphere, or into water, 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.

ARTICLE 4: Responsible End Markets

Section 18980.4. Responsible End Market 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, in its ordinary course of business, meet

DRAFT

the following criteria:

(1) The entity and the intermediate supply chain entities that handle materials it receives operate in compliance with all permitting, licensing, and other clearances that may be required to lawfully conduct collection, processing, or recycling activities under all applicable local, sub-national, national, and international laws including, but not limited to, laws concerning public health, safety, and land use.

(2) The entity is transparent, which means the entity:

(A) Maintains records establishing the chain of custody encompassing all intermediate supply chain entities and the end market for all covered materials accepted by the end market for at least the past three years. Such records shall document, at a minimum, every person that took possession of the discarded covered materials and the collection, processing, or recycling activities conducted by such persons with respect to the material. Notwithstanding the foregoing, a PRO or Independent Producer may, in a plan or plan amendment, propose an alternative manner for establishing transparency with respect to the intermediate supply chain entities that handle the material accepted by responsible end markets. The Department shall approve the proposal if it determines that the proposed approach will provide the same or greater degree of transparency, including availability of information concerning compliance with the Act's requirements related to responsible end markets, as otherwise provided herein.

(B) Documents all complaints, penalties, violations, and other forms of enforcement action taken against the entity.

C) Maintains records of all permits, licenses, and other clearances with respect to collection, processing, or recycling activities as required by all applicable local, sub-national, national, and international laws.

DRAFT

(D) Consents to be audited by a PRO or an Independent Producer pursuant to section 18980.4.2.

(E) Provides any records identified in subparagraph (A) through (C) to a PRO or Independent Producer that requests them.

(F) Upon request, discloses to the Department, a PRO, or any Independent Producers, the types of covered materials and covered material categories that it will accept.

(G) Upon request, provides a PRO or Independent Producer documentation establishing that it handles materials in the manner described in paragraph (3).

(3) The entity shall minimize the discharge of emissions, effluents, and materials produced by the entity, including feedstocks and residuals, and shall handle incompatible materials in the following manner:

(A) For incompatible materials that can be further processed and recycled, the entity sends materials to entities that are authorized to further process and recycle the material.

(B) For incompatible materials that cannot be further processed and recycled, the entity disposes of the material in a way that minimizes significant effects on the environment and risks to public health and safety.

(4) The entity achieves the following, as applicable:

(A) Each calendar year, the entity's average recycling yield meets or exceeds the threshold recycling yields identified by a PRO or Independent Producer in their approved plan for each material type identified in paragraphs (b)(1) through (b)(5) and any end markets identified following a study pursuant to section 18980.4.3(b)(1). Each plan shall include a justification for each threshold recycling yield, including how the yield is informed by relevant data, if any, in the most recent needs assessment conducted by the Department pursuant to section 42067 of the

DRAFT

Public Resources Code and other verifiable data pertaining to recycling processes.

(i) For any period, average recycling yield shall be calculated by taking the total weight of material that has been recycled and dividing it by the total weight of material that has been accepted by the end market and not sent to a responsible end market for further processing.

(ii) For the purpose of this subparagraph, the weight of material recycled shall be determined according to section 18980.3.2(b)(2), except that “material” includes covered material and non-covered material.

(iii) A separate yield rate shall be calculated for each recycling process that accepts covered material.

(B) Covered material partially or wholly comprising plastic and intentionally included in the process used to generate a recycled organic product must fully biologically decompose, and the recycled organic product must meet standards necessary to be sold into the marketplace. Full biological decomposition of compostable plastic refers to the complete biodegradation and disintegration of the material under controlled composting conditions, resulting in its conversion to carbon dioxide, water, biomass, and inorganic compounds, with no visible, distinguishable, or toxic residues remaining after the composting cycle. The entity must neither dispose of undecomposed material intentionally included in the process nor send it to another entity that subsequently disposes of it, and the entity must ensure that it fully biologically decomposes, through additional processes conducted either by the entity or by subsequent entities to which the material is transferred. Covered material inadvertently included in the process that remain undecomposed shall be considered incompatible materials and are subject to paragraph (3) of subdivision (a).

(C) For covered material comprising fiber or paper substrates (without a plastic

DRAFT

component) or wholly derived from natural resources not of mineral or fossil fuel origin, the covered material intentionally included in the process used to generate a recycled organic product must biologically decompose and may be processed in a manner consistent with the management of other feedstocks to produce a marketable product that complies with standards found in sections 17868.2, 17868.3 and 17868.3.1 of Article 7 of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations or in sections 17896.59, 17896.60, and 17896.61 of Article 6 of Chapter 3.2 of Division 7 of Title 14 of the California Code of Regulations, as applicable.

(b) An end market is an entity that produces and sells or transfers recycled organic product or recycled content feedstock that meets the quality standards necessary to be used for the creation of new or reconstituted products. An entity that produces and uses such material in the creation of new or reconstituted products is also an end market. An entity may be an end market for some materials and an intermediate supply chain entity for others. For example, if an entity transfers a portion of covered material it accepts to other entities for further processing, the entity is an intermediate supply chain for that portion, but an end market for the covered material it retained.

(1) For material made of glass, the end market is the entity that first produces glass feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products. Such end markets include, but are not limited to, the glass beneficiation plant that produces cullet.

(2) For material made of metal, the end market is the entity that first produces metal feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products. Such end markets include, but are not limited to, entities that smelt metal and produce ingots, sheets, and coils.

(3) For material made of paper or non-plastic fiber, the end market is the entity that first

DRAFT

produces paper feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products. Such end markets include, but are not limited to, the beneficiation wastepaper plant or entity that re-pulps the material into a pulp product.

(4) For material made of plastic, the end market is the entity that first produces plastic feedstock that meets the quality standards necessary to be used in lieu of virgin material for the creation of new or reconstituted products. Such end markets include, but are not limited to, entities that create pellet.

(5) For material made of wood, the end market is the entity that first produces wood feedstock that meets the quality standards necessary to be used for the creation of new or reconstituted products. Such end markets include, but not limited to, entities that chip and grind the material, including, but not limited to, C&D wood debris chipping and grinding operations, facilities as described in section 17383.3, and facilities as defined in paragraph (1) of subdivision (a) of section 17852.

(6) Entities that convert material into a recycled organic product are end markets for such material. Such entities include, but are not limited to, compostable material handling operations or facilities described in paragraph (12) of subdivision (a) of section 17852 and in-vessel digestion facilities and operations described in paragraphs (15), (16), and (19) of subdivision (a) of section 17896.2.

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

(8) For a covered material item made of a material type that is not represented in paragraphs (1) through (6), the end market shall be an end market established through a study conducted by a PRO or Independent Producer pursuant to paragraph (1) of subdivision (b) section 18980.4.3.

DRAFT

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

Reference: Sections 42041, 42051, 42051.1, 42057, 42061 and 42067, Public Resources Code.

Section 18980.4.1. End Market Identification

(a) A PRO or Independent Producer shall include in its plan the method by which it will identify responsible end markets. At minimum, the plan shall:

(1) Describe how end markets will be identified.

(2) Describe the process by which a PRO or Independent Producer will evaluate whether each end market meets the standards specified in section 18980.4.

(3) To the extent that an end market cannot be identified as, or confirmed to be, responsible without cooperation from the end market or intermediate supply chain entities, describe how such cooperation will be obtained. For example, the plan must explain how the PRO or Independent Producer will ensure that intermediate supply chain entities continue to operate with all required permits, licenses, and other clearances.

(b) A PRO or Independent Producer shall maintain records of all contracts or agreements established with end markets and intermediate supply chain entities during the contract term and for at least three years thereafter.

(c) A PRO or Independent Producer shall, for at least three years, maintain all records described in subdivision (b) and paragraph (2) of subdivision (a) of section 18980.4 and, if applicable, paragraphs (4) and (6) of subdivision (d) of section 18980.4.1 that it receives from end markets and intermediate supply chain entities and shall produce the records to the Department upon written request. Records provided to the Department 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))

DRAFT

unless an exemption from mandatory disclosure applies. The Department shall withhold from public disclosure portions of the application that the applicant appropriately identifies as trade secrets, subject to the requirements and limitations set forth in section 18980.14.

(d) A PRO or Independent Producer shall identify in its plan any recycling technology that was not a type of mechanical recycling technology in use within the State as of the effective date of the Act. Facilities employing such technology must not produce significant amounts of hazardous waste as defined in paragraph (1).

(1) For purposes of paragraph 5 of subdivision (aa) of section 42041 of the Public Resources Code, “significant amounts of hazardous waste” means hazardous waste as defined in Title 40 of the Code of Federal Regulations Section 261.3 that presents a substantial risk of harm to public health, or of contamination of the environment.

(A) Mechanical recycling technologies that were in use within the State as of the effective date of the Act do not produce significant amounts of hazardous waste for the purposes of the Act and this chapter.

(B) The production and management of hazardous waste that is handled and disposed of in compliance with an applicable permit does not present a substantial risk of harm to public health or of contamination of the environment, for purposes of the Act and this chapter. Minor technical violations or minor deviations from permit conditions that do not result in, or are not reasonably likely to lead to, actual environmental harm or harm to public health shall not, by themselves, be considered noncompliance for purposes of this section.

(2) A facility’s use of a technology that is not a type of mechanical recycling technology in use within the State as of the effective date of the Act shall not be considered recycling for the covered material processed using it unless the facility operates in a manner consistent with ISO 59014:2024.

DRAFT

(3) A facility using the technology shall not be considered to be recycling the covered material processed unless the facility complies with all applicable requirements established in this Article.

(4) Before it may be considered recycling in the PRO or Independent Producer's program, any facility using the technology must provide to the PRO or Independent Producer:

(A) A description of the technology and how that technology is consistent with the definition of recycling pursuant to subdivision (aa) of section 42041 of the Public Resources Code.

(B) A description of the covered material to be processed and the yield of the recovered material that meets the quality standards necessary to be used for the creation of new or reconstituted products.

(C) The weight (in kilograms) of material processed per calendar month for the last twelve months.

(D) The weight (in kilograms) of hazardous waste as that term is defined in Title 40 of the Code of Federal Regulations Section 261.3, generated per calendar month for the last twelve months.

(E) The weight (in kilograms) of "acute hazardous waste" as that term is defined in Title 40 of the Code of Federal Regulations Section 261.11(a)(2), generated per calendar month for the last twelve months.

(5) In its plan, a PRO or Independent Producer shall justify its conclusion that use of a particular technology does not produce significant amounts of hazardous waste.

(6) A facility using a technology that is included in an approved PRO or Independent Producer plan under this subdivision shall report annually the information identified in paragraph (4) of this subdivision to the PRO or Independent Producer.

DRAFT

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

Reference: Sections 40062, 42041, 42051, 42051.1 and 42057, Public Resources Code.

Section 18980.4.2. End Market Compliance Audits and Verification

(a) A PRO or Independent Producer shall have annual compliance audits of responsible end markets conducted and completed to ensure that each end market it uses satisfies the requirements to be a responsible end market as specified in subdivision (a) of section 18980.4. All compliance audits shall be conducted by an independent third-party.

(b) A PRO or Independent Producer shall include the findings of any compliance audits in the annual report pursuant to section 18980.9.1(c). The Department shall have full access to any compliance audit reports upon request.

(c) A PRO or Independent Producer shall annually verify that each end market it uses satisfies the requirements to be a responsible end market as specified in subdivision (a) of section 18980.4. Each verification shall be documented in the annual report pursuant to subdivision (c) of section 18980.9.1 and shall include, but not necessarily be limited to, the following:

(1) Information that demonstrates a responsible end market met or exceeded its average recycling yield threshold, including a detailed explanation of how the entity measured and calculated the amount of material that was accepted and the amount of covered material that was successfully recycled by the responsible end market.

(2) All information and evidence related to any failure of an end market to satisfy the requirements to be a responsible end market as specified in subdivision (a) of section 18980.4.

DRAFT

(3) Descriptions of any corrective actions that were taken.

(4) Descriptions of any instances where a PRO or Independent Producer prohibited sending materials to an end market due to that entity's failure to satisfy the requirements as specified in subdivision (a) of section 18980.4.

(5) Records of complaints made against the end market, including records maintained by the end market as described in section 18980.4(a)(2)(B) and records maintained by a PRO or Independent Producer pursuant to sections 18980.6.8(b)(7) and 18980.7.7(b)(7).

(d) The Department may require a PRO or Independent Producer to provide any records necessary to verify responsible end markets. The records shall be provided without redactions. As described in section 18980.14, a PRO or Independent Producer may specify what records it claims are wholly or partially confidential or otherwise exempt from public disclosure.

(e) If the Department determines that an end market identified by a PRO or Independent Producer no longer meets the standards specified in section 18980.4, the end market is no longer a responsible end market and any covered material sent to that end market thereafter shall not be considered recycled for purposes of compliance with the Act.

