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Submitted Electronically via CalRecycle's Public Comment Portal

Csilla Richmond
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations
California Department of Resources Recycling and Recovery (CalRecycle)
Regulations Unit
1001 I Street, MS-24B
Sacramento, CA 95814

Re: Senate Bill 54: Plastic Pollution Prevention and Packaging Producer Responsibility Act

Dear Ms. Richmond:

The California Chamber of Commerce and these undersigned organizations (the "CalChamber Coalition" or "Coalition") thank you for the opportunity to submit comments regarding CalRecycle's (the "Department") Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations published in the California Regulatory Notice Register on August 22, 2025 (the "Regulations"). The Coalition consists of California-based and national organizations and businesses of all sizes that collectively represent nearly every major business sector, from agriculture to grocery stores, that will be impacted by Senate Bill 54 ("SB 54") and the Department's corresponding implementing regulations.

The CalChamber Coalition is an active and diverse set of engaged stakeholders working to create an implementable and cost-effective framework for achieving California's ambitious circular economy mandates. On May 8, 2024, the Coalition submitted detailed comments discussing how to resolve at least 35 critical issues concerning the first draft of the proposed SB 54 regulations ("May 8 Letter"). On November 4, 2024, the Coalition submitted a second letter ("November 4 Letter") further discussing the issues identified in the May 8 Letter, and new issues based upon the substantially revised proposed regulations issued on October 14, 2024. In addition, the Coalition and its members have provided comments on other directly relevant laws and rulemakings, including Senate Bill 343 (Allen) and Assembly Bill 1201 (Ting) which all considerably intersect California's packaging and foodservice ware extended producer responsibility law under SB 54.

We appreciate all of the Department's consideration and thoughtfulness regarding all Coalition comments so far submitted, and for the consideration of these additional Coalition comments on the latest Regulations. We believe the most recent Regulations are dramatically improved and legally conform to the statutory mandates under SB 54. When compared to prior versions of the regulations, this will help position California for a more successful implementation of SB 54 while lowering costs to the system. The Coalition submits the below additional comments on the Regulations to further strengthen the rules and best conform to the statutory mandates outlined under SB 54.

Categorical Exclusion for Food and Agricultural Commodities

The Coalition concurs with the inclusion of Section 18980.2(a)(2) of the Regulations, which categorically excludes from the "covered material" definition "packaging or packaging components used by a food or agricultural commodity," if it is "not reasonably possible" to use alternatives to comply with federal regulations, rules, or guidelines issued by the U.S. Department of Agriculture (USDA) or the Food and Drug Administration (FDA). This exclusion is faithful to the plain text of SB 54, which prohibits the imposition of "any requirement," including recycled content requirements, that conflicts with federal law or regulation, explicitly encompassing those issued by USDA and FDA "relevant to packaging agricultural commodities, requirements for microbial contamination, or to the structural integrity or safety of packaging" under federal law.[1]

Not only does the language used in Section 18980.2(a)(2) comport with SB 54's statutory directive, it also wisely reflects the California Supreme Court's understanding of preemption, which rejects the idea that the "theoretical possibility of compliance" with two laws is sufficient to overcome preemption.[2] If any refinement or clarification were needed, for example increasing predictability for implementation of the PRO's plan, setting annual deadlines for exclusion determinations to be filed by a producer, as well as a reasonable time frame after exclusions are filed for any rejections of determinations by the Department could be considered and would remain consistent with the statute.

The categorical exclusion of food and agricultural commodities complying with USDA and FDA rules, guidelines or regulations was expressly contemplated under SB 54 in PRC § 42060(b)(2) and appropriately implemented by the Department in the Regulation. There is no need to perpetually re-establish a basis for an excluded material for which long-established federal regulations, rules, or guidelines issued by the USDA or the FDA, whose federal jurisdiction establishes unique packaging requirements for certain foods like meat and poultry. To subject such packaging to the presumption that it is covered and that external conditions may suddenly alter the producer's obligations and ability to sell essential commodities would be extremely disruptive, and quite possibly dangerous to public health, as well as detrimental to the environment due to increased food waste from compromised packaging, if California's agricultural producers, grocery retailers, and food service providers are suddenly forced into insufficient and inadequate packaging.

[1] *See* PRC § 42060(b)(1)-(2).
[2] *See Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th 135, 150 (2023) (emphasizing that "compliance with both laws must be '*reasonably* possible'").

Furthermore, exempted materials—as opposed to excluded materials—still must be included in the PRO's source reduction plan, and producers of exempted materials must report and pay fees on them. To take meat and poultry as an example, at this time it is not reasonably possible to use alternatives to packaging that have already been approved by the USDA's Food Safety and Inspection Service ("FSIS") as an appropriate "food contact substance." Plastic film wrap has been carefully optimized for its durability (resistant to tearing), impermeability (protecting products from oxidation, moisture, and other airborne contaminants), and safety (preventing transfer of chemicals to the product). These features are paramount where fresh protein products are concerned, due to the heightened risks of foodborne illness, cross-contamination, and significantly shorter shelf-life. Similar rationale is applicable in many other sectors of the food supply chain, whether it is fresh produce or canned goods.

