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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 undersigned organizations (the “Coalition”) thank you for the opportunity to submit comments regarding CalRecycle’s (the “Department”) proposed revisions to the Plastic Pollution Prevention and Packaging Producer Responsibility Act Permanent Regulations that were published on January 29, 2026 (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. Collectively, the Coalition is directly responsible for producing, distributing, and selling the essential goods that Californians rely upon daily, and their continued investment and growth are critical to maintaining a strong and competitive California economy.

While we have supported the objective of improving recycling outcomes and reducing waste, the proposed amended regulations are overly punitive, economically distortive, and internally inconsistent with SB 54’s statutory framework. The issues raised by the amended categorical food exclusion provisions are emblematic of deeper structural flaws in SB 54 and the regulations proposed to implement it. Across multiple provisions, the regulatory framework substitutes rigid mandates and punitive compliance mechanisms for the balanced, workable approach intended by extended producer responsibility frameworks. By imposing absolute source-reduction caps untethered from population or sales growth, unrealistic recyclability thresholds disconnected from existing infrastructure, and standards that elevate theoretical alternatives over real-world food safety and operational feasibility, the regulations collectively set businesses up to fail.

For food and agriculture in particular, these requirements threaten the safety, availability, and affordability of essential products by forcing packaging decisions that compromise food shelf

life, food safety and sterility, and the efficient distribution across the state and nation. We believe the most recent revisions to the Regulations will significantly harm California’s business community and are vulnerable to legal challenges that would only slow the ability of producers to achieve the goals of SB 54. The Coalition submits the below additional comments to address the key concerns and help the Regulations best conform to the statutory mandates of SB 54.

Section 18980.2 Impermissibly Narrows Federal Conflict Protections, Imposes an Unauthorized Impossibility Test, and Exceeds CalRecycle’s Statutory Authority

I. The “Mandatory” Federal Law Limitation in Section 18980.2(a)(2) Is Too Narrow.

Section 18980.2(a) would exclude packaging from SB 54’s scope only where compliance is impossible due to “mandatory” federal requirements. In practice, this standard is far too narrow. Most U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) regulations do not prescribe specific packaging material; they impose performance standard-based safety standards instead, which aim at preventing contamination and ensuring food safety, among other purposes. Producers and suppliers, through extensive research and development investments and efforts, have developed packaging materials that reliably meet these standards, even if no federal rule explicitly “mandates” the use of that particular packaging. Indeed, an earlier version of Section 18980.2 correctly acknowledged that many federal food safety laws provide only general “standards to prevent microbial contamination or to maintain the safety or structural integrity of packaging” to meet federal requirements. Now, however, the Regulations would force producers to gamble with food safety, experimenting with new materials to satisfy SB 54 (or avoid crippling malus fees), despite no federal law requiring such change. This flatly contradicts Public Resources Code (PRC) Section 42060(b)(1), which directs CalRecycle to “consider guidelines” issued by FDA and USDA.

By framing the exclusion around direct conflicts with “mandatory” provisions, the regulation fails to capture situations where SB 54 effectively pressures producers to abandon packaging that federal law strongly favors or necessitates in practice, including via agency guidance or guidelines. The Coalition urges CalRecycle to strike “mandatory” and broaden the exclusion’s scope to more accurately reflect federal food safety law, regulation and guidance so that any packaging needed to meet federal food or agricultural standards is protected.

II. The Three-Part Impossibility Test Ignores Feasibility and Exceeds Statutory Authority.

Section 18980.2 of the Regulations creates an onerous application process that goes well beyond what SB 54 intended. Subparagraph (B) requires a business claiming an exclusion to satisfy three rigid criteria:

- (i) Prove that there is not a single alternative out there that works. To be a valid alternative, it cannot compromise the structural integrity or safety of the product, and it cannot break any other California or federal law.
- (ii) Prove that it cannot simply swap out specific packaging components to avoid the cited conflict.
- (iii) Prove that it cannot avoid the conflict by redesigning the entire packaging.