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

Reference: Sections 42041, 42051, 42051.1, 42051.3 and 42053, Public Resources Code.

Section 18980.4.3. End Market Development

(a) A PRO or Independent Producer must support the establishment, expansion, and continued existence of responsible end markets sufficient to satisfy the obligations of the

DRAFT

PRO or Independent Producer under the Act, in the manner set forth in their approved plans. Each plan must establish, at a minimum, how the PRO or Independent Producer will do the following:

(1) Provide financial support to end markets as necessary to develop responsible end markets and ensure that they continue to satisfy the standards specified in section 18980.4. The plan must specify, at a minimum, how the PRO or Independent Producer will identify where financial support is needed and decide whether to provide it.

(2) Facilitate material recycling and assist end markets in satisfying the standards specified in section 18980.4, by providing financial support to local jurisdictions, recycling service providers, alternative collection programs, intermediate supply chain entities, and other entities that provide services used for the diversion of materials. The plan must specify, at a minimum, how the PRO or Independent Producer will identify and evaluate opportunities to provide such support and decide whether to provide it.

(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. The plan must, at a minimum, describe known opportunities for developing new responsible end markets or alternatives to covered materials.

(b) If a PRO or an Independent Producer identifies a covered material that does not have an end market, as described in section 18980.4(b), the following requirements apply:

(1) Except as provided in paragraph (3), the PRO or Independent Producer shall conduct a study that:

(A) 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)

DRAFT

of the Public Resources Code.

(B) Evaluates the feasibility of collecting, transporting, processing, and recycling the covered material.

(C) Evaluates how any current or new end market can meet the standards specified in section 18980.4.

(D) May also include pilot programs to test the components specified in subparagraphs (A), (B), or (C).

(2) If a PRO or Independent Producer, after having conducted the study described in paragraph (1), determines that a responsible end market exists or can exist for such covered material, the PRO or Independent Producer shall include in its plan or a plan amendment:

(A) A description of the end market.

(B) A justification of how the end market can meet the standards specified in section 18980.4 for the covered material.

(C) A budget and investment strategy that describes how the PRO or Independent Producer will fund the development of the end market, along with any necessary development of collection, transportation, and processing infrastructure.

(D) A timeline detailing the proposed end market development.

(E) A determination on how the weight of covered material recycled is estimated, pursuant to section 18980.3.2(b)(2).

(3) A study pursuant to paragraph (1) shall not be required if the PRO or Independent Producer opts to phase out the covered material such that the PRO participants or the Independent Producer will no longer sell, offer for sale, or distribute the covered material in the state. The PRO or Independent Producer shall invest in alternatives to

DRAFT

that covered material to facilitate phasing it out. Alternatives may include, for example, investing in refill and reuse infrastructure that reduces reliance on the covered material.

(c) When a PRO or Independent Producer decides to conduct a study pursuant to paragraph (b)(1), the PRO or Independent Producer shall notify the Department and disclose the date on which the study was initiated.

(d) When a PRO or Independent Producer completes a study pursuant to paragraph (b)(1), the PRO or Independent Producer shall include the results of the study in a plan, plan amendment, or annual report.

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

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

ARTICLE 5: Requirements for Producers

Section 18980.5. Producer Compliance

(a) Within 30 days of the effective date of this chapter each producer shall register with the Department pursuant to subdivision (a) of section 18980.10. Entities that become producers after 30 days after the effective date of this chapter but prior to January 1, 2027, shall register within 30 days of becoming a producer.

(b) Pursuant to subdivision (b) of section 42051 of the Public Resources Code, each producer shall, within 30 days after the effective date of this chapter, apply to become a participant of an approved PRO or apply to be an Independent Producer subject to the requirements of section 18980.5.1. Entities that become producers after 30 days after the effective date of this chapter but before January 1, 2027, shall apply within 30 days of becoming a producer. This obligation shall apply to a person if the covered material for which the

DRAFT

person is a producer is sold, offered for sale, imported, or distributed in the state by any person.

(c) Entities that become producers on or after January 1, 2027, shall, within six months of becoming a producer, register with the Department pursuant to subdivision (a) of section 18980.10 and either become a participant producer or apply to be an Independent Producer pursuant to section 18980.5.1.

(d) Each producer that applies to become a participant of an approved PRO pursuant to subdivision (b) of this section shall, at the time of its application, submit to the PRO that producer's supply data for calendar year 2023. For purposes of this subdivision, "supply data" means the information described in section 18980.10.2.

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

Reference: Section 42051, Public Resources Code.

Section 18980.5.1. Application for Independent Producer Compliance

(a) A producer seeking to comply with the Act without participating in a PRO shall first, if not already registered with the Department pursuant to subdivision (a) of section 18980.5, register with the Department pursuant to subdivision (a) of section 18980.10 and submit an application for individual compliance to the Department. The application shall be submitted electronically via email. If the Department has given notice via its website that an online portal is available for application submittal, the application shall instead be submitted electronically via that portal. The application ~~and~~ shall include the following:

(1) Types of covered material the producer is selling, offering for sale, importing, or distributing in or into the state.

DRAFT

(2) Information that demonstrates compliance with the requirements of subparagraph (A) of paragraph (2) of subdivision (b) of section 42051 of the Public Resources Code.

(b) The Department shall approve the application if the application establishes that the producer satisfies all requirements of subparagraph (A) of paragraph (2) of subdivision (b) of section 42051 of the Public Resources Code and this chapter. The Department will not consider the applicant in violation of paragraph (1) of subdivision (b) of section 42051 of the Public Resources Code before the Department has approved or denied the application and notified the applicant accordingly.

(c) If the Department denies the application, the producer shall become a participant in a PRO or submit a revised application within 30 days after receiving notice of the denial. If the Department denies the revised application, the producer shall, within 30 days of receiving notice of the second denial, become a participant in a PRO. The producer shall not be considered to be in violation of paragraph (1) of subdivision (b) of section 42051 of the Public Resources Code until after such 30-day period.

(d) Notwithstanding subdivisions (b) and (c), a producer submitting a second revised application following the denial of the revised application shall be considered in violation of paragraph (1) of subdivision (b) of section 42051 of the Public Resources Code during the pendency of such application unless the producer is a participant of the PRO.

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

Reference: Sections 42041 and 42051, Public Resources Code.

Section 18980.5.2. Exemptions for Small Producers

(a) A producer seeking an exemption pursuant to paragraph (5) of subdivision (a) of section

DRAFT

42060 of the Public Resources Code shall, if not already registered with the Department pursuant to subdivision (a) of section 18980.5, register with the Department pursuant to subdivision (a) of section 18980.10 and submit an application to the Department electronically via email~~to the Department~~. If the Department has given notice via its website that an online portal is available for application submittal, the application shall instead be submitted electronically via that portal. The application shall include the following:

(1) Records showing the producer's gross sales in the state in the most recent calendar year were less than one million dollars ($1,000,000).

(2) The nature of business, including: what business activities it conducts, such as retail or wholesale activity; whether it conducts business online, at physical locations, or both; the nature of the products it sells, offers for sale, or distributes, including the degree to which it acquires the products from out-of-state suppliers and the degree to which it owns the brands or trademarks associated with the products.

(b) The Department shall approve an application if the application meets the requirements of this section, unless the Department determines that the exemption would hinder a type of covered material or covered material category from satisfying the requirements of section 42050 of the Public Resources Code. If the Department lacks sufficient information and evidence to assess whether such a determination is justified, the producer shall supplement the application with information and evidence requested by the Department as the Department deems necessary to further assess the potential effect of granting the exemption. If the application is approved, the exemption shall become effective on the date the application is approved and is valid for two years.

(c) To renew an exemption, the small producer shall, between 120 days and 90 days before the expiration date, provide updated information satisfying the requirements of subdivision (a). The Department shall evaluate the application in the same manner as it reviews initial

DRAFT

applications under this section. If approved, the exemption shall be renewed for two additional years 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.

(e) Any producer who is exempt pursuant to this section shall maintain their registration pursuant to subdivision (a) of section 18980.10.

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

Reference: Sections 42050, 42052 and 42060, Public Resources Code.

ARTICLE 6: Requirements for the Producer Responsibility Organization

Section 18980.6. Producer Participation General Requirements

(a) In notifying the Department of information required by subdivision (d) of section 42051 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

DRAFT

product code (UPC).

(C) 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.

(D) 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 (A) and (B) of paragraph (1).

(B) The date the producer no longer participated in the plan and 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, explanation and documentation sufficient to demonstrate compliance with subdivision (b).

(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.

(b) A PRO may dismiss producers only for good cause, after exerting good faith effort to resolve the good cause.

(1) Good cause for dismissal must be based on substantial noncompliance with the Act or requirements of the PRO plan. Noncompliance is substantial if it causes the PRO to incur financial harm or creates the risk that the PRO or other producers will violate the Act. The PRO may further base dismissal on additional conduct, regardless of whether the conduct itself violates the Act, if the conduct imposes significant costs or other

DRAFT

significant burden on the PRO, or if it creates the risk that the PRO or other producers will violate the Act.

(2) Good faith effort to resolve the good cause requires, at a minimum, notice to the producer and reasonable opportunity for the producer to cure the good cause through corrective actions. The notice shall identify the required actions with particularity, and a producer shall not be dismissed if it performs such actions.

(3) Notwithstanding paragraph (2), the opportunity to cure the good cause for dismissal shall not be required if the cause is based on the same conduct or circumstances that had already been the subject of notice and the opportunity to cure within the preceding year.

(c) A PRO may refuse to accept a producer as a participant in its plan only for good cause, after exerting good faith effort to resolve the good cause.

(1) Good cause for refusal must, at a minimum, be based on at least one of the following circumstances:

(A) The producer fails to provide information reasonably required by the PRO for acceptance of the producer, as set forth in the PRO's approved plan.

(B) The information provided to the PRO or other evidence available to the PRO clearly establishes that the producer is unwilling to exert good faith effort to comply with the Act.

(C) The PRO has previously dismissed the producer for good cause pursuant to subdivision (b), and the cause identified in the notice preceding that dismissal still exists.

(2) Good faith effort to resolve the good cause for refusal requires, at a minimum, notice to the producer and reasonable opportunity for the producer to cure the good cause through corrective actions. The notice shall identify the required actions with

DRAFT

particularity. A producer shall be accepted as a participant if it performs such actions and shall not be deemed to have violated paragraph (1) of subdivision (b) of section 42051 of the Public Resources Code.

(3) During the period provided for the producer to cure the good cause, the producer shall be considered to be a participant in the PRO for purposes of subdivision (b) of section 42051.

(4) Notwithstanding paragraph (2), the opportunity to cure the good cause for refusal shall not be required if the cause is based on the same conduct or circumstances that had already been the basis for dismissing or refusing to accept the producer within the preceding year.

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

Reference: Sections 42051 and 42051.1, Public Resources Code.

Section 18980.6.1. Producer Responsibility Plan Submission

(a) Except as provided in subdivision (b), a PRO approved by the Department pursuant to subdivision (a) of section 42051 of the Public Resources Code shall, on or before [the Office of Administrative Law to insert date of filing with the Secretary of State or April 1, 2026, whichever is later]~~April 1, 2026~~, prepare and submit a producer responsibility plan to the advisory board pursuant to section 42051.2 of the Public Resources Code.

(b) Notwithstanding the deadline in subdivision (a), a PRO approved by the department pursuant to subdivision (a) of section 42051 of the Public Resources Code may choose to submit its producer responsibility plan to the advisory board after [the Office of Administrative Law to insert date of filing with the Secretary of State or April 1, 2026,

DRAFT

whichever is later]~~April 1, 2026~~, but on or before June 15, 2026, subject to the following conditions:

(1) The PRO shall waive its right to the full 120-day period in paragraph (1) of subdivision (b) of section 42051.2 of the Public Resources Code. The PRO shall instead submit the plan to the department with revisions, pursuant to paragraph (1) of subdivision (b) of section 42051.2 of the Public Resources Code, within 60 calendar days of receipt of the advisory board's comments.

(2) The Department shall review the plan for compliance with the Act and take action on the plan, pursuant to paragraph (2) of subdivision (b) of section 42051.2 of the Public Resources Code, within 75 calendar days of receipt of the plan from the PRO.

(c) A successor or additional PRO approved by the Department shall prepare and submit a producer responsibility plan to the advisory board pursuant to section 42051.2 of the Public Resources Code within six months of approval.

(d) ~~Upon~~ When the PRO submit~~tal of the~~ a producer responsibility plan to the advisory board for review and comment as required by subdivision (a) of section 42051.2 of the Public Resources Code, the PRO shall also make the plan available ~~for~~ to the public for review and ~~public~~ comment by, at minimum, posting the plan to its internet website. To be considered by the PRO as described in subdivision (e), the advisory board's comments and public comments must be received by the PRO within 60 days after such posting.