Placing federally approved packaging like this within the scope of SB 54's requirements when it is not reasonably possible to comply nor have alternatives to comply would unreasonably encumber California food and agriculture producers already facing significant uncertainties, market disruptions and higher prices. Further, risking the public's health with unproven packaging alternatives is dangerous and unnecessary. We note that subdivision (d) of Section 18980.2 adequately addresses scenarios where packaging for agricultural commodities that was previously excluded can be brought into compliance with SB 54 in the event that a Department investigation determines that it is "reasonably possible" to use alternative packaging that complies with the requirement. Finally, the risk of higher food prices and reduced food safety, shelf life, and access is fundamentally at odds with SB 54's mandate that regulations must "*avoid or minimize disproportionate impacts to disadvantaged or low-income communities or rural areas*." Few impacts could be more severe for California families at this time than a rise in the cost of food. For all of these reasons, the Coalition concurs that the inclusion of categorical exclusions best effectuates the intent and plain meaning of SB 54.

Over-the-Counter Medications

The Coalition agrees with the Department's interpretation of SB 54 and designation of over-the-counter medications ("OTC") and their packaging as excluded from the definition of "covered material" under Section 18980.2(a)(6). These latest provisions in the Regulations have the strongest legal footing in the text and intent of SB 54, while further making the most practical sense from a policy perspective.[3]

First, excluding most OTC drugs from the requirements of SB 54 is faithful to the text of the statute, which plainly excludes from the definition of "covered material" any packaging for "medical products ***and*** products defined as devices or prescription drugs." As provided in PRC § 42041(e)(2)(A)(i), "medical products" and "products defined as devices or prescription drugs" are two separate and distinct categories of products. To exclude prescription drugs and medical

[3] *See* Section 18980.2(a)(6) (excluding "drugs," as defined in 21 U.S.C. § 321(g), that "do not require a prescription" and satisfy one of the following criteria: (A) they are neither "cosmetics" nor "soap," as those terms are defined under federal law; or (B) they are not a drug solely by virtue of containing a "sunscreen active ingredient," as defined under federal law).

devices would only effectuate the second half of this statutory provision, rendering the first half meaningless. That reading would not be faithful to the text of the statute.[4]

Although "medical products" are not defined elsewhere in state or federal law, the most logical meaning is OTC drugs, which are "medical" in nature because, like prescription drugs, they are "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease." [5] The key difference is that the FDA has determined these products can be used appropriately by consumers for self-diagnosed medical conditions, do not need a health practitioner for safe and effective use, and have a low potential for misuse and abuse.[6] Section 18980.2(a)(6) gives full effect to the statutory mandate, and for that reason, it should be adopted without any changes.[7]

Second, OTC drug packaging is heavily regulated by the FDA under the Federal Food, Drug, and Cosmetic Act, as well as the U.S. Consumer Product Safety Commission under the Poison Prevention Packaging Act. These regulations require tamper-evident and child-resistant packaging, extensive labeling and dosing instructions, and unique packaging designs that ensure durability and protection from light and moisture product safety. Such federally mandated requirements leave little to no room for producers to meaningfully reduce packaging or redesign for recyclability. In this way, the Department's determination to carve out OTC drugs and their packaging carries out another key provision of SB 54, which instructs the Department to ensure that all regulations consider federal guidelines and regulations. *See* PRC § 42060(b).

Third, sweeping OTC drug packaging within the definition of "covered material" would materially disadvantage low-income and uninsured or underinsured communities, thereby ignoring one of the statute's key mandates. *See* PRC § 42060(d) ("[T]he department shall ensure the regulations, and activities conducted in accordance with the regulations, avoid or minimize disproportionate impacts to disadvantaged or low-income communities. . . ."). If OTC drug packaging were to become "covered material," the attendant fees—which could not easily be avoided through even careful redesign due to the complex federal regime described above—would very likely increase the cost of OTC products. For low-income and uninsured consumers, OTC products are often the first and even only line of treatment for common but potentially serious or progressive health issues. Making OTC products more expensive risks discouraging safe and responsible self-treatment, increasing healthcare burdens on already vulnerable populations, and potentially pushing consumers toward less safe, unregulated remedies.

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[4] *See Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.*, 23 Cal. App. 5th 1129, 1196 n.85 (2018) ("In construing a statute, effect should be given, whenever possible, to the statute as a whole and to every word and clause thereof, leaving no part of the provision useless or deprived of meaning.")(emphasis added).

[5] *See* 21 U.S.C. § 321(g)(1).

[6] *See generally* 21 U.S.C. § 379aa(a)(2).

[7] The Coalition agrees with the Department's statements in its Initial Statement of Reasons. *See* ISOR pp. 31-32 ("Principles of statutory interpretation require that statutory terms must not be interpreted in a way that renders them superfluous. . . . Accordingly, the Legislature's deliberate choice to refer to 'medical products,' 'devices,' and 'prescription drugs' instead of simply 'drugs' and 'devices' requires that the term 'medical products' be construed not to encompass all 'drugs,' as defined in the cited federal law. Interpreting the term otherwise would render the term 'prescription drugs' of no effect.") (internal citations omitted).

Reuse/Refill Standards

The Coalition concurs the Regulations at Section 18980.2.1 effectively implement standards for identifying reusable and refillable materials that are not covered material consistent with PRC § 42041(af) in order to increase the use of such items and expand reuse and refill systems.

Section 18980.2.1 incorporates a minimum standard for reuse/refill by exempting only those items that meet the requirements of PRC § 42041(af), *see* Section 18980.2(a), along with providing definitions for certain terms in the statute that clarify application of the criteria. This straightforward approach simplifies but maintains the rigorous reuse/refill standards consistent with practical implications, thereby encouraging the increased safe usage of reusable and refillable products that is necessary to achieve the goals of SB 54.