This test is unduly narrow and ignores key policy considerations in SB 54 such as cost feasibility and proportionality. Nothing in SB 54 suggests that the Legislature intended to demand such a heightened burden of proof, essentially requiring producers to prove a negative—that *no*

alternative exists anywhere—in order to avoid a conflict between state and federal law. By demanding absolute impossibility, the regulation discounts practical realities like economic feasibility and risk mitigation. For example, an alternative packaging might exist in theory but be prohibitively expensive or untested at scale.

This omission is striking because SB 54 itself recognizes the importance of feasibility and balance. For instance, the statute explicitly authorizes CalRecycle to grant exemptions for “unique challenges” where compliance is impractical and to account for health and safety needs. These provisions reflect a legislative intent to temper the law’s requirements with practical feasibility and negative externalities. The new Section 18980.2, by contrast, ignores whether forcing a packaging change is economically or technologically realistic for the producer, whether the material is authorized for food contact use or commercially scalable, and whether doing so would yield negligible environmental benefits at great cost to health and safety, or would raise other environmental impacts such as increased use of packaging material, increased impact from transportation, etc. It demands that businesses prove that something does not and cannot exist, effectively requiring 100 percent certainty that no other packaging could work.

Such an extreme evidentiary burden exceeds CalRecycle’s statutory authority and is not appropriately called, as the Regulations imply, a “reasonable possibility” standard. Public Resources Code Section 42060(b)(2) simply prohibits state requirements in “direct conflict” with federal law; it does not license CalRecycle to erect a multi-pronged test that omits considerations of costs and proportionality. The Coalition urges the Department to substantially revise Section 18980.2 to include feasibility and proportionality in the analysis, consistent with SB 54’s balanced approach. Factor (iii) for example should be revised to: “Prove that it cannot avoid the conflict by redesigning the entire packaging without the entity facing substantial or undue hardship.”

III. Imposing an “Impossibility” Standard Clashes with California Law on Preemption.

The revised exclusion effectively demands a showing that simultaneous compliance with SB 54 and federal law is impossible—an “impossibility” standard (as opposed to a “reasonable possibility” standard) that is inconsistent with case law on conflict preemption. California courts have made clear that conflict preemption does not require literal impossibility. Rather, the question is whether it is “reasonably possible” to comply with both laws. In *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th 135 (2023), the California Supreme Court explicitly rejected the argument that a theoretical ability to comply with two conflicting laws is enough to avoid preemption. The Court held that “compliance with both laws must be *reasonably possible*,” and that mere “theoretical possibility” is insufficient. *Id.* at 150.

The Department’s revised Regulations run afoul of this principle. By requiring producers to demonstrate that no alternative packaging exists (i.e., that it is absolutely impossible to comply), Section 18980.2 is anchored in the very “theoretical possibility” test that the California Supreme Court rejected. The proper inquiry is whether a producer can reasonably comply with both federal packaging requirements and SB 54’s mandates. If complying with SB 54 would force the producer to abandon packaging that is needed (or even just widely used) to meet federal safety standards, then dual compliance is not reasonably possible, and that is sufficient to establish a conflict.

The Coalition believes that the introduction of the “reasonably possible” language from an earlier Notice of Rulemaking was a step in the right direction. But with the most recent revision, the Department seems to have clawed this back with an excessively strict view of “reasonably possible.” California law does not require proving absolute impossibility to trigger an exemption for conflicting federal law. The Department should align Section 18980.2’s standard with the California Supreme Court’s precedent in *Chevron* by focusing on practical, rather than theoretical, possibility.

IV. Unbounded Agency Discretion Invites Unpredictable and Unfair Results.

The Coalition is deeply concerned that the revised process for obtaining an exclusion vests too much discretion in the Department to deny exclusion based on hypothetical alternatives or unstated criteria. This would render many outcomes unpredictable, unfair, and generally discourage economic investment in the state of California.

Under Section 18980.2(a)(2)(C) and (E), even after a producer submits evidence supporting an exclusion, CalRecycle can unilaterally determine that the packaging does not qualify for the exclusion and thereby deem it covered by SB 54 within 180 days. These provisions offer no meaningful standards cabining agency review, thus enabling the Department to overrule the producer’s determination if it imagines any way the conflict could be avoided. This invites situations where regulators raise new theories or hypothetical packaging alternatives that the producer did not address and use that as a basis to deny the exclusion. No business can possibly preempt and disprove every theoretical alternative that the Department might later conceive.