(e) The producer responsibility plan submitted to the Department as required in paragraph (1) of subdivision (b) of section 42051.2 of the Public Resources Code shall include a summary of all comments received from the advisory board and the public, and identify revisions, if any, made in response to the 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 subdivision (c) of section 42051.2 of the Public Resources Code.

DRAFT

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

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

Section 18980.6.2. Producer Responsibility Plan Approval

(a) The Department shall approve a PRO plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. In determining whether the PRO plan contains all the elements required pursuant to the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the PRO by the advisory board and the public as summarized by the PRO pursuant to subdivision (e) of section 18980.6.1 of these regulations, as well as any revisions by the PRO in response to those comments.

(b) Conditional approval shall be granted if the Department determines that certain elements of the plan do not meet certain requirements of the Act or this chapter, but that if conditions identified by the Department 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. While approval conditions are pending, the plan shall be considered approved for purposes of the Act and this chapter.

(c) If the Department conditionally approves the plan, the PRO shall, until the conditions on approval have been met, submit the following information on or before the last day of every month, beginning the first full calendar month after conditional approval:

(1) Estimated date for resubmittal of the revised plan. Pursuant to paragraph (3) of subdivision (b) of section 42051.2 of the Public Resources Code, this date must be no

DRAFT

later than 12 months after conditional approval.

(2) Status updates addressing each approval condition, including a specific description of how it is being addressed.

(d) If the approval conditions are not met within 12 months after conditional approval, the conditional approval shall end, and the PRO shall be deemed not in compliance with the Act and this chapter.

(e) A plan approved by the Department is valid for five years from the date of approval by the Department.

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

Reference: Sections 42051.2, 42060, and 42063, Public Resources Code.

Section 18980.6.3. Review of Updated Producer Responsibility Plan

(a) A PRO shall submit a proposed updated plan to the advisory board as required in paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code at least 180 days before the expiration date of its producer responsibility plan.

(b) ~~Upon~~ When the PRO submit~~stal of the~~ a producer responsibility plan to the advisory board for review and comment as required by paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code, the PRO shall also make the proposed updated plan available to the public 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.~~To be considered by the PRO as described in subdivision (c), the advisory board's comments and public comments must be received by the PRO within 60 days after such

posting.

(c) No later than 120 calendar days after receiving comments from the advisory board, the PRO shall submit the updated plan to the Department. The updated producer responsibility plan submitted to the Department as required in paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code shall include a summary of all comments received from the advisory board and the public, and identify revisions, if any, made in response to the comments as summarized by the PRO. 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.

(d) In determining whether the updated plan contains all the elements required pursuant to the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the PRO by the advisory board and the public as summarized by the PRO pursuant to subdivision (c) of these regulation, as well as any revisions by the PRO in response to those comments.

(e) The Department shall approve the updated plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. The updated plan is valid for an additional five years, beginning on 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, 42060, 42063 and 42070, Public Resources Code.

Section 18980.6.4. Producer Responsibility Plan Amendments

(a) If paragraph (1) of subdivision (e) of section 42051.2 of the Public Resources Code

DRAFT

requires a PRO to submit a proposed plan amendment to the advisory board, the advisory board shall have no more than 60 calendar days to review the amendment and provide comments to the PRO.

(b) The PRO shall include, with the proposed plan amendment submitted to the Department as required in paragraph (1) of subdivision (e) of section 42051.2 of the Public Resources Code, a summary of all comments received from the advisory board, and identify revisions, if any, made in response to the comments.

(c) The Department shall approve the proposed plan amendment if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. In determining whether the proposed plan amendment contains all the elements required pursuant to the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the PRO by the advisory board as summarized by the PRO pursuant to subdivision (b), as well as any revisions by the PRO in response to those comments. Approval does not alter the expiration date of the plan.

(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, 42060, 42063 and 42070, Public Resources Code.

Section 18980.6.5. Annual Reports

(a) A PRO shall submit the annual report required by section 42051.3 of the Public Resources Code in two phases, as provided in this section.

(b) The first phase shall be submitted no later than July 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this

DRAFT

phase, a PRO shall submit to the Department the information described in subdivisions (a)(2) and (a)(3)(B), (C), (D), and (E) of section 42051.3 of the Public Resources Code, as well as any results of the independent audit described in subdivisions (b) and (c) of section 42054 of the Public Resources Code.

(c) The second phase shall be submitted no later than October 1 of each year after the Department has approved or conditionally approved a PRO plan pursuant to section 18980.6.2. In this phase, a PRO shall submit to the Department the information described in (a)(3)(A) of section 42051.3 of the Public Resources Code.

(d) Upon submittal of each phase of the annual report to the Department, the PRO shall make that phase of the report available to the public by, at minimum, posting it to its internet website until an approved annual report is posted pursuant to subdivision (f).

(e) After submission of the second phase of an annual report, the Department shall approve the annual report if it meets the requirements of section 18980.9.1 and section 42051.3 of the Public Resources Code.

(f) Within five calendar days after approval of the annual report by the Department, the PRO shall post the approved annual report on the PRO's internet website.

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

Reference: Section 42051.3, Public Resources Code.

Section 18980.6.6. Document Submittals

(a) A producer responsibility plan, updated producer responsibility plan, plan amendments, annual report, or any document associated with the preceding that is submitted to the Department by the PRO, shall meet all of the following requirements:

DRAFT

(1) The document shall be submitted to the Department electronically via email. If the Department has given notice via its website that an online portal is available for submittal of the document, the document shall instead be submitted electronically via that portal. The date of electronic submittal will be considered the date of receipt by the Department.

(2) 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, 18980.6.5, 18980.8, 18980.8.1, and 18980.9.1, 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 paragraph (3) of subdivision (a).

(3) The document shall be provided to the Department under penalty of perjury. An individual authorized to act on behalf of the person submitting 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."

(b) 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 PRO appropriately identifies as trade secrets, subject to the requirements and limitations set forth in Article 14. In addition to identifying the particular content, as prescribed in Article 14, claimed to contain trade secrets and thus be non-disclosable, the PRO shall identify any portions of plans or other documents subject to this section submitted to the Department that it claims to be non-

DRAFT

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.

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

Reference: Sections 40062, 42051.1, 42051.3 and 42063, Public Resources Code.

Section 18980.6.7. Eco-Modulated Fee and Fee Schedule

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

(1) Estimated costs of implementing the plan, including the costs to cover the environmental mitigation requirements of section 42064 of the Public Resources Code.

(2) Operating costs of the PRO.

(3) Costs of completing the needs assessment.

(4) Costs to reimburse the Department, including the full personnel costs related to the administration, implementation, and enforcement of this Chapter and the Act. Costs shall include labor, fringe benefits, travel, equipment, supplies, and contracts, as well as costs calculated using section 9213.1 of the State Administrative Manual, including for general administration, budgeting, accounting, business services, training, and legal.

(b) Beginning two years following the approval of a PRO's plan, the PRO shall charge each participant producer pursuant to subdivision (a) of section 42053 of the Public Resources Code. Such fees shall be based on the fee schedule described in subdivision (c) of

DRAFT

section 42053 of the Public Resources Code and eco-modulated as described in the plan. A PRO shall account for the costs to ensure covered materials and covered material categories meet the requirements of this chapter, including minimization of environmental and public health impacts of covered material and the end-of-life management of covered material.

(c) Notwithstanding subdivisions (a) and (b), the PRO may charge each participant producer annual fees pursuant to subdivision (a) of section 42053 of the Public Resources Code at any time following approval of the initial plan if the PRO determines it has sufficient data to establish a fee schedule described in subdivision (c) of section 42053 of the Public Resources Code and to eco-modulate fees as described in the plan.

(d) If a PRO, pursuant to subdivision (f) of section 42053 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.

(e) In setting the individual assessments pursuant to paragraph (1) of subdivision (c) of section 42053 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, or of the methodology used to derive rates. The justification shall address each factor specified in subdivision (d) of section 42053 of the Public Resources Code. The justification for fees shall be informed, at a minimum, by the relevant data, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to the biodegradation or disintegration rates of compostable covered materials.

(B) If a PRO's justification contradicts the results of the most recent needs assessment

DRAFT

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 base fee rates for covered material categories to account for investments or other expenditures necessary to develop responsible end markets for such covered material categories, implement source reduction measures for such covered material categories, or shift to reuse and refill systems.

(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, the percentage of materials recovered by the program, 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 its 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 [weight of covered material of that covered material category sold, distributed, or imported in or into the state within the previous calendar year (WCMSDI)]: BFRCMC x WCMSDI = Base Fee.

DRAFT

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

(f) In setting any adjustments pursuant to paragraph (2) of subdivision (c) of section 42053 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 subdivision (e) of section 42053 of the Public Resources Code. The justification for malus fees and credits shall be informed, at a minimum, by the relevant data, if any, in the most recent needs assessment, the most recent material characterization study conducted pursuant to subdivision (a) of section 42061 of the Public Resources Code, source reduction data, data pertaining to recycling rates, and data pertaining to biodegradation or disintegration rates of compostable covered materials.

(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.

(g) In assessing fees pursuant to paragraph (5) of subdivision (c) of section 42053 of the Public Resources Code, a PRO shall develop a formula to calculate each participant's market share and corresponding environmental mitigation surcharge assessment. 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 weight of plastic covered material shall be measured in accordance with paragraph (15) of subdivision (a) of section 18980.1. The PRO shall provide the formula to the Department. The Department shall annually notify the PRO of the PRO's share of the annual environmental mitigation

DRAFT

surcharge, accounting for any amount owed by Independent Producers.

(h) For purposes of accounting for when recycling or composting is made “more difficult by incorporation of specific elements” pursuant to paragraph (2) of subdivision (d) of section 42053 of the Public Resources Code, the publications incorporated into a plan pursuant to subdivision (j) of section 18980.8 shall apply. An element of covered material shall be considered to make recycling more difficult according to the design guide incorporated pursuant to paragraph (1) of subdivision (j) of section 18980.8 if, as described in the design guide, the element “requires test results” or otherwise prevents the covered material from being considered “preferred.”

(i) Pursuant to paragraph (4) of subdivision (e) of section 42053 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.

(j) Pursuant to paragraph (7) of subdivision (e) of section 42053 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 paragraph (7) of subdivision (e) of section 42053 of the Public Resources Code, means materials that are wholly derived from natural resources that are not of mineral or fossil fuel origin, without resulting in the net depletion of any of the resources. Examples of potentially renewable material include those 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.

DRAFT

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

Reference: Section 25249, Health and Safety Code; Sections 42053 and 42064, Public Resources Code.

Section 18980.6.8. Recordkeeping and Reporting Requirements

(a) A PRO shall maintain records documenting the following:

(1) For the previous calendar year, for each covered material category, disaggregated by each participant producer:

(A) The total weight of material sold, distributed, or imported in or into the state.

(B) The total number of plastic components sold, distributed, or imported in or into the state.

(C) The total weight of material that is recycled.

(D) The total weight of material that is disposed of.

(2) For covered material collected and recycled or disposed of through a program other than curbside collection programs, for each covered material category:

(A) The total weight of material collected by the program.

(B) The total weight of material that is recycled.

(C) The total weight of material that is disposed of.

(b) A PRO shall maintain the following records:

(1) Records kept pursuant to subdivision (a) of section 42054 of the Public Resources Code.

(2) All contracts or agreements established with entities, including, but not limited to, end

DRAFT

markets, recycling service providers and intermediate supply chain entities, during each contract's term and for at least three years thereafter.

(3) Copies of supporting records that were used in creating those reports pursuant to section 18980.10.1.

(4) Documentation of all information included in the verifications required pursuant to subdivision (c) of section 18980.4.2.

(5) Copies of audits and investigations undertaken pursuant to section 18980.4.2.

(6) Records required to be maintained pursuant to subparagraph (A) of paragraph (4) of subdivision (c) of section 18980.3.3, if any.

(7) Records of complaints received on responsible end markets pursuant to subdivision (f) of section 18980.8.

(c) Notwithstanding the PRO's obligations with respect to record maintenance and implementation of a records maintenance protocol, each producer is responsible for ensuring that it complies with subdivision (d) of section 42052 of the Public Resources Code, either through records in its custody or records maintained by the PRO. Records in the producer's custody or the PRO's custody must be sufficient for the Department to determine whether the producer is complying with this chapter and the Act.

(d) All records required to be maintained pursuant to this chapter or the PRO's record maintenance protocol shall be available for inspection by an authorized representative of the Department or other duly authorized regulatory agency and maintained for at least three (3) years.