Section 18980.8.1(c) also requires the PRO's plan, pursuant to PRC § 42051.1(m), to "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." This includes explaining "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." Such requirements aptly supplement the "minimum" standard for reuse/refill.

The standard imposed by the Regulations for reuse/refill is entirely consistent with SB 54 and need not provide any further criteria that, similar to the prior proposed regulations, as detailed in our May 8 Letter and November 4 Letter, imposed onerous and infeasible requirements for producers, caused confusion as to applicability, and mandated criterion found nowhere in the text of SB 54.

Finally, the Coalition agrees with the Department's decision not to include additional record-keeping requirements in the Regulations for the PRO regarding covered materials that producers claim to be reusable or refillable because such requirements are unnecessary and would cause undue burden and costs for the PRO. This is consistent with the directive in PRC § 42060(a)(2)(C)(ii), which states: "To the maximum extent feasible, the department shall seek to use records and information that the local jurisdiction, producer, retailer, wholesaler, or PRO already maintains, in order to minimize the burden imposed by the reporting and recordkeeping requirements while still enabling the department to determine compliance with this chapter." (Emphasis added). Determining whether packaging or food service ware items are reusable or refillable is the responsibility of a producer; the PRO need not maintain records of that determination because it is not responsible for it. Producers will need to ensure compliance with Section 18980.2.1, as the Regulations allow the Department to conduct investigations pursuant to PRC § 42090(a) to determine whether packaging or food service ware is covered material.[8] This is important to keep costs down across the system and protect the food system.

Exclusion for Secondary & Tertiary Packaging for CRV Containers

SB 54 was enacted with sweeping coverage of single-use packaging and plastic single-use food service ware, subject to exemptions and categorical exclusions that the Legislature enumerated. Among these are packaging systems for food and agriculture, medical goods, as well as beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (the

[8] *See* Section 18980.2.1(c).

"Bottle Bill" or "CRV Program").[9] When the Legislature enumerated what was *not* a "covered material" under SB 54, it consistently exempted (in PRC § 42041(e)(2)(A)-(G)) all of the packaging associated with that category. The Department has correctly assessed that this includes secondary and tertiary packaging associated with the primary regulated good. Accordingly, the Department's May 2025 draft regulation treated all secondary and tertiary packaging associated with CRV beverages as "not covered material." This was revised in the August 2025 Regulations to treat the CRV Program differently.[10] The final regulation should revert to the original interpretation and exclude secondary and tertiary packaging associated with containers subject to the Bottle Bill.

The Department's recent change appears to be based on the use of the term "beverage containers" in PRC § 42041(e)(2)(E) as contrasted with the term "packaging" in PRC § 42041(e)(2)(A), (B), (C), (D), (F), and (G). But in context, surrounded by these other full exclusions from "covered material," the language in (E) indicates that the Legislature intended the same breadth of exclusion.

This intention is clear from the unique nature of the Bottle Bill. Unlike the other categories enumerated in PRC § 42041(e)(2)(A), (B), (C), (D), (F), and (G), the Bottle Bill is a comprehensive, self-funding redemption program with decades of proven recycling success. Producers already complying with one of the most comprehensive recycling laws in the world should not then be forced into another recycling program where substantial other unrelated costs, whether it be enforcement or administrative costs associated with an EPR program, are passed on to entities complying separately under the Bottle Bill.

The logic for reading the SB 54 beverage container exclusion to cover all packaging tiers is reinforced by the Legislature's recent expansion of the Bottle Bill to include wine and distilled spirits through SB 1013 (Atkins, 2022). That legislation was the product of years of debate over how best to handle the unique packaging streams associated with these industries. Ultimately, California chose to fold wine and spirits into the CRV program precisely because the Bottle Bill is a proven, comprehensive, self-funding system that avoids duplicative regulation. Industry stakeholders, including small wineries and distillers, agreed to participate because the CRV program provides a uniform, closed-loop mechanism for managing their packaging without subjecting them to fragmented or overlapping requirements from multiple state programs. This legislative compromise underscores that the Bottle Bill is not merely about bottles and cans, but rather about ensuring an integrated and streamlined regulatory framework for all beverage packaging.

This history provides strong evidence that the Legislature understood the Bottle Bill exclusion in SB 54 as programmatic rather than vessel-specific. It would make little sense for lawmakers to expand the CRV system to cover entire new beverage sectors in order to consolidate and streamline packaging regulation, while simultaneously intending to regulate secondary and tertiary packaging for those same products under an entirely separate and duplicative set of obligations (SB 54). The very point of SB 1013 was to bring industries like wine and distilled

[9] *See* PRC § 42041(e)(2)(E).
[10] *See* § 18980.2(c).

spirits under the existing, successful container redemption model, so that they could avoid the burdens of managing packaging compliance under multiple overlapping programs.