Such open-ended discretion is inconsistent with due process and sound regulatory practice. Producers facing these compliance decisions need clear, objective criteria to rely on. Instead, under the revised Section 18980.2, they are forced to play a guessing game: a producer might invest substantial effort to demonstrate a conflict, only to have the agency speculate that perhaps an untested or cost-prohibitive packaging change could solve the issue and thus reject the exclusion.

This result is regulatory uncertainty on a matter of critical importance (safe food packaging), which will chill investment and innovation in California. We emphasize that SB 54 intended the federal conflict provision to operate as a safeguard for agricultural and other producers doing business in federally regulated environments, and not as a trap door. By giving the Department essentially unchecked power to second-guess conflict determinations, the revised Regulations undermine the very protection that the Legislature wrote into Public Resources Code Section 42060(b). The Coalition urges CalRecycle to establish clear, reasonable criteria for evaluating conflict claims and to constrain its discretion.

V. The Department’s Proposal to Dictate Alternative Packaging Is Not Authorized by SB 54.

Finally, the Coalition objects to the revised regulation’s new mechanism allowing the Department to effectively propose or impose alternative packaging solutions as a condition of denying an exclusion. Nothing in Public Resources Code Section 42060(b) authorizes CalRecycle to override a producer’s judgment and mandate a different packaging choice. To the contrary, Section 42060(b) was intended to be self-executing: if compliance with SB 54 or its implementing regulations would create a direct conflict with federal law, then those state requirements simply do not apply by operation of law. The statute speaks in absolute terms: “Neither the department nor the PRO shall impose any requirement . . . in direct conflict with a

federal law or regulation.” It does not establish a negotiation or alternative selection process. The Department’s role is to avoid conflicts, not to second-guess producers’ choices of federally compliant packaging or to design alternatives on their behalf.

Where the Legislature intended CalRecycle to exercise discretionary, adjudicatory authority, it did so expressly and with accompanying standards. For example, SB 54 authorizes CalRecycle to grant exemptions based on “unique challenges” or “health and safety concern, *see* PRC § 42060(a)(3)-(4) (directing the Department to “establish a process to identify covered material that . . . presents unique challenges in complying” or “cannot comply . . . for health and safety reasons,” and authorizing the Department to exempt such material). The statute also authorizes CalRecycle to evaluate and approve small producer exemption claims, *see id.* § 42060(a)(5) (directing the Department to “establish a process to exempt” small producers). In these and other provisions, the Legislature affirmatively delegated authority to the Department to make substantive determinations and condition regulatory outcomes on agency judgment.

Section 42060(b) is categorically different. Rather than conferring discretionary authority, it imposes a self-executing limitation on CalRecycle’s power, providing that “neither the department nor the PRO shall impose any requirement . . . that is in direct conflict with a federal law or regulation.” Unlike the provisions cited above, Section 42060(b) contains no directive for the Department to adjudicate eligibility, approve or deny exclusions, or substitute its judgment for that of federally regulated entities. This omission is deliberate. Where the Legislature intended CalRecycle to serve as gatekeeper, it said so expressly; where it did not, the statute operates by force of law. Transforming Section 42060(b) into an agency-administered approval process collapses that distinction and exceeds the authority the Legislature chose to confer.

By inserting itself in the decision of how a producer should comply with FDA or USDA requirements, the Department is reaching beyond its legal mandate. This finds no support in SB 54’s text. The Legislature did not contemplate CalRecycle becoming an arbiter of packaging design for federally regulated products or second-guessing the conclusions of food safety and technical experts. Quite the opposite. Section 42060(b) reflects deference to federal law, recognizing that in areas of potential conflict (like food safety packaging), the State must yield and allow continued use of the federally compliant material.