(e) An entity subject to requirements under this article or the Act shall, within 10 calendar days of receiving written request from the Department, provide to the Department records necessary for the Department to assess the entity's compliance. At the Department's option, records shall be provided either by allowing physical access during normal

DRAFT

business hours to the Department or other duly authorized regulatory agency or by submitting them to the Department by electronic means.

(f) For the purposes of this article, the weight of material recycled shall be determined according to paragraph (2) of subdivision (b) of section 18980.3.2.

(g) For the purposes of this article, the weight of material disposed of shall be determined according to paragraph (3) of subdivision (b) of section 18980.3.2.

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

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

ARTICLE 7: Requirements for Independent Producers

Section 18980.7. Independent Producer 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 to the advisory board pursuant to section 42051.2 of the Public Resources Code.

(b) ~~Upon~~ When the Independent Producer submits~~tal of~~ the producer responsibility plan to the advisory board for review and comment as required by subdivision (a) of section 42051.2 of the Public Resources Code, the Independent Producer shall also make the plan available to the public for review and ~~public~~ comment by, at minimum, posting the plan to its internet website. To be considered by the Independent Producer as described in subdivision (c), the advisory board's comments and public comments must be received by the Independent Producer within 60 days after such posting.

(c) The producer responsibility plan submitted to the Department as required in paragraph (1)

DRAFT

of subdivision (b) of 42051.2 of the Public Resources Code shall include a summary of all comments received from the advisory board and the public, and identify revisions, if any, made in response to any comments. Additionally, 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 subdivision (c) of section 42051.2 of the Public Resources Code.

(d) 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 participant producer, the termination shall only become effective as of the date the Department receives written notice that the entity has been accepted by a PRO as a participant producer.

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

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

Section 18980.7.1. Independent Producer Plan Approval

(a) The Department shall approve an Independent Producer plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. In determining whether the plan contains all the elements required pursuant to the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the Independent Producer by the advisory board and public as summarized by the Independent Producer pursuant to subdivision (c) of section 18980.7 of these regulations as well as any revisions by the Independent Producer in response to those

DRAFT

comments.

(b) Conditional approval shall be granted if the Department determines that certain elements of the plan do not meet certain requirements of the Act or this chapter, but if conditions identified by the Department are met, final approval will be warranted. Such conditions may include, without limitation, clarification to remove ambiguities or the addition of information or data demonstrating that particular requirements have been met. While approval conditions are pending, the plan shall be considered approved for purposes of the Act and this chapter.

(c) If the Department conditionally approves the plan, the Independent Producer shall, until the conditions on approval have been met, submit the following information on or before the last day of every month, beginning the first full calendar month after conditional approval:

(1) Estimated date for resubmittal of the revised plan. Pursuant to paragraph (3) of subdivision (b) of section 42051.2 of the Public Resources Code, this date must be no later than 12 months after conditional approval.

(2) Status updates for each approval condition, including specific description of how it is being addressed.

(d) If the approval conditions are not met within 12 months after conditional approval, the conditional approval shall end, and the Independent Producer shall be deemed not in compliance with the Act and this chapter.

(e) A plan approved by the Department is valid for five years from the date of approval by the Department.

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

DRAFT

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

Section 18980.7.2. Review of Updated Independent Producer Plan

(a) An Independent Producer shall submit a proposed updated plan to the advisory board as required in paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code at least 180 days before the expiration date of its producer responsibility plan.

(b) ~~Upon~~ When the Independent Producer submit~~stal of~~ the producer responsibility plan to the advisory board for review and comment as required by paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code, the Independent Producer shall also make the proposed updated plan available to the public for review and ~~public~~ comment by, at minimum, posting the plan to its internet website. ~~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.~~ To be considered by the Independent Producer as described in subdivision (c), the advisory board's comments and public comments must be received by the Independent Producer within 60 days after such posting.

(c) No later than 120 calendar days after receiving comments from the advisory board, the Independent Producer shall submit the updated producer responsibility plan to the Department as required in paragraph (2) of subdivision (d) of section 42051.2 of the Public Resources Code, include summary of all comments received from the advisory board and the public, and identify revisions, if any, made in response to the comments as summarized by the Independent Producer. Additionally, the Independent Producer 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.

(d) In determining whether the updated plan contains all the elements required pursuant to

DRAFT

the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the Independent Producer by the advisory board and the public as summarized by the Independent Producer pursuant to subdivision (c) of these regulation, as well as any revisions by the Independent Producer in response to those comments.

(e) The Department shall approve the updated plan if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. The updated plan is valid for an additional five years, beginning on the date of approval.

(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 42051.2, 42063 and 42070, Public Resources Code.

Section 18980.7.3. Independent Producer Plan Amendments

(a) If paragraph (1) of subdivision (e) of section 42051.2 of the Public Resources Code requires an Independent Producer to submit a proposed plan amendment to the advisory board, the advisory board shall have no more than 60 calendar days to review the amendment and provide comments to the Independent Producer.

(b) The Independent Producer shall include, with the proposed plan amendment submitted to the Department as required in paragraph (1) of subdivision (e) of section 42051.2 of the Public Resources Code, summary of all comments received from the advisory board and identify revisions, if any, made in response to the comments.

(c) The Department shall approve the proposed plan amendment if it contains all the elements required pursuant to the Act and meets all requirements of this chapter. In

DRAFT

determining whether the proposed plan amendment contains all the elements required pursuant to the Act and meets all requirements of this chapter, the Department shall consider comments submitted to the Independent Producer by the advisory board as summarized by the Independent Producer pursuant to subdivision (b), as well as any revisions by the Independent Producer in response to those comments. Approval does not alter the expiration date of the plan.

(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.

Section 18980.7.4. Independent Producer Annual Reports

(a) An Independent Producer shall submit to the Department an annual report that includes an annual budget pursuant to section 42051.3 of the Public Resources Code no later than October 1 of each year after the Department has approved or conditionally approved an Independent Producer plan pursuant to section 18980.7.1.

(b) Upon submittal of an annual report to the Department, the Independent Producer shall make the annual report available to the public by, at minimum, posting the document to its internet website until an approved annual report is posted pursuant to subdivision (d).

(c) The Department shall approve annual reports if they meet the requirements of section 18980.9.1 and section 42051.3 of the Public Resources Code.

(d) Within five calendar days after approval of the annual report by the Department, the Independent Producer shall post the approved annual report on the Independent

DRAFT

Producer's internet website.

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

Reference: Sections 42051 and 42051.3, Public Resources Code.

Section 18980.7.5. Independent Producer Document Submittals

(a) A producer responsibility plan, updated producer responsibility plan, plan amendments, annual report, or any document associated with the preceding that is submitted to the Department by an Independent Producer, shall meet all the following requirements:

(1) The document shall be submitted to the Department electronically via email. If the Department has given notice via its website that an online portal is available for submittal of the document, the document shall instead be submitted electronically via that portal. The date of electronic submittal will be considered the date of receipt by the Department.

(2) 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, 18980.7.4, 18980.8, and 18980.9.1, 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)(3).

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

DRAFT

individual authorized to act on behalf of the person submitting 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.”

(b) 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 14. In addition to identifying the particular content, as prescribed in Article 14, 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.

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

Reference: Sections 40062, 42051, 42051.1, 42051.3 and 42063, Public Resources Code.

Section 18980.7.6. Independent Producer Environmental Mitigation Surcharge

The Department shall determine the percentage of the total amount of plastic covered material produced and reported by all producers for which each Independent Producer is the producer, and the Independent Producer shall pay that percentage of the total environmental mitigation surcharge imposed by section 42064 of the Public Resources Code. The percentage share shall be the average of the percentage calculated using the weight of the plastic covered material and the percentage calculated using number of

DRAFT

plastic components.

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

Reference: Sections 42051 and 42064, Public Resources Code

Section 18980.7.7. Independent Producer Recordkeeping and Reporting Requirements

(a) An Independent Producer shall maintain records documenting the following:

(1) For the previous calendar year, for each covered material category:

(A) The total weight of material sold, distributed, or imported in or into the state.

(B) The total number of plastic components sold, distributed, or imported in or into the state.

(C) The total weight of material that is recycled.

(D) The total weight of material that is disposed of.

(2) For each covered material collected and recycled through a program other than curbside collection programs, for each covered material category:

(A) The total weight of material collected by the program.

(B) The total weight of material that is recycled.

(C) The total weight of material that is disposed of.

(b) An Independent Producer shall maintain the following records:

(1) Records kept pursuant to subdivision (a) of section 42054 of the Public Resources Code.

DRAFT

(2) All contracts or agreements established with entities, including, but not limited to, end markets, recycling service providers and intermediate supply chain entities, during each contract's term and for at least three years thereafter.

(3) Copies of supporting records that were used in creating the reports submitted pursuant to section 18980.10.1.

(4) Documentation of all information included in the verifications required pursuant to subdivision (c) of section 18980.4.2.

(5) Copies of audits and investigations pursuant to section 18980.4.2.

(6) Records required to be maintained pursuant to subparagraph (A) of paragraph (4) of subdivision (c) of section 18980.3.3, if any.

(7) Records of complaints received on responsible end markets pursuant to subdivision (f) of section 18980.8.

(c) The Independent Producer is responsible for ensuring that it complies with subdivision (d) of section 42052 of the Public Resources Code. Records in the Independent Producer's custody must be sufficient for the Department to determine whether the Independent Producer is complying with this chapter and the Act.

(d) All records required to be maintained pursuant to this chapter or by the Independent Producer's record maintenance protocol shall be available for inspection by an authorized representative of the Department or other duly authorized regulatory agency and maintained for at least three (3) years.

(e) An entity subject to requirements under this article or the Act shall, within 10 calendar days of receiving written request from the Department, provide to the Department records necessary to assess the entity's compliance. 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

DRAFT

Department by electronic means.

(f) For the purposes of this article, the weight of material recycled shall be determined according to paragraph (2) of subdivision (b) of section 18980.3.2.

(g) For the purposes of this article, the weight of material disposed of shall be determined according to paragraph (3) of subdivision (b) of section 18980.3.2.

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

Reference: Sections 42051, 42051.1, 42052, and 42054, Public Resources Code.

ARTICLE 8: Producer Responsibility Plan Requirements

Section 18980.8. Producer Responsibility Plan

(a) Subject to subdivision (b), all producer responsibility plans shall meet all of the requirements outlined in section 42051.1 of the Public Resources Code and all other requirements set forth in the Act and this chapter.

(b) For purposes of determining the required elements of Independent Producer plans, all references to a PRO in the Act with respect to plan requirements apply equally to Independent Producers, except for subdivisions (d) and (f), subparagraph (D) of paragraph (1) of subdivision (j), paragraph (3) of subdivision (j), and paragraphs (1) through (3) of subdivision (m) of sections 42051.1 of the Public Resources Code, and subdivision (d) of section 42051, section 42053, paragraph (2) of subdivision (a) of section 42053.5, and section 42056 of the Public Resources Code, which do not apply to Independent Producer plans.

(c) Pursuant to paragraph (3) of subdivision (b) of section 42051.1 of the Public Resources

Code, for each technology that will be utilized to achieve recycling requirements, the plan shall additionally include:

(1) An explanation of how the technology is employed in recycling.

(2) A specification of the 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 (for example, further processing or landfill disposal).

(6) Current operational status, including location of current and proposed sites.

(7) An assessment of potential public health and environmental impacts to disadvantaged communities, low-income communities, or rural areas.

(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 subdivision (aa) of section 42041 of the Public Resources Code.

(d) In addition to the examples provided in paragraphs (1) through (4) of subdivision (e) of section 42051.1 of the Public Resources Code, the plan shall include the following education and promotion efforts to educate ratepayers to improve the preparation and sorting, as needed, for covered material:

(1) A description of performance measures, which shall evaluate performance of the comprehensive education and outreach program including, but not limited to, ultimate

DRAFT

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.

(3) A process for coordinating education and promotional efforts between entities including, but not limited to, the PRO, Independent Producers, local jurisdictions, recycling service providers, and alternative collection programs.

(e) The plan shall include all information specified in subparagraph (A) of paragraph (4) of subdivision (a) of section 18980.4, subparagraph (1) through (3) of subdivision (a) of section 18980.4.1, subdivision (d) of section 18980.4.1, and subdivisions (a) and (d) of section 18980.4.3.

(f) The plan shall include a process for implementing and maintaining a formal complaint process, specifically for addressing complaints related to responsible end markets utilized by the PRO or Independent Producers. The process at minimum, shall:

(1) Clearly outline the steps and requirements for persons submitting a complaint.

(2) Establish criteria for assessing the validity and seriousness of alleged complaints.

(3) Specify the process, including estimated timelines, for reviewing, processing, evaluating, investigating and resolving alleged complaints.