The wine industry further illustrates just how important this issue is for the state. California is not only the nation's largest wine producer but also a global symbol of American viticulture. The industry is central to the state's economy, generating billions of dollars annually, sustaining hundreds of thousands of jobs, and showcasing the reputation of so many California regions to the world. Many of these wineries are small, family-owned businesses whose margins are already narrow. Imposing overlapping and inconsistent recycling regimes on these producers, at a time when California wineries and other beverage entities are facing inflation, retaliatory tariffs, increased labor costs and labor shortages, risks suffocating the very enterprises that embody California's agricultural heritage and international reputation. Burdensome duplication raises costs, disrupts operations, and undermines the competitiveness of California wines in both domestic and international markets. These are some of the most sustainable and eco-minded growers, distributors and wineries in the world.[11]

The canons of statutory construction favor harmonization of related statutes. Courts have long held that statutes must be interpreted in a manner that avoids conflicts and gives effect to all provisions whenever possible.[12] Reading SB 54's beverage container exclusion narrowly, as the August 2025 Regulations do, would create direct conflict by forcing producers to comply with overlapping and inconsistent mandates under both the Bottle Bill and SB 54. By contrast, reading the exclusion appropriately to cover secondary and tertiary packaging harmonizes the two statutes: the Bottle Bill continues to govern beverage containers comprehensively, while SB 54 governs other packaging streams not already covered by a specific statutory program.

That conclusion is further reinforced by the interpretive canon of *noscitur a sociis*, which teaches that the meaning of a word or phrase is informed by the company it keeps.[13] Although "beverage container" is phrased differently from the surrounding exclusions, its placement in a list where each item excluded entire packaging systems indicates that it should be construed in a similar fashion. A contrary reading would make the CRV provision the sole outlier in the section, producing an anomalous result that courts generally avoid.[14] Applying *noscitur a sociis*, the term "beverage container" is properly understood as encompassing the whole packaging system associated with CRV-regulated products, thereby preserving consistency across the framework in SB 54.

Furthermore, read *in pari materia* with the other exemptions in PRC § 42041(e)(2), the "beverage container" carve-out should be understood to function consistently with its statutory neighbors where the exclusion of what is not "covered material" applies broadly across all tiers

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[11] *See* California Sustainable Winegrowing Alliance (CSWA) (noting that 2,634 Certified California Sustainable Vineyards farm 251,687 acres (101,854 hectares), 43% of California winegrape acres; another 22% are certified to other sustainability programs, with some vineyards certifying to more than one program. Additionally, 223 Certified Wineries produce 214 million cases (about 90% of California wine). Finally,
38 million cases (456 million bottles) are certified by CCSW. *Available at:* https://californiasustainablewine.com/

[12] *See California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.

[13] *See People v. Woodhead* (1987) 43 Cal.3d 1002, 1010 ("A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.'"

[14] *See People v. Leal* (2004) 33 Cal.4th 999, 1008 (statutes should not be interpreted to yield absurd or internally inconsistent results).

of packaging associated with the "not covered material" category. It would be inconsistent with the statutory structure for one exclusion in the same series to be treated as vessel-only, while the rest sweep in the full packaging system. The more natural reading, supported by the canon of *in pari materia*, is that the Legislature intended the beverage container exclusion to cover the complete packaging chain associated with CRV products.

Finally, interpreting the exemption broadly ensures that the Legislature's policy goals are achieved without undermining its most successful recycling program and excessively burdening the state's beverage producing community. The Bottle Bill has achieved redemption rates and consumer participation far exceeding other recycling systems and has become a world-leading program precisely because these regulated entities have spent billions of dollars developing and complying with this recycling program. It is inconsistent with the statute to require the same entities, including many wineries that voluntarily joined the Beverage Container Recycling Program under SB 1013, to also comply with SB 54 for the secondary and tertiary packaging associated with their beverage containers.

Source Reduction Targets

The Coalition strongly recommends that the Regulations explicitly confirm that the data from calendar year 2027 shall be used to measure against the 2023 baseline for purposes of determining compliance with the January 1, 2027 source reduction target.

The statute requires that the PRO develop and implement a plan to achieve the 25% reduction by weight and 25% by plastic component source reduction requirement for covered material. PRC § 42057(a)(1). To achieve this requirement, the statute sets forth the following deadlines for source reduction:

- January 1, 2027 interim target: 10% reduction of plastic covered material, with at least 2% reduced through reusable or refillable systems;
- January 1, 2030 interim target: 20% reduction of plastic covered material, with at least 4% reduced through reusable or refillable systems; and
- January 1, 2032 requirement: reduction of plastic covered material by 25% by weight and by number of plastic components.[15]

The baseline year for determining source reduction is 2023.[16] The Regulations require reporting entities to submit a source reduction baseline report to the Department by July 1, 2026.[17] The Regulations then require the PRO's annual report to include the percentage of source reduction across all participant producers.[18]

However, the statute does not identify which year of data must be used to calculate the source reduction percentage from the 2023 baseline in order to determine whether each respective target has been met. Rather, it allows the Department to "adopt regulations to implement this section, including, but not limited to, reporting and collection requirements."[19] Given this broad

[15] *Id.* § 42057(a)(1) and (2)(C)-(D).
[16] *Id.* § 42057(b).
[17] Section 18980.9(a).
[18] *See* Section 18980.9.1(d)(2)(A).
[19] *Id.* § 42057(j).

language and in order to ensure source reduction percentages are complete and accurate when submitted in the PRO's annual reports, the Department should propose an additional provision in the Regulations identifying the specific year of data upon which the 2023 baseline must be measured against for purposes of determining compliance with the source reduction targets.

For three reasons, the Coalition strongly encourages the Department to require that data from calendar year 2027 be used against the 2023 baseline to determine the source reduction percentage for purposes of achieving compliance with the first deadline of January 1, 2027.

First, the Regulations are not expected to be finalized until early in 2026, so producers will not be on notice of the need to collect this source reduction data until then. At that point, certain (or perhaps all) of a producer's 2026 data may no longer be available or collectible, making it infeasible to determine the source reduction percentage based upon the entire "calendar year" 2026 data.