The Coalition is unaware of any statutory authority for CalRecycle to compel use of a particular “alternative packaging” as a remedy for federal conflict. Indeed, such powers would raise serious questions, as CalRecycle is not the expert agency on safe food packaging. In short, the Department’s newfound authority to suggest or require alternative packaging is *ultra vires*. We ask that the Department strike this aspect of the revisions and restore the exclusion to a straightforward, self-executing provision.

The Coalition recognizes that a self-executing federal conflict provision *could* be invoked improperly by producers seeking to avoid compliance. But that concern does not justify converting Section 42060(b) into a discretionary approval regime. The Legislature was surely aware that some provisions of SB 54 would operate without advance agency permission, and it accepted that structure here in order to ensure that federally regulated food and agricultural packaging would not be subjected to state requirements that intrude on federal safety determinations.

Critically, abuse of Section 42060(b) is already constrained by several existing legal mechanisms. Producers remain subject to enforcement, administrative review, and judicial scrutiny if no genuine conflict exists, and must be prepared to defend their determinations under

established conflict-preemption principles. California law further limits over-assertion by requiring that compliance with both laws be assessed based on whether it is *reasonably possible*, not merely theoretically conceivable, providing a workable framework for evaluating claims. In this context, Section 42060(b) will not invite abuse that would undermine the statute's overarching goals. The Coalition believes, and the Legislature likely understood, that the risk of over-assertion, which is subject to these constraints, is preferable to authorizing state regulation that forces businesses to choose between SB 54 compliance and adherence to federal food and agricultural safety law.

Regulations Should Have Included an Exclusion for Secondary & Tertiary Packaging for CRV Containers Consistent with Statute

SB 54 was enacted as an extended producer responsibility law governing single-use packaging and plastic single-use food service ware, subject to specific exemptions and categorical exclusions enumerated by the Legislature. Among these are packaging systems for food and agriculture, medical goods, as well as packaging associated with the California Beverage Container Recycling and Litter Reduction Act (the “Bottle Bill” or “CRV Program”).¹ When the Legislature defined what does not constitute “covered material” under SB 54, it consistently excluded, in PRC § 42041(e)(2)(A)–(G), all packaging associated with those enumerated materials and applications.

The Department has previously recognized that these exclusions encompass secondary and tertiary packaging associated with the primary regulated good. The May 2025 draft regulation correctly treated all secondary and tertiary packaging associated with CRV beverages as “not covered material.” The subsequent August 2025 revision departed from that interpretation by treating the CRV Program differently from the rest of the exemptions listed in PRC § 42041(e)(2)(A)–(G). The May 2025 interpretation was consistent with the statute and should be restored.

I. The CRV Program Exclusion Must Be Interpreted Consistently with the Legislature's Comprehensive Exemptions List in SB 54

The Department's revised interpretation appears to rely on the use of the term “beverage containers” in PRC § 42041(e)(2)(E), as contrasted with the term “packaging” in neighboring subsections. But when read in context, surrounded by comprehensive exclusions from “covered material,” subsection (E) reflects the same breadth of legislative intent. Each item listed in PRC § 42041(e)(2)(A)–(G) removes an entire packaging system from SB 54's scope. The CRV Program is not a narrow material carve-out; it is a distinct statutory recycling regime. Nothing in the structure of the statute suggests that the Legislature intended to treat beverage containers as the sole outlier in an otherwise comprehensive list of exclusions. The CRV program is a decades-old, self-funding redemption program with demonstrable recycling success. Producers subject to that program are already operating under one of the most comprehensive recycling frameworks in the world and paying associated fees. It would be inconsistent with the statutory design to require those same producers to comply and pay more fees to an entirely new recycling regime

¹ See PRC § 42041(e)(2)(E).

for the secondary and tertiary packaging associated with the containers already regulated under CRV.

II. Undermines Legislative Compromise and Harms a Major California Industry

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 CRV program 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 elected to extend the CRV program to cover wine and distilled spirits to create a more comprehensive, self-funding framework that prevents overly burdensome obligations. Industry stakeholders, including small wineries and distillers, agreed to participate because the CRV program provided 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 CRV program 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 CRV program 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 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.²

III. Established Canons of Construction Require Harmonization of SB 54 and the CRV Program

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

² 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/>

provisions whenever