(g) Pursuant to paragraph (1) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a process for determining and paying costs that will be incurred, or otherwise would be incurred, by local jurisdictions, recycling service providers, alternative collection programs, and others due to requirements of the Act. For purposes of this subdivision, costs that the PRO and Independent Producers are obligated to pay are referred to as “covered costs.” The process for determining covered costs must satisfy the following criteria:

DRAFT

(1) Costs incurred before January 1, 2023, are not covered costs.

(2) Any of the following costs incurred due to requirements of the Act are covered costs:

(A) A cost of the same nature as one that would ordinarily exist, or be expected to exist, but is greater due to the requirements of the Act. Only the amount of the increase caused by such requirements is a covered cost.

(B) A cost that would not reasonably have been expected to be incurred in the absence of the Act, such as a cost that is of a different nature than ordinarily expected costs and is incurred specifically for the purpose of complying with the requirements of the Act.

(C) A cost specifically approved in advance by the PRO or Independent Producer as a covered cost.

(3) For every cost identified by the entity, the PRO or Independent Producer shall determine the extent to which it is a covered cost. The PRO or Independent Producer shall notify the entity of all determinations in writing.

(4) The process must establish reasonable periods for making determinations pursuant to paragraph (3) and issuing payments, if any.

(5) An entity may seek a determination pursuant to paragraph (3) before it incurs costs it considers to be covered costs. The PRO or Independent Producer shall consider the expected costs that the entity identifies and determine the extent to which they are covered costs.

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

DRAFT

activities be determined according to paragraph (3).

(7) Subject to the dispute resolution procedure provided in subdivision (h), the PRO or Independent Producer shall not be required to pay costs that had been submitted to the PRO or Independent Producer for consideration before they were incurred and were determined not to be covered costs.

(8) For costs determined to be a recycling service provider's covered costs, the PRO or Independent Producer shall first notify the local jurisdiction on whose behalf a recycling service provider provides solid waste handling services of such determination. The notice may be the same notice provided to the local jurisdiction pursuant to paragraph (3) and shall, at a minimum, describe the nature and amount of the covered costs.

(h) Pursuant to paragraph (2) of subdivision (g) of section 42051.1 of the Public Resources Code, the plan shall include a dispute resolution process concerning determinations of whether and to what extent costs incurred by local jurisdictions and recycling service providers are covered costs.

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

(2) The advisory board, when reviewing any plan submitted to it, shall review the process and consider whether to suggest changes to ensure that the PRO or Independent Producer covers costs related to the Act.

(3) The process must avoid unnecessary burden on local jurisdictions and recycling service providers.

(4) The process must provide the option for the local jurisdiction or recycling service

DRAFT

provider to require the dispute to be submitted to mediation and, if no agreement is reached through mediation, binding arbitration. The PRO or Independent Producer plan shall include the express terms of an agreement that, upon the local jurisdiction or recycling service provider's exercise of its option, will govern mediations and arbitrations. The agreement's express terms must comply with the following restrictions:

(A) Each mediation or arbitration shall be administered by a nationally recognized service provider. The plan shall identify a mediation service provider and an arbitration service provider, or a single service provider for both, but the parties involved in the dispute may agree to utilize any other entity, subject to the other requirements set forth in this paragraph.

(B) Arbitration, if any, shall be conducted under rules and procedures deemed appropriate by the arbitrator or arbitration panel for resolution of the dispute, in consideration of the complexity of the evidentiary and legal issues involved in the matter, subject to the requirements of sections 1280 through 1294.4 of the Code of Civil Procedure. To the extent the parties agree to any rules or procedures that comply with those sections, the arbitrator or arbitration panel shall adopt such rules or procedures.

(C) Mediators and arbitrators or arbitration panels shall be agreed upon by the parties or shall be selected according to a process agreed upon by the parties. If the parties are unable to agree upon appointment of a mediator, one shall be assigned by the mediation service provider. If the parties are unable to agree upon appointment of an arbitrator, each party shall select one arbitrator, and the selected arbitrators shall then select a third arbitrator, who shall act as chair to the arbitration panel.

(D) The decision of the arbitrator or arbitration panel shall be binding.

DRAFT

(E) Unless the parties agree otherwise, arbitration and mediation fees shall be apportioned equally among the parties. Each party shall be responsible for their own attorney's fees.

(F) The arbitrator or arbitration panel must be empowered to determine the reasonable costs, if any, for which the PRO or Independent Producer must pay the local jurisdiction or recycling service provider pursuant to subdivision (g) of section 42051.1 of the Public Resources Code. The arbitrator or panel shall apply that provision as follows:

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

(ii) Cost determinations shall be subject to the limitations provided in subdivision (b).

(G) The local jurisdiction or recycling service provider shall not be required to agree to submit a matter to binding arbitration as a precondition for submitting the matter to mediation.

(5) Notwithstanding the foregoing, the parties to any dispute may resolve the dispute in any manner mutually agreed upon, such as through mediation, non-binding arbitration, or arbitration without regard to the dispute resolution provisions of the plan.

(6) Nothing in this subdivision shall be construed as empowering the PRO or Independent Producers to require local jurisdictions or recycling service providers to submit any matter to mediation or arbitration.

(i) If the plan is a PRO plan, the plan shall establish the process required pursuant to

DRAFT

paragraph (1) of subdivision (f) of section 18980.3. If the plan is an Independent Producer plan, it shall instead include the information required pursuant to paragraph (2) of subdivision (f) of section 18980.3 for any covered materials claimed to be recyclable pursuant to paragraph (4) of subdivision (d) of section 42355.51 or paragraph (5) of subdivision (d) of section 42355.51 of the Public Resources Code.

(j) The plan shall additionally include:

(1) In its entirety, the then-current version of the design guide referenced in subparagraph (A) of paragraph (3) of subdivision (d) of section 42355.51 of the Public Resources Code.

(A) Such version shall apply to determinations of recyclability of covered materials, as set forth in paragraph (1) of subdivision (b) of section 18980.3, and to the requirement under paragraph (2) of subdivision (d) of section 42053 of the Public Resources Code that the PRO's fees account for the difficulty of recycling covered material, as set forth in subdivision (g) of section 18980.6.7.

(B) In the event that an updated version of the design guide incorporated into the plan becomes available, the updated design guide may only become part of the plan through a plan updated pursuant to section 18980.6.3 or amended pursuant to section 18980.6.4. In an updated or amended plan, any changes to the design guide that would affect the recyclability of covered materials shall be identified and the impacts explained.

(2) Any other publications, in their entirety, that the PRO may rely on pursuant to paragraph (2) of subdivision (d) of section 42053 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.

(k) If the plan is a PRO plan, it shall include a description of how the PRO will coordinate with

DRAFT

any Independent Producers. If the plan is an Independent Producer plan, it shall include a description of how the Independent Producer will coordinate with the approved PRO and any other Independent Producers.

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

Reference: Sections 42041, 42051, 42051.1, 42051.2, 42060, 42063, 42080, 42081, and 42355.51, Public Resources Code; section 7295, Government Code.

Section 18980.8.1. Plan Requirements Specific to a PRO

(a) Pursuant to subdivision (f) of section 42051.1 of the Public Resources Code, the PRO's plan shall include a closure and transfer plan, as specified in section 18980.8.2.

(b) Pursuant to subdivision (d) of section 42051.1 and subdivision (c) of section 42053 of the Public Resources Code, the PRO's plan shall include a fee schedule. The fee schedule shall be developed using the requirements specified in section 18980.6.7.

(c) Pursuant to subdivision (m) of section 42051.1 of the Public Resources Code, the PRO's plan shall include procedures and methods for ensuring that all items claimed as the basis for source reduction through shifting to reusable or refillable items satisfy the requirements to be considered reusable or refillable. The plan shall explain, at a minimum, how the PRO will: confirm items are designed for durability; assess convenience, safety, and environmental risks; and determine the average number of uses or refills for packaging reused or refilled by producers.

(d) Pursuant to paragraph (4) of subdivision (m) of section 42051.1 of the Public Resources Code, at a minimum, the plan's record maintenance protocol must include specific requirements to ensure that each producer provides records to the PRO that are sufficient

DRAFT

to demonstrate that the producer has complied with the plan and the Act.

(e) The plan shall authorize the Trustee or Agent for the Closure and Transfer Plan established pursuant to section 42056 and subdivision (f) of section 42051.1 of the Public Resources Code to develop and implement, subject to department approval and only after the Closure and Transfer Plan self-executes pursuant to section 18980.8.2, adaptive management strategies to ensure that the requirements of the Act are met if specific plan elements conflict with their achievement. Adaptive management authority shall include authorizing the Trustee or Agent to make changes to the fee schedule and all appropriate components thereof to ensure that the plan operates in a manner that does not conflict with the requirements of the Act.

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

Reference: Sections 42051.1, 42053, 42056 and 42057, Public Resources Code.

Section 18980.8.2. Closure and Transfer Plan Requirements

(a) The Closure and Transfer Plan pursuant to subdivision (f) of section 42051.1 of the Public Resources Code shall be self-executing as of either the effective date of dissolution of a PRO or termination of its plan, as proposed in the notice provided to the Department pursuant to paragraph (7) of subdivision (b) of section 18980.8.2, or five calendar days after actual revocation. The Closure and Transfer Plan shall include the following:

(1) Information pertaining to the trustees or agents that will implement the Closure and Transfer Plan, if executed, including the following:

(A) Primary and secondary contact names, contact information, and affiliations for the Initial Trustee or Agent who will implement the Closure and Transfer Plan.

DRAFT

(B) Primary and secondary contact names, contact information, and affiliations for the Successor Trustee or Agent who will implement the Closure and Transfer Plan if the Initial Trustee or Agent is unable to serve.

(C) A statement acknowledging that the Department will serve as the Trust Protector or Escrow Account Protector and the Beneficiary of the Trust or Escrow Account, and may provide direction to the Trustee or Agent and may remove and replace a Trustee or Agent at its discretion.

(D) A description of the credentials, qualifications, requisite industry knowledge, financial expertise, and skill in contract administration necessary for the Trustees or Agents to fulfill all the duties required by the Act, these regulations, and the Closure and Transfer Plan and an indication of their consent to be appointed as a Trustee or Agent.

(E) Names and roles of key entities who may be affected by or have responsibilities pursuant to the initiation of the Closure and Transfer Plan. Such entities include, but are 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.

(F) A description of how the Trustee or Agent will receive payment for its services; for example, out of a specifically budgeted amount included in the Closure Fund.

(2) An explanation of how the PRO will ensure that the Closure and Transfer Plan can be fully executed through a Trustee or Agent according to the requirements of this chapter, with the direction of the Department, including how the PRO will:

(A) Empower the Trustee or Agent to satisfy the obligations of the PRO and implement the Closure and Transfer Plan.

(B) Facilitate the Trustee's or Agent's transfer of administration to the successor PRO

DRAFT

or PROs.

(C) Ensure that all contracts and other agreements are fully assignable to and assumable by the Trustee or Agent and fully assignable by the Trustee or Agent to the successor PRO or PROs, and assumable by the successor PRO or PROs.

(3) Documentation that demonstrates the PRO has created and will maintain the Closure Fund, a trust fund or escrow account established pursuant to section 42056 of the Public Resources Code, separately from the PRO's other accounts:

(A) Providing at all times, from thirty-six months after the time at which the first PRO plan is approved, for the full funding of the activities necessary to perform all of the PRO's obligations during, at minimum, a six-month period, except for its obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code. Funding necessary to perform the PRO's obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code shall not be required as part of the Closure Fund, trust fund, or escrow account.

(i) Until the Closure Fund is fully funded thirty-six months after the approval of the first PRO plan, the PRO shall also provide to the Department documentation of a letter of credit maintained by the PRO with a lending institution that would make whole the full funding obligation if the Closure and Transfer Plan is executed.

(B) Existing continuously through to the transfer to the Trustee or Agent in an account dedicated solely to satisfying the obligations of the PRO during the closure period.

(C) Into which the PRO will deposit moneys allocated to the payment of the PRO's obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code concerning the annual surcharge, as further specified

DRAFT

by the PRO in its Closure and Transfer Plan and these regulations.

(4) An explanation of how the PRO will ensure that, upon the self-execution of the Closure and Transfer Plan, adequate moneys will be available and deposited into the Closure Fund to satisfy its obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code concerning the annual surcharge, including the PRO's methodology for calculating the adequacy of the moneys.

(5) An explanation of 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 all of its obligations over a six-month period, except for those obligations specifically identified in paragraph (4) of this subdivision.

(C) The PRO's plans for communicating with Producers, responsible end markets, materials recovery facilities (MRFs), contractors, local jurisdictions, and other key entities about the activation and carrying out of the Closure and Transfer Plan and directing communications to the Department.

(6) A description of 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 scope of work.

(B) The process for revising a Trustee or Agent's scope of work.

(C) How the PRO and Trustee or Agent will independently confirm payment of the Trustee or Agent.