Second, utilizing a full calendar year of data, not a portion thereof, to measure source reduction from the 2023 baseline is consistent with the statute. The 2023 baseline itself requires use of the full 2023 calendar year of data.[20] Additional sub-sections of PRC § 42057 reference the calculation of source reduction based on the full calendar year.[21] Notably, there is no reference in PRC § 42057 to the collection of some other time frame of data or to the determination of source reduction compliance with respect to a non-calendar year.

Third, using a full calendar year of data is confirmed by the language of the statute and in the Regulations regarding the annual recycling rate which acknowledge that "sufficient data" means data over a 12-month period. For source reduction, that calendar year will be the year following the January 1, 2027 deadline (i.e., 2027 calendar year), given the lack of data expected to be available for 2026. For instance, one criterion for a "covered material" exemption under PRC § 42041(e)(2)(H)(i)(IV) states:

> Until January 1, 2027, the producer annually demonstrates to the department that the material has had a recycling rate of 65 percent for three consecutive years. On and after January 1, 2027, the producer demonstrates to the department that the material has had a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

Section 18980.2.3(a)(4) of the Regulations, which speaks to the criteria above in PRC § 42041, states:

> 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

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[20] *See* PRC § 42057(b) ("By January 1, 2025, the department shall establish a baseline for the 25-percent reduction required in subdivision (a) based on the amount of plastic covered material, including the number of products packaged in covered material, that was sold, offered for sale, or distributed in the state in the 2023 calendar year.") (Emphasis added).

[21] *See id*. § 42057(f)(1) ("In the source reduction plan, the PRO shall give producers credit for source reduction achieved from the 2013 calendar year to the 2022 calendar year, inclusive."); § 42057(h) ("To ensure source reductions achieved by January 1, 2032, are not lost after January 1, 2032, while still allowing for businesses to grow, the department shall, beginning in the 2030 calendar year and every five years thereafter, conduct an evaluation of the plastic covered material subject to this section to determine if actions to secure greater source reductions are necessary.").

> 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.

Then, Section 18980.3.2 of the Regulations (Methodology for Recycling Rate Determination), which is referenced in the bolded sentence above, states:

> (b)(1): "… 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**."

This language acknowledges that "sufficient data" is necessary for determining the recycling rate. That same logic must be applied to the source reduction deadline. Compliance with the source reduction targets should be determined based upon sufficient data which will be available only after the Regulations are finalized. 2027 will be the first full year after issuance of the Regulations when data can be collected and relied upon to determine compliance with the January 1, 2027 source reduction target.

Therefore, requiring a 2027 data year to determine the source reduction percentage will ensure that the data is complete and accurate for the full calendar year as of the January 1, 2027 deadline. Assuming the Regulations are finalized and effective in 2026, producers will be on notice of needing to compile their 2027 data for the source reduction target at that point, allowing them sufficient time to understand and set up the necessary mechanisms to do so consistent with the final Regulations. Using a 2027 data year will ensure that the source reduction percentages identified in the PRO's annual reports are complete, accurate, and consistent with the plain language and intent of PRC § 42057.

With respect to the other source reduction targets – January 1, 2030 and January 1, 2032 – using the prior calendar year's data to measure source reduction does not pose the same problem as the January 1, 2027 target assuming the Regulations are finalized and effective in early 2026. Because producers will be on notice in 2026, it will be feasible for producers to collect an accurate and complete data set for the full 2029 and 2031 calendar years for the PRO to then determine the respective source reduction percentages from the 2023 baseline. Therefore, the Coalition recommends the Regulations specify that the data year that the 2023 baseline be measured against to determine compliance with these two targets be, respectively, the 2029 and 2031 calendar years (i.e., the previous full calendar year of data available at the time of the target).

New Recycling Technologies

The Coalition agrees that the the criteria in the Regulations at Section 18980.4.1(d) setting forth which new recycling technologies may be deployed as part of a Producer Responsibility Plan are consistent with the statutory language of SB 54 and provide essential pathways for the development of innovative new technologies and markets for recycled content that unlock

circularity by enhancing and complementing the state's critically important mechanical recycling infrastructure.

The Regulations at Section 18980.4.1(d) comply with SB 54's explicit directive in Public Resources Code § 42041(aa)(5) to "include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste." In accordance with the law, the Department properly exercised its discretion to interpret the undefined term "significant amounts of hazardous waste" to mean that which "presents a substantial risk of harm to public health, or of contamination of the environment."[22] The Regulations also appropriately deem hazardous waste that is "handled and disposed of in compliance with an applicable permit"—consistent with all relevant state and federal laws—as not amounting to "significant amounts of hazardous waste."[23] Federal laws include, among others, the principal federal statute governing hazardous waste, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq. With nearly five decades of jurisprudence since its enactment in 1976, a robust body of case law has developed interpreting its scope, robust enforcement mechanisms, and strict application of end-of-life management across the hazardous waste lifecycle.

Further, the Regulations consistent with SB 54 do exclude technologies that produce significant amounts of hazardous waste: "Facilities employing such [new, non-mechanical] technology must not produce significant amounts of hazardous waste as defined in paragraph (1)."[24] SB 54 explicitly includes the qualifier "significant amounts," with the directive that the Department "include criteria" to determine what exactly that undefined term in statute encompasses – discretion imparted to the expertise of the Department. This interpretation is consistent with the requirement in PRC § 42041(aa)(5) that the Department "encourage recycling that ***minimizes*** generation of hazardous waste" (emphasis added). Any post-hoc statement implying or directly stating that SB 54's "intent" was to exclude any "generation of hazardous waste" is directly contradicted by the statute's plain language (i.e., the term "minimize") and not indicative, much less determinative, of legislative intent.[25]

Other aspects of the Regulations also encourage new recycling technologies that minimize the "generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts."[26] For instance, Section 18980.4.1(d)(2) requires facilities using new technologies to operate consistent with ISO 59014:2024. Compliance with this standard achieves SB 54's goals of minimizing greenhouse gases and other impacts to public health and the environment by requiring facilities to utilize any innovative circular technologies responsibly. In addition, Section 18980.8(c), governing producer responsibility plans, requires that for each technology used, information must be included regarding an "assessment of potential public

[22] Section 18980.4.1(d)(1).
[23] Section 18980.4.1(d)(1)(B).
[24] Section 18980.4.1(d); *see also* Section 18980.4.1(d)(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.").
[25] *See California Teachers Assn. v. San Diego Community College Dist.*, 28 Cal.3d 692, 701 (1981) ("There are sound reasons underlying the rule against admitting statements of personal belief or intent by individual legislators on the issue of legislative intent."); *Quintano v. Mercury Casualty Co.*, 11 Cal.4th 1049, 1062 (1995) ("[T]he statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.").
[26] PRC § 42041(aa)(5).

health and environmental impacts to disadvantaged communities, low-income communities, or rural areas."

The Coalition agrees with the deletion of the previously proposed Section 18980.3.6 in the Regulations, which CalChamber commented was inconsistent with the plain language of SB 54.

The current framework in the Regulations effectively encourages innovation in recycling technologies while ensuring that public health and the environment are protected. Developing and scaling cutting-edge technologies and infrastructure to maximize the recovery and recycling, while decreasing waste, are essential to establishing a world-leading circular economy. Indeed, for many forms of packaging and food service ware, new recycling technologies are vital for preserving and protecting food and other supply chains and keeping costs down and goods affordable. SB 54's plain language recognizes this by providing a path for new technologies under certain criteria, to be defined by the Department in regulations. The Coalition strongly supports the Department's faithful implementation of SB 54 in this regard.

Compliance Pathway for Compostables

Compostable packaging and food serviceware are critical compliance pathways under SB 54, offering producers additional tools to reduce plastic waste and meet the law's ambitious recycling and pollution-reduction goals. However, AB 1201 (Ting) fundamentally redefined what it means for a product or package to be deemed "compostable" by tying eligibility to the USDA's National Organic Program (NOP). This linkage upended the marketplace because the NOP has not yet been updated to recognize many of the new, innovative compostable materials that could help producers achieve SB 54's objectives. While this presents challenges, SB 54's success depends on ensuring that compostable pathways remain viable and do not become artificially foreclosed.

Instead of facilitating those pathways, the Coalition sees the Regulations as adding additional unnecessary barriers. Subsections (B) and (C) of Section 18980.4(a)(4) impose rigid new mandates that go well beyond the statutory framework of SB 54 and AB 1201, creating conflicts and additional compliance uncertainty. For example, subsection (B) requires "full biological decomposition" of covered materials and prohibits transfer of any undecomposed material to subsequent facilities. Such an absolute standard is incompatible with how composting operations actually function, where heterogeneous feedstocks and variable conditions inevitably result in some residuals.[27] By layering on new performance mandates atop AB 1201's already restrictive framework, the Regulations would undermine any realistic compostable compliance pathway.

In short, while AB 1201 already imposes significant constraints, the Regulations should not exacerbate those challenges by adding impractical, inconsistent, and duplicative requirements. Subsections (B) and (C) extend well beyond statutory intent, conflict with USDA oversight of compostable labeling, and duplicate existing regulatory standards. For these reasons, they should be stricken in their entirety so that compostable packaging and food serviceware can remain a meaningful compliance pathway under SB 54.

[27] Rynk, R., et al. "Chapter 4 – Compost feedstocks." In *The Composting Handbook* (Elsevier, 2022).

Grouping Like Forms/Types of Packaging for Recycling Rate Calculations

The Regulations refer to the Covered Materials Category list identifying 94 different types/forms of packaging / foodservice ware subject to the recycling rates/dates or compostability in SB 54. We are grateful that the Regulations allow for "groupings" of similar types of products and applies the "group" recycling rate to be applied to each type/form of packaging in the group under Section 18980.3.2(d)(3). However, to effectively lower system costs for recycling service providers and producers, which will translate to recycling and circularity and much lower costs, we recommend allowing the PRO to determine whether it is possible to calculate for a grouping and to allow for it expressly when it is either not possible to calculate it separately or practicably infeasible to do so separately. This change greatly improves the likelihood of success of the system and also reduces costs to both the system and the Department, while maintaining the same recycling rates, dates and environmental outcomes.

Covered Costs

The Coalition concurs with the framework in Section 18980.8.1 (g) establishing a clear and equitable process for determining "covered costs" the Producer Responsibility Organization (PRO) and Independent Producers are obligated to fulfill. Defining what is and is not covered costs establishes a pragmatic framework for cost accountability. By limiting covered costs to those demonstrably resulting from new program requirements as a result of SB 54, as the law intended, the Regulation appropriately aligns producer payments with infrastructure investments and other impacts associated with the implementation of this law rather than pre-existing municipal or service provider functions or infrastructure. This approach ensures funds are used efficiently to support implementation of SB 54 as cost effective as possible, prevent double recovery of costs, and uphold the legislative intent to internalize only those expenses that arise directly from producer responsibility obligations.