(7) Self-execute on the effective date of dissolution of a PRO or termination of its plan, as

DRAFT

noticed to the Department pursuant to paragraph (7) of subdivision (b) of section 18980.8.2, or five calendar days after actual revocation.

(8) Authorization of the Trustee or Agent's development and implementation, subject to department approval, of adaptive management strategies to ensure that the requirements of the Act are met if specific plan elements conflict with their achievement, including those specific adaptive management authorities specified in subdivision (e) of section 18980.8.1.

(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 contents of the Closure Fund can fully satisfy the PRO's obligations during a six-month period except those obligations specifically identified in paragraph (4) of subdivision (a) of this section. Such evidence shall:

(A) Include financial modeling that assures fund solvency through Closure and Transfer Plan implementation, based on current program activity levels and most recent cost and revenue data.

(B) Be provided to the Department in annual reports and at any time upon the request of the Department.

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

(4) Notify the Department when changes to its scope of work are finalized.

(5) Notify the Department of any of the following circumstances at the time specified:

DRAFT

(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 identified in paragraph (2) of this subdivision over the next six months.

(B) No more than five calendar days after the PRO determines that the Trustee or Agent is temporarily or permanently unwilling or unable to carry out its obligations under the Closure and Transfer Plan.

(6) Immediately 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. If directed by the Department, cease spending until the Closure Fund is solvent.

(7) In the event of the dissolution of a PRO or termination of a PRO's plan, submit to the Department via email a written ~~electronic~~ notice of intent no fewer than 180 days prior to the PRO's proposed date of dissolution or termination. The notice shall include, at a minimum, the following information:

(A) The proposed effective date of dissolution or plan termination, including a description of why the effective date is appropriate.

(B) The PRO's reason for proposing to dissolve or terminate its plan.

(C) A detailed description of how the PRO will implement the plan until the proposed effective date of dissolution or plan termination, and thereafter, how the Trustee or Agent shall meet the requirements pursuant to subdivision (f) of section 42051.1 of the Public Resources Code.

(D) An explanation of the PRO's outstanding obligations to the Department and key entities and how it will fulfill these obligations prior to the proposed effective date of dissolution or plan termination.

(E) If the Department does not approve the proposal, the PRO may revise its proposal

DRAFT

addressing deficiencies identified by the Department and resubmit the proposal to the Department.

(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) Provide the Department and the Trustee or Agent with all records necessary to implement the Closure and Transfer Plan, including contract and agreement records, preliminary accounting of the Closure Fund, including its balance, and any other PRO accounts and assets, as well as all necessary contact information for Producers, responsible end markets, materials recovery facilities (MRFs), contractors, local jurisdictions, and other key entities.

(A) Where the Closure and Transfer Plan is being activated due to plan revocation, these records must be provided no later than five calendar days after plan revocation.

(B) Where the Closure and Transfer Plan is being activated due to dissolution or

DRAFT

termination, these records must be provided no later than the established termination date.

(10) Immediately upon self-execution of the Closure and Transfer Plan carry out all actions assigned to it under the Closure and Transfer Plan, unless directed otherwise in writing by the Department, including:

(A) Deposit into the Closure Fund all moneys allocated to satisfy its obligations pursuant to paragraphs (1) and (2) of subdivision (e) of section 42064 of the Public Resources Code concerning the annual surcharge and any unexpended funds.

(B) Transfer the Closure Fund, complete with all funds described in subparagraph (A) of this paragraph, 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 and the Trustee or Agent any additional financial information received by the PRO concerning the plan.

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

(c) 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.

(d) The Trustee or Agent shall:

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

DRAFT

(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 execution date of the Closure and Transfer Plan and administer it thereafter.

(4) As appropriate, assume or accept the assignment of all PRO contracts and agreements.

(5) Propose adaptive management strategies to the department for its approval and implement them once approved.

(6) Implement the PRO's most recently approved PRO plan, as augmented by any adaptive management strategies necessary to meet the requirements of the Act, if applicable.

(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 to receive advice on the administration of the Closure and Transfer Plan, unless the Department determines that such meetings are not necessary for the Trustee or Agent to perform its obligations under this section.

(9) Submit an annual report to the Department that contains the information required by section 42063 of the Public Resources Code and Article 9 of this chapter.

(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

DRAFT

Plan.

(11) Transfer all responsibilities to the Successor PRO or PROs, if directed by the Department to do so, and assign all contracts and agreements to the appropriate entity, if directed by the Department.

(e) 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) During the period from the self-execution of the Closure and Transfer Plan through the approval of a Successor PRO's plan, review and approve, if warranted, written requests from the Trustee or Agent to implement adaptive management strategies pursuant to the PRO's previously approved plan if the requirements of the Act cannot be met without adaptive management.

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

Reference: Sections 42051.1 and 42056, Public Resources Code.

ARTICLE 9: Source Reduction Baseline Report and Annual Reports

Section 18980.9. Source Reduction Baseline Report

(a) On or before July 1, 2026, all reporting entities shall submit a source reduction baseline report to the Department. The source reduction baseline report shall be submitted electronically via email. If the Department has given notice via its website that an online

DRAFT

portal is available for report submittal, the report shall instead be submitted electronically via that portal.~~, and a~~At a minimum, the report shall include 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. The weight of plastic covered material shall be measured in accordance with paragraph (15) of subdivision (a) of section 18980.1.

(b) The PRO must disaggregate the amounts specified in subdivision (a) by each participant producer.

(c) The Department shall use the information reported pursuant to this section to update the source reduction baseline pursuant to subdivision (b) of section 42057 of the Public Resources Code by November 1, 2026.

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

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

Section 18980.9.1. Annual Reports

(a) Subject to section 18980.6.5 and subdivision (b) of this section, all annual reports shall include the information specified in paragraphs (2) and (3) of subdivision (a) of section 42051.3 of the Public Resources Code.

(b) For purposes of determining the required elements of Independent Producer annual reports, all references to a PRO in the Act with respect to annual reports apply equally to Independent Producers, except for the reference to the fee schedule in subparagraph (A) of paragraph (3) of subdivision (a) of section 42051.3 of the Public Resources Code and the requirements in subparagraph (B) of paragraph (3) of subdivision (a) of section 42051.3 of the Public Resources Code, which do not apply to Independent Producer

DRAFT

annual reports.

(c) The annual report shall include:

(1) All information on recyclability required pursuant to subdivision (f) of section 18980.3.

(2) Pursuant to subdivision (i) of section 42057 of the Public Resources Code, the recycling rate for all expanded polystyrene, as defined in subdivision (h) of section 18980.3.2, if relevant to the entity reporting.

(3) Information on responsible end markets utilized, as required pursuant to subdivisions (b) and (c) of section 18980.4.2.

(d) For the PRO, the annual report shall additionally include:

(1) In the second phase of the annual report, as described in subdivision (c) of section 18980.6.5, fee schedule amendments pursuant to subdivision (e) of section 42053 of the Public Resources Code as a result of adjustments, including calculations for malus fees or credits.

(2) In its first phase of the annual report, as described in subdivision (b) of section 18980.6.5, the following information with respect to source reduction:

(A) Percentage of reduction across all participant producers.

(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.

(C) A quantitative assessment of source reduction achieved through reuse and refill strategies. The assessment shall assess the percentage of reduction in new material produced, detailing the reduction in the number and weight of plastic components through shifting to reusable or refillable packaging or food service ware and elimination of plastic components.

DRAFT

(D) Source reduction percentage by weight achieved through an alternative compliance formula pursuant to subclause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of section 42057 of the Public Resources Code and approved by the Department as part of the PRO's plan.

(3) In the first phase of the annual report, as described in section 18980.6.5, information on the Closure and Transfer Plan as required pursuant to sections 18980.8.2(b)(2) and 18980.8.2(c).

(e) Within 90 calendar days of receiving the second phase of an annual report submitted pursuant to subdivision (a) of section 42051.3 of the Public Resources Code, as described in subdivision (c) of section 18980.6.5, the Department shall review the annual report to determine if it is complete or incomplete.

(1) 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 paragraphs (2) through (5) of subdivision (b) of section 42051.3 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: Registration and Data Reporting Requirements

Section 18980.10. Registration and Maintaining Address on File

(a) Each producer, including producers of covered material seeking an exemption pursuant to sections 18980.2.3, 18980.2.4, or 18980.5.2, shall register <u>with the Department. The registration information and requests required under this section shall be submitted to the</u>

DRAFT

Department electronically through the Department's online reporting system. ~~in a manner established by the Department.~~ Retailers and wholesalers are not subject to this requirement if they are not the producer pursuant to subdivision (w) of section 42041 of the Public Resources Code of any covered material used by goods they sell, offer to sell, or distribute.

(1) To register, a producer shall file at least the following information:

(A) Contact information, including the name, title, email, and phone number, of a person authorized to act on behalf of the producer

(B) Legal entity name (a fictitious business name is not sufficient)

(C) All business names under which the producer transacts business (i.e., fictitious business names or "dba" names)

(D) Federal Employer Identification Number (or, for Importers of Record that do not have a Federal Employer Identification Number, a Customs Assigned Importer Number (also known as a "CBP-Assigned Number"))

(E) Business mailing address

(F) Primary business address (physical address; must not be a post office box)

(G) Business phone number

(H) 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

DRAFT

required pursuant to paragraph (1) 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 of the change is a violation of subdivision (c) of section 42051 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 paragraph (1) of subdivision (b) of section 42051 of the Public Resources Code, the PRO shall register the producer with the Department within 30 days of the producer being accepted as a participant producer.

(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) If a participant producer's activities have changed such that it is no longer subject to the reporting requirements of this chapter:

(1) If the participant producer is a reporting entity, the producer shall submit a request to

DRAFT

the Department to inactivate its reporting system registration within 30 days of the change. Subject to subdivision (d), the Department shall inactivate the registration if the request describes changed business activities that render the producer no longer subject to the reporting requirements.

(2) If the participant producer is not a reporting entity:

(A) The participant producer shall notify the PRO within 30 days of the change.

(B) The PRO shall submit a request to the Department to inactivate the reporting system registration for the participant within 30 days of receiving notification from the participant producer. Subject to subdivision (d), the Department shall inactivate the registration if the request describes changed business activities that render the producer no longer subject to the reporting requirements.

(c) If an Independent Producer's business activities have changed such that it is no longer subject to the reporting requirements of this chapter, the Independent Producer shall submit a request to the Department to inactivate its reporting system registration within 30 days of the change. Subject to subdivision (d), the Department shall inactivate the registration if the request describes changed business activities that render the Independent Producer no longer subject to the reporting requirements.

(d) The Department shall not approve a request for inactivation pursuant to subdivision (b) or (c) until the requesting entity has submitted to the Department all outstanding reports required pursuant to section 18980.10.1 and the Department has deemed any such reports complete.

(e) Once approved, the effective date of an inactivation pursuant to subdivision (b) or (c) shall be the date on which the producer's activities changed such that the producer became no longer subject to the reporting requirements of this chapter.

(f) A producer whose registration status was inactivated pursuant to subdivision (b) or (c), or a

DRAFT

PRO acting on such a producer's behalf, shall notify the Department if the producer's activities have changed such that it has become subject to the reporting requirements of this chapter. The producer or PRO shall notify the Department within 30 days of such a change, and the Department shall reactivate the producer's registration status upon receipt of the notice. Following reactivation, the producer, or a PRO acting on its behalf, shall resume reporting by July 1 of the following calendar year. The first report after reactivation shall include all applicable data pertaining to the calendar year in which the activities changed such that the producer became subject to the reporting requirements, beginning as of the date of that change.

(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.

Section 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 it submits 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, it shall notify the

DRAFT

Department and correct the error within 14 calendar 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 14 calendar days.

(4) The reporting entity may notify the Department of the reasons why resolving the error cannot be completed within 14 calendar days, and the Department shall extend the deadline up to an additional 14 calendar days, if necessary to accommodate such reasons.

(b) A participant producer shall notify the PRO of any reportable activities that it has reported or will report to the Department. Notwithstanding any other provisions in this chapter concerning reporting obligations, the PRO is not required to report such activities.

(c) Reports shall:

(1) Be due on July 1 of each year, except for the PRO's initial report, which shall be submitted with its producer responsibility plan when that plan is submitted pursuant to subdivision (a) or (b), as applicable, of section 18980.6.1.

(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 January 1 of the previous calendar year for purposes of reporting.

(d) A producer that has requested inactivation of its reporting system registration pursuant to paragraph (1) of subdivision (b) of section 18980.10 or subdivision (c) of section 18980.10, shall submit a report to the Department for activities conducted by the producer during the partial year preceding the date on which the producer's activities changed such that the producer is no longer subject to the reporting requirements of this chapter. A

DRAFT

participant producer who has requested inactivation through its PRO pursuant to paragraph (2) of subdivision (b) of section 18980.10, shall provide the PRO with all information necessary for the PRO to report activities conducted by the participant producer during the partial year preceding the date on which the producer's activities changed such that the participant producer is no longer subject to the reporting requirements of this chapter.

(e) 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.

Section 18980.10.2. Data Report Contents

(a) Reports submitted pursuant to section 18980.10.1 shall contain the following information for all covered material for which the reporting entity was the producer or, for a PRO, for which its participant producers were the producers:

(1) For the previous calendar year, for each covered material category:

(A) The total weight of material, sold, distributed, or imported in or into the state.

(B) The total number of plastic components sold, distributed, or imported in or into the state.

(C) The total weight of material disposed of.

(D) The total weight of material recycled.

(2) Pursuant to paragraph (3) of subdivision (a) of section 42052 and paragraph (4) of subdivision (a) of section 42052 of the Public Resources Code, for covered material

DRAFT

collected and recycled through a program other than curbside collection programs, for each covered material category:

(A) Identification of each alternative collection program.

(B) The total weight of covered material collected by each program.

(C) The total weight of covered material that is recycled by each program.

(b) All data reported pursuant to this chapter shall be reported in annual increments.

(c) For the purposes of this article, the weight of material recycled shall be determined according to paragraph (2) of subdivision (b) of section 18980.3.2.

(d) For the purposes of this article, the weight of material disposed of shall be determined according to paragraph (3) of subdivision (b) of section 18980.3.2.

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

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

ARTICLE 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Section 18980.11. Requirements for Local Jurisdictions and Recycling Service Providers

(a) No later than the date the Department first approves a PRO's plan, local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list

DRAFT

pursuant to subdivisions (c) and (d) of section 42061 of the Public Resources Code. For all purposes under the Act, the term “recycling programs” encompasses composting-related collection and processing.

(b) Covered material is considered included in a local jurisdiction or recycling service provider’s collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and transfers it to responsible end markets directly or to intermediate supply chain entities. The local jurisdiction or recycling service provider shall not be required to establish the availability of a responsible end market to ultimately recycle the covered material. However, the absence of responsible end markets shall be deemed a local condition, circumstance, or challenge rendering inclusion of the covered material in the program impracticable for purposes of subdivision (b) of section 42060.5 of the Public Resources Code and paragraph (4) of subdivision (c) of section 18980.11.1 of this chapter.

(c) As provided in subdivision (g) of section 18980.2.5, a change to the CMC list pursuant to subdivision (e) of 42061 of the Public Resources Code that imposes additional obligations on local jurisdictions or recycling service providers does not affect the obligations of local jurisdictions or recycling service providers under subdivision (a) of section 42060.5 of the Public Resources Code until one year after the change. If a local jurisdiction or recycling service provider submits a request to the Department for an extension or exemption pursuant to subdivision (b) of section 42060.5 of the Public Resources Code before the end of that one-year period, the requirement of subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect with respect to the additional obligations until the Department decides whether to grant or deny the request.

Authority: Section 42060, Public Resources Code.

Reference: Section 42061 and 42060.5, Public Resources Code.

DRAFT

Section 18980.11.1. Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers

(a) Pursuant to subdivision (b) of section 42060.5 of the Public Resources Code, a local jurisdiction or recycling service provider may apply for an extension of, or an exemption from, the requirements of subdivision (a) of section 42060.5 of the Public Resources Code. An application may be submitted regardless of whether the Department has issued a notice of violation alleging noncompliance with those requirements.

(b) For purposes of this section, “exemption” also refers to an “extension.” An extension differs from an exemption only in that an exemption becomes effective upon approval and exempts the applicant from the requirement for two years, whereas an extension may be granted before the requirement has taken effect and results in delaying the requirement's applicability for two years beyond when it otherwise would have taken effect.

(c) A local jurisdiction or recycling service provider seeking an exemption shall ~~apply~~ submit an application to the Department electronically via email. If the Department has given notice via its website that an online portal is available for application submittal, the application shall instead be submitted electronically via that portal.~~in a manner established by the Department.~~ The application shall include the following information:

(1) For each entity on whose behalf the application is submitted, the following contact information:

(A) The name, mailing address, and physical address of the entity.

(B) Name, title, phone number, and email address of the individual submitting the request.

(C) If different, the name, title, phone number, and email address of the individual to whom the Department shall direct all communications concerning the exemption.

DRAFT

(2) If the applicant is a recycling service provider, it must notify each local jurisdiction to which it provides services that would be affected by the extension or exemption of its intent to request the exemption. The applicant shall obtain the following information and include it in the application:

(A) Contact information (name, phone number, and email address) for an individual representing the local jurisdiction. The individual identified must be authorized by the jurisdiction to receive all communications regarding the request.

(B) A description of each local jurisdiction's involvement in the application process, including, at minimum, when the applicant notified the local jurisdiction of the intent to submit the application.

(3) The specific covered materials or covered material categories that are the subject of the request.

(4) A description, with supporting documentation, of the specific local conditions, circumstances, and 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 collection and recycling programs. The description must demonstrate that the identified material cannot practicably be included in the collection and recycling programs. The description must also address, at a minimum, the necessity of the exemption with respect to the following considerations: program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; and transportation safety.

(5) Written notices and comments, if any, received pursuant to subdivision (d) and an explanation of how the applicant addressed them or why it did not do so.

(d) No exemption application or renewal request shall be submitted to the Department until

DRAFT

after the local jurisdiction or recycling service provider has provided all PROs and Independent Producers the application or advance notice of the renewal request. All PROs and Independent Producers shall have 90 days to review an application, and 30 days to review a notice of a renewal request. During the review period:

(1) Each PRO and Independent Producer may submit comments to the applicant concerning the assertion that collection is impracticable and the relevant conditions, circumstances, and challenges.

(2) Each PRO and Independent Producer shall notify the applicant in writing whether they object to the exemption or extension sought. If a PRO or Independent Producer provides no such notice, they will be deemed not to object.

(3) The parties may agree to extend the 90- or 30-day period or come to an agreement concerning the collection and recycling or composting of the covered materials or covered material categories at issue.

(e) The Department shall approve the application if the application establishes that the identified material cannot practicably be included in the collection and recycling programs.

(f) If the Department denies the application, the applicant shall not submit a new application for the same material within 90 days of the determination by the Department to deny approval of the application. A new application shall not be submitted unless the specific local conditions, circumstances, or challenges alleged to justify the extension or exemption have changed since submission of the previous application.

(g) The Department shall repeal the extension or exemption if it determines that conditions, circumstances, or challenges no longer render compliance impracticable as described in the application.

(h) An extension or exemption may be renewed by completing either of the following between 120 and 90 calendar days before the extension or exemption expires:

DRAFT

(1) If the information provided pursuant to paragraph (4) of subdivision (c) is no longer accurate or otherwise no longer establishes impracticability of complying with subdivision (a) of section 42060.5 of the Public Resources Code, the applicant shall submit a new application pursuant to subdivisions (c) and (d).

(2) If the local jurisdiction or recycling service provider maintains that local conditions, circumstances, and challenges described in the original application have not changed and continue to render compliance impracticable, a new application is not required, except that the local jurisdiction or recycling service provider shall:

(A) Notify all PROs and Independent Producers in writing that it intends to request renewal of the extension or exemption on the same basis asserted in the original application.

(B) Complete the procedure described in subdivision (d) and determine whether, considering the comments received, if any, the contents of the original application remain accurate and sufficient to establish impracticability.

(C) If the local jurisdiction or recycling service provider determines that the original application remains accurate and sufficient, it shall request renewal in a letter submitted ~~electronically~~ to the Department electronically via email. If the Department has given notice via its website that an online portal is available for letter submittal, the letter shall instead be submitted electronically via that portal. The letter shall certify that all information in the application remains accurate and that the circumstances described in it continue to render compliance with section 42060.5 impracticable. The letter shall include updates to the information previously submitted pursuant to paragraph (1) of subdivision (c), if necessary. The letter shall include or be accompanied by the comments received, if any, and an explanation of why the comments did not merit an update to the application.

(D) If the local jurisdiction or recycling service provider determines that the original

DRAFT

application is no longer accurate or no longer establishes that compliance with section 42060.5 is impracticable, the local jurisdiction shall request renewal by submitting a revised application pursuant to subdivision (c), along with the comments received and an explanation of how the revisions address them.

(3) The Department shall grant renewal of the exemption unless it determines that the conditions, circumstances, or challenges described in the previously approved application no longer establish impracticability.

Authority: Section 42060, Public Resources Code.

Reference: Sections 42051.1 and 42060.5, Public Resources Code.

Section 18980.11.2. Exemption for Rural Counties and Rural Jurisdictions

(a) A rural county or rural jurisdiction that has adopted a resolution pursuant to subdivision (c) of section 42060.5 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 the Public Resources Code, the rural county or rural jurisdiction shall not be exempt from the requirements of subdivision (a) of section 42060.5 of the Public Resources Code under subdivision (c) of section 42060.5 of the Public Resources Code.

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

Reference: Sections 42041, 42060, 42060.5, and 42649.8, Public Resources Code.

DRAFT

ARTICLE 12: Requirements for the Advisory Board

Section 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, unless otherwise specified by the Department.

(b) Notwithstanding subdivision (a), 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) during which their membership commenced.

(c) If a member is reappointed for an additional term, the additional term shall be deemed to commence upon expiration of the previous term.

(d) The director shall revoke a member's appointment if: the member was nominated by an entity or otherwise appointed as the entity's representative for purposes of subdivision (a) of section 42070 of the Public Resources Code, but the entity no longer recognizes the member as its representative; the director determines that the member's conduct manifests a clear unwillingness or inability to serve as such a representative; or other circumstances establish that the member is manifestly unfit to be such a representative.

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

DRAFT

Section 18980.13. Compliance Evaluation and Determination

(a) The Department may conduct investigations to examine operation activities and records, as it deems necessary to determine compliance with this chapter or the Act pursuant to subdivision (a) of section 42080 of the Public Resources Code. The investigation may require, for example, entities to produce records to the Department and to cooperate 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 paragraph (1) of subdivision (a) of section 42081 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 Producer Responsibility 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 subsequent day on which the actions are committed following the thirtieth day after the Department issues a notice of violation for the initial violation.

DRAFT

(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 PRO or 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 begin accruing 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 of a producer being 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 generally to participants in a PRO plan, such as the requirement to ensure that covered material sold, offered for sale,

DRAFT

imported, or distributed in the state achieves the requirements set forth in sections 42050 and subdivision (i) of 42057 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 notice of violation for such failure. For example, if any participating producers continue offering for sale products that use covered material in a particular covered material category that does not meet the recycling rate requirements of subdivision (c) of section 42050 or subdivision (i) of section 42057 of the Public Resources Code, those producers of covered material in that category have violated their obligation under that section, and either the PRO or the individual participating producers may be penalized pursuant to section 42080 of the Public Resources Code for each such violation. Notwithstanding the foregoing, penalties shall not be imposed on the PRO for violations of subdivision (i) of section 42057 of the Public Resources Code that occur before approval of the PRO's plan.

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

(1) Each product that uses non-compliant covered material, without regard to the distribution or sales of discrete instances of the product, shall constitute a distinct violation. Each product shall be identified according to the characteristics listed in paragraph (2) of subdivision (a) of section 42081 of the Public Resources Code, using as many characteristics as necessary to uniquely identify it. In addition to those characteristics, 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 product according to such characteristics. If the Department determines characteristics listed in paragraph (2) of subdivision (a) of section 42081 of the Public Resources Code are not sufficient to uniquely identify the product, other characteristics

DRAFT

may be considered. Multiple variations of a product, such as those identified by multiple SKUs or UPCs, constitute the same 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 product using non-compliant covered material is in distribution or offered for sale in the state.

(3) If a specific covered material satisfies the recycling rate requirement of subdivision (c) of section 42050 of the Public Resources Code, the producer of the covered material shall not be considered to violate that requirement solely because the covered material category encompassing the covered material does not meet that requirement. However, the producer must demonstrate in an annual report that the covered material continues to satisfy the requirement. Recycling rate shall be calculated as described in section 18980.3.2, applied solely to the covered material rather than to the covered material category.

(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 lists identified in subdivision (a) of section 42060.5 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 in their collection and recycling programs, except as described in sections 18980.11.1 and 18980.11.2, or unless the local jurisdiction is otherwise not required to include the covered material category in its collection and recycling programs under section 42060.5 of the Public Resources Code.

(3) No penalty may be imposed against a local jurisdiction during the pendency of a request for an extension for, or exemption from, a requirement of subdivision (a) of

DRAFT

section 42060.5 asserting that compliance with the requirement is not practicable for a specific identified covered material.

(j) The number of violations of section 42060.5 of the Public Resources Code by a recycling service provider and the accrual of penalties shall be calculated in the same manner as would apply under subdivision (i) for local jurisdictions committing the same violations. No penalty may be imposed against a recycling service provider during the pendency of a request for an extension for, or exemption from, a requirement of subdivision (a) of section 42060.5 asserting that compliance with the requirement is not practicable for a specific identified covered material.

(k) Except as otherwise provided, all factual determinations pursuant to this chapter, including whether any conditions have been met or factual circumstances have been established or demonstrated, shall be made based on the preponderance of evidence, meaning that, in consideration of all relevant facts and circumstances, the facts to be determined must be shown more likely than not to be true.

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

Reference: Sections 42050, 42057, 42060.5, 42080, 42081 and 42083, Public Resources Code.

Section 18980.13.1. Corrective Action Plan

(a) Nothing in this section shall be construed as limiting the Department's authority to enter into any agreement with any party, including a producer, local jurisdiction, or recycling service provider, to resolve violations identified in a notice of violation on any terms the parties mutually deem appropriate.

(b) When issuing a notice of violation pursuant to subdivision (a) of section 42081 of the

DRAFT

Public Resources Code or in response to a written request submitted to the Department after issuance of a notice of violation, the Department shall determine whether to permit an entity to propose a corrective action plan pursuant to subdivision (b) of section 42081 of the Public Resources Code. In determining whether to allow submission of a proposal, the Department shall consider the practicality of a corrective action plan and whether a corrective action plan is, compared to immediate imposition of penalties, likely to more effectively promote the achievement of the requirements of section 42050 of the Public Resources Code, the policy goal established in Section 41780.01 as it relates to covered material, and the intent of the Act as provided in section 42040.

(c) In the notice of violation, the Department shall set forth specific elements that the proposal must contain, as the Department deems necessary for the corrective action plan to address the considerations identified in subdivision (a). Such elements may include: addressing specific matters related to compliance with the Act; sales and distribution data; consent to the imposition of certain penalties without an administrative hearing 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; and identification of corrective action already taken or that will be implemented regardless of whether the Department approves the corrective action plan. The Department shall not review a proposed corrective action plan unless it contains the specified elements and satisfies 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 paragraph (1) of subdivision (a) of section 18980.10.

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

DRAFT

(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. This description must be sufficiently detailed for the Department to evaluate whether such corrective action is feasible and whether, if approved and complied with, it will result in full compliance with the Act.

(D) The requester shall state whether the requester consents to the imposition of penalties without an administrative hearing, 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 violations include, at a minimum, violations that the corrective action plan does not address or that may require more than 24 months to fully correct.

(2) 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 excuse any violation or otherwise affect the Department's authority to take enforcement action against any alleged violations, including those addressed in the proposed corrective action plan, except as specifically provided in the Act and this chapter.

(3) After submitting a corrective action plan, the entity shall be bound by the corrective action plan upon approval by the Department. The entity further acknowledges that the Department may, when approving the corrective action plan or at any other time, impose reasonable conditions for how the entity must demonstrate compliance with the corrective action plan. Such conditions may include, for example, document submittals and reporting related to the effectiveness of the corrective action plan. Such conditions shall be considered part of the corrective action plan.

DRAFT

(4) If it approves a corrective action plan, 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 corrective action plan.

(5) The Department shall approve the corrective action plan if, compared to immediate imposition of penalties, the plan is more certain to promote, and will be more effective at promoting the following:

(A) Achievement of the requirements of section 42050 of the Public Resources Code.

(B) The policy goal established in section 41780.01 of the Public Resources Code, as it relates to covered material.

(C) The intent of the Act, as provided in section 42040 of the Public Resources Code.

(6) The approval of a corrective action plan does not excuse violations other than to the extent the corrective action plan precludes assessment of penalties pursuant to subdivision (b) of section 42081 of the Public Resources Code for the violations covered by the corrective action plan.

(d) If, upon the corrective action plan's expiration, the corrective action plan has failed to resolve some or all of the violations identified in the notice described in subdivision (a), the entity may submit a written request for an extension pursuant to paragraph (2) of subdivision (b) of section 42081 of the Public Resources Code. Extensions shall be subject to the same conditions and limitations set forth in paragraphs (2) through (7) of subdivision (c) with respect to the initial submission and approval of the plan. Extension requests shall include, at a minimum:

(1) A description of the efforts made to comply with the corrective action plan's requirements and the extent to which such efforts will be continued or modified to comply with the corrective action plan.

(2) Explanation of extenuating circumstances, if any. At minimum, such explanation shall

DRAFT

address whether the circumstances were beyond the control of the entity, whether they prevented compliance with the corrective action plan and the Act, and how they affect the extent to which penalties for the outstanding violations are appropriate.

(3) Updates, if any, to the content included in the original proposal for the corrective action plan pursuant to paragraph (1) of subdivision (b).

(e) Subject to subdivision (f), accrual of penalties for the violations identified in a proposed corrective action plan shall be paused upon submission of the proposed corrective action plan to the Department and shall remain paused until either of the following, as applicable:

(1) Department rejection of the proposed corrective action plan without allowing submission of a modified proposal.

(2) Violation of an approved corrective action plan.

(f) 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.

(1) A violation of the plan is subject to penalties regardless of whether the corrective action plan is terminated or necessarily will fail to resolve any underlying violation.

(2) For each violation of the corrective action plan, the notice shall identify whether the violation concerns requirements for resolving specific underlying violations of the Act identified in the plan. Subject to paragraph (3) of subdivision (a) of section 42081 of the Public Resources Code, penalty accrual shall resume for those underlying violations, except as provided in subparagraphs (A) and (B).

(A) Unless the violation of the corrective action plan is resolved within 30 days after issuance of the notice, the Department shall deem the corrective action plan terminated, and penalties shall begin accruing for the underlying violations upon

DRAFT

such termination. The violation of the corrective action plan shall not be considered resolved if it diminished the likelihood that the corrective action plan will result in resolution of the underlying violations.

(B) Termination and penalty accrual pursuant to subparagraph (A) shall be with respect only to the underlying violations identified in the notice for which the likelihood of resolution has been diminished. The corrective action plan shall remain in effect for purposes of the other underlying violations.

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

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

Section 18980.13.2. Administrative Civil Penalties

(a) Any entity, such as 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 subdivision (a) of section 42081 of the Public Resources Code. If a PRO acting on behalf of its participants causes participants to be in violation of 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 subdivision (c) of section 18980.13.3.

(c) Subject to the procedural requirements in this chapter, and except in the event of a default or other waiver by the person alleged by the Department to have violated the Act, 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

DRAFT

minimum, the factual factors identified in subdivision (c) of section 42081 of the Public Resources Code.

Authority: Sections 40401, 40502, 42060 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.

Section 18980.13.3. Notices

(a) For persons that have filed a primary business address with the Department pursuant to subdivision (c) of section 42051 of the Public Resources Code, notices of violation, notices of disciplinary action, and all accompanying documents shall be delivered by one or more of the following means:

(1) Delivery to the primary business address on file via first-class mail, registered mail, certified mail, commercial carrier, or personal delivery;

(2) Email to the address on file with the Department pursuant to section 18980.10;

(3) For entities known by the Department to have failed to maintain an up-to-date email address on file, email to any other email address, with written consent or written acknowledgment of receipt.

(b) For persons not required to file a primary business address with the Department pursuant to subdivision (c) of section 42051 of the Public Resources Code or that have failed to do so, notices of violation, notices of disciplinary action, and all accompanying documents shall be delivered using any of the methods described in subdivision (a) to at least one of the following addresses:

DRAFT

(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 subdivision (c) of section 42051 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 other means, 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.

DRAFT

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

Section 18980.13.4. Procedure for a Hearing

(a) Unless otherwise specified by the Department in a notice or accusation issued pursuant to section 18980.13.3, all administrative hearings shall be conducted by the Department as informal hearings and heard by the Director or a hearing officer designated by the Director according to Article 10 of Chapter 4.5 (commencing with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding the foregoing, the procedures and requirements set forth in section 11505 and section 11506 of the Government Code shall apply to any hearing conducted under this division.

(b) A respondent may submit to the Department a request for a hearing to contest the imposition of penalties or other disciplinary action within fifteen (15) days of being served an accusation pursuant to subdivision (c) of section 18980.13.3. Failure to submit a timely hearing request shall waive the right to a hearing.

(c) Within fifteen (15) days of receipt of a respondent's written request for a hearing pursuant to subdivision (b), the director or hearing officer shall provide the respondent with a written notice setting forth the procedures that will govern the hearing, including, at a minimum, procedures relating to the use and admissibility of oral and written testimony, depositions, subpoenas and witnesses, discovery, and other forms of evidence.

(d) 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.

DRAFT

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

Reference: Sections 42041, 42080 and 42081, Public Resources Code; Sections 11445.10, 11445.20, 11445.30, 11445.40, 11445.50, 11445.60, 11505 and 11506, Government Code.

Section 18980.13.5. Disciplinary Actions

(a) If, after notice and hearing, if one is requested, 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, as it deems necessary to effectuate the purposes of the Act:

(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) Pursuant to subdivision (b) of section 42056 of the Public Resources Code, five calendar days after the revocation of a previously approved plan or revocation of approval of the PRO, the Trustee or Agent shall implement the Closure and Transfer Plan in the previously approved plan, pursuant to subdivision (f) of section 42051.1 of the Public Resources Code and as described in section 18980.8.2.

Authority: Sections 40401, 40502, 42056, 42060(a), 42061.5 and 42080, Public Resources Code; section 11445.20, Government Code.

DRAFT

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

ARTICLE 14: Public Records

Section 18980.14. 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) Subject to the requirements of this section and subdivision (b) of section 18980.6.6, the Department shall not disclose information or records that constitutes a trade secret, as defined in subdivision (d) of section 3426.1 of the Civil Code, in response to public records requests.

(c) For any information submitted to the Department that is claimed by the person submitting it to be partially or wholly exempt from disclosure under the Public Records Act, the person shall clearly identify such information and provide the legal basis for it being exempt. Where such basis is that the information constitutes a trade secret, the person shall:

(1) Expressly 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 of the individual to be contacted regarding requests received by the Department for disclosure of the information. Unless already

DRAFT

on file with the Department pursuant to section 18980.10 of this chapter, the individual's address and telephone number shall also be provided.

(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 and is clearly identified as described in subdivision (c), shall be deemed subject to mandatory disclosure under the Public Records Act.

(e) For information that a person was required to submit pursuant to this chapter or the Act, 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. The information shall be considered subject to section 40062 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; Section 3426.1, Civil Code.

Chapter 11.5 Environmental Marketing and Labeling

ARTICLE 1: Approval of Certification Entities

Section 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.

DRAFT

(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.

(3) “ISO/IEC 17065:2012” refers to the publication, which is incorporated by reference in its entirety, titled “Conformity assessment—Requirements for bodies certifying products, processes and services,” International Organization for Standardization / International Electrotechnical Commission, September 2012.

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

(1) It holds an ISO/IEC 17065:2012 accreditation and requires test results from an independent laboratory holding ISO/IEC 17025:2017 accreditation as a condition for certifying that a product complies with subparagraph (A) of paragraph (1) of subdivision (g) of section 42357 of the Public Resources Code. The accreditations must be 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 subparagraph (A) of paragraph (1) of subdivision (g) of section 42357 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 ownership interest, whether direct or indirect, in any laboratory that conducts testing on which its certifications are based or in any entity that is the manufacturer, distributor, or seller of any product subject to the certification

DRAFT

requirement.

(B) Other than for services related to verification or certification programs, market research, advocacy, scientific or policy research or studies, scientific testing, or industry development, it transacts business with any entity subject to the certification requirement, regardless of whether such business is with that entity directly or indirectly, such as through a subsidiary or parent company. Merely purchasing items for purposes unrelated to the activities identified in this subparagraph, without any further contractual or other relationship related to the purchase, shall not be considered transacting business with any person for purposes of this subparagraph.

(c) A third-party certification entity may request approval, or renewal of a prior approval, by submitting the following to the Department electronically via email. If the Department has given notice via its website that an online portal is available for submissions, the following shall instead by submitted electronically via that portal~~in a manner prescribed by the Department~~. Approval or renewal shall be granted if the submission includes all required elements.

(1) Contact information.

(2) Documentation of ISO/IEC 17065:2012 accreditation. An accrediting body's directory identifying the entity as holding the accreditation required under this section shall be deemed sufficient documentation.

(3) An affidavit, subject to the penalty of perjury, that the entity satisfies the requirements for approval pursuant to subdivision (b).

(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,

DRAFT

whichever date is earlier.

(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 paragraph (1) of subdivision (b). 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 subparagraph (A) of paragraph (1) of subdivision (g) of section 42357 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.

DRAFT