SB 54 and Proposition 65 Consistency

The Regulation's requirement that the PRO charge malus fees to producers who use covered materials that contain Proposition 65-listed chemicals is inconsistent with Proposition 65 and would expose companies that comply with Proposition 65 safe harbor levels and court-issued consent judgments to unnecessary liability.

The Regulation provides that "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 ["Proposition 65"]."[28] This is inconsistent with decades of jurisprudence regarding Proposition 65, which is not a product safety law that limits the amount of chemicals that can be in a product or that bans products based on chemicals present. Rather, it is a "right-to-know" law that imposes stringent warning requirements based on exposure levels to certain listed chemicals. The state agency responsible for overseeing Proposition 65, the Office of Environmental Health Hazard Assessment ("OEHHA"), does not refer to chemicals listed under Proposition 65 as "hazardous material," nor does the Department of Toxic Substances Control ("DTSC") or the Department.

The Coalition adds that the Regulation would expose businesses that comply with Proposition 65 to malus fees improperly. Proposition 65 does not require that warnings be provided based on the

[28] *See* § 18980.6.7(i).

presence of a listed chemical in a product at any level. Instead, it exempts from the warning requirement an "exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1,000) times the level in question for substances known to the state to cause reproductive toxicity."[29] The warning threshold for listed carcinogens is known as the "no significant risk level" or "NSRL," and the warning threshold for reproductive toxins is known as the maximum allowable dose level or "MADL."

For some chemicals, OEHHA has established nonmandatory "safe harbor" levels for which warnings are not required as a matter of law.[30] BPA, for example, has a safe harbor level of 3 micrograms per day via the dermal exposure route from solid materials.[31]

Businesses are not bound by these levels and are entitled to prove that higher levels should apply.[32] For some chemicals for which safe harbor levels have not been established, courts have approved consent judgments that have set *de facto* industry standards; for listed phthalates like Di(2-ethylhexyl) phthalate ("DEHP"), for example, that concentration level is 1,000 parts per million.

As a result, businesses can comply with Proposition 65 even though a listed chemical(s) is present in its packaging, provided the concentration is below the respective safe harbor level(s) or, if the business is bound by a court-approved consent judgment, the level(s) set in that agreement. OEHHA itself acknowledges, "*A business does not need to provide a warning when exposure from an individual product is too low to significantly contribute to an overall risk of cancer or harmful reproductive effects.*"[33] The agency also "discourage[s]" businesses "from providing a warning that is not necessary."[34]

Accordingly, by requiring that the PRO charge a malus fee to producers who use covered materials containing chemicals listed under Proposition 65, at any level, the Regulation would punish businesses complying fully with Proposition 65. A business that reformulates its packaging to comply with a safe harbor level set by OEHHA (i.e., 1,000 times lower than the level where no harm was observed in animal studies for reproductive toxins) or that complies with a court-approved consent judgment for a listed chemical would comply with Proposition 65, yet still be subject to malus fees under the Regulation. Further, no business can feasibly confirm that all of its packaging does not contain, at any level, any of the 900-plus chemicals listed under Proposition 65.

The Regulation, moreover, will raise practical concerns as laboratory technologies improve. As revised, the Regulation provides that malus fees must be assessed if a Proposition 65-listed chemical is present at any level. If a laboratory developed a technology that could detect listed

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[29] Health & Safety Code § 25249.10(c).
[30] 27 C.C.R. § 25705 (carcinogens); *Id.* § 25805 (reproductive toxins)
[31] *Id.* § 25805(b).
[32] *Id.* §§ 25701, 25801.
[33] OEHHA, "Toxic Chemicals, Proposition 65 Warnings, and Your Health: The Big Picture," available at https://www.p65warnings.ca.gov/fact-sheets/toxic-chemicals-proposition-65-warnings-and-your-health-big-picture
[34] OEHHA, "Businesses and Proposition 65," available at https://oehha.ca.gov/proposition-65/businesses-and-proposition-65

chemicals in the parts per trillion range, it follows that a detection of one part per trillion would expose a business to mandatory malus fees. Such a detection would not pose a harm to human health, let alone qualify as "hazardous material" as contemplated in SB 54.

The Coalition recommends striking § 18980.6.7(i) entirely. SB 54 already provides the PRO with discretion when to levy malus fees, for which this section removes that discretion. Alternatively, and consistent with the discretion contemplated by SB 54, Section 18980.6.7(i) should be revised from "shall" to "may."

Detachable Components

The Coalition is concerned that the proposed definition of detachable components disregards how California's recycling system has been designed to function. For decades, producers and recyclers have worked to ensure that components such as caps, lids, and pumps are engineered to be compatible with the base package in recycling systems. This approach has made recycling simpler and more effective by allowing consumers to place the entire package, including attached components, into the recycling bin while enabling material recovery facilities and reclaimers to sort and recycle complete packages efficiently. By treating every detachable component as a separate item, the Regulation risks significantly complicating an already complicated materials category list, thereby undermining recycling rates, distorting producer fee obligations, and creating incentives for packaging design choices that run counter to recyclability.

The Regulation in this section introduces unnecessary consumer confusion at a time when public participation in recycling must be strengthened under a circular economy. Consumers have been encouraged for years to keep caps on bottles, screw lids back onto jars, and recycle containers with pumps intact. If these components are now reclassified as distinct packaging categories, producers may be forced into redesigns that conflict with those best practices, and consumers may lose trust in recycling rules they see as contradictory or overly complicated. A more balanced definition would recognize that when components are not routinely separated by consumers prior to disposal, or where the PRO or producer community expressly educates the consumer on how keeping discarded covered materials together, the Regulations should treat these components as part of the base package for purposes of categorization, recycling and fee assessment.

We urge CalRecycle to refine the definition of detachable components in Section 18980.1(a)(4)(C) to mean components that are routinely detached by consumers without tools or substances, or those necessarily removed during ordinary use and not typically reattached before disposal. Aligning this rule with existing best practices will avoid disruptions, maintain consistency across California's recycling laws, and support the successful implementation of SB 54.

SB 343 On Ramp for a Successful Circular Economy

The Coalition has serious concerns about producers' collective ability, through the PRO, to meet the ambitious recyclability targets set by SB 54 for all covered material. A major impediment is

SB 343's restrictions on communicating to consumers instructions for how to recycle covered material.[35]

SB 343 prohibits all products and packaging from "display[ing] a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating the product or packaging is recyclable, or otherwise directing the consumer to recycle the product or packaging," unless the product or packaging currently meets strict criteria.[36] At the heart of those criteria are requirements that the product or packaging currently be collected for recycling by programs covering 60 percent of the state's population and sorted for recycling by large volume transfer or processing facilities collectively serving at least 60 percent of recycling programs statewide.[37]

If those criteria are not met, then the producer of the product or packaging lacks the practical ability to instruct consumers as to how to recycle it because it cannot use the label of the product for recycling instructions. As a result, if a product or packaging does not meet the criteria under SB 343 as of its effective date of October 4, 2026, it will likely never be able to meet the criteria because producers will not be able to instruct consumers, for example, to place the packaging in their recycling bin; this creates what is known as a "death spiral" for that packaging no matter how much investment in circularity and sustainability producers make.

Fortunately, SB 343 contains a provision that, in conjunction with SB 54, permits the Department to address this inconsistency. Under PRC §42355.51(d)(6), the Department has the authority to onramp products and packaging as "recyclable" in the state if they are part of, and in compliance with, a program established pursuant to state or federal law on or after January 1, 2022, governing the recyclability or disposal of that product or packaging and the director determines that the product or packaging will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging.

The Coalition urges the Department to exercise this authority in the Regulations by adopting a provision that determines that all covered material under SB 54 meets these criteria. Covered material under SB 54 is part of the exact type of recycling program contemplated by PRC §42355.51(d)(6). Furthermore, it "will not increase contamination of curbside recycling" from any level of such contamination that may exist today because there is no indication that producers are moving toward materials that are *less* likely to be recycled, and indeed the requirements of SB 54 have, understandably, focused producers on conversion to materials that are *more* likely to be recycled. In fact, the entire premise of SB 54 is create a circular economy whereby all covered material in compliance with the program is substantially increasing the recycling of single-use packaging and single-use plastic food serviceware. Furthermore, instructions to consumers about how to recycle covered materials do not "deceive consumers as to the recyclability of the product or packaging," but instead assist them in understanding what initial steps they need to take to facilitate the recycling of the product or packaging (starting with placing it in the recycling bin). This is critical for a working circular economy because once a producer sells the product or package, it is the consumer who takes custody of the package or product and must appropriately place it in the recycling bin.

[35] PRC §42355.51(b)(1).
[36] PRC §42355.51(b)(1).
[37] PRC §42355.51(d)(2).

The Coalition of course understands that there may be individual instances of products or packaging that may increase contamination of curbside recycling (perhaps some hypothetical new material) or whose labeling as potentially recyclable may be considered to deceive consumers (perhaps a material that will not realistically ever be recycled). The Regulations therefore should establish a procedure by which the Department may, upon objection from any member of the public and a review of the facts, exclude such products or packaging from the regulatory determination under PRC §42355.51(d)(6).

It is hard to overstate the significance of the SB 343 prohibition on recyclable labeling on the ability of producers and the PRO to meet the recycling targets of SB 54. The Coalition urges the Department to address this issue in the Regulations as discussed above in order to facilitate the smooth implementation of both SB 343 and SB 54 toward the goal of circularity.

The Coalition appreciates the opportunity to submit these additional comments for consideration, and for all of the dedication and hard work by CalRecycle to implement this EPR program. We look forward to continuing our productive dialogue to ensure a fair, cost effective, and faithful implementation of SB 54.

Respectfully submitted,

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African Farmers League, Manuel Cunha Jr.
Agricultural Council of California, Emily Rooney
American Chemistry Council, Tim Shestek
American Pistachio Growers, Zachary Fraser
California Apple Commission, Todd Sanders
California Blueberry Commission, Todd Sanders
California Dairies Inc., Darrin Monteiro
California Fresh Fruit Association, Daniel Hartwig
California Grocers Association, Daniel Conway
California League of Food Producers, Trudi Hughes
California Manufacturers & Technology Associations, Elizabeth Esquivel
California Strawberry Commission, Mark Martinez
California Tomato Growers Association, Mike Montna
California Restaurant Association, Matt Sutton
California Retailers Association, Sarah Pollo Moo
California Rice Commission, Timothy A. Johnson
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Consumer Brands Association, Erin Raden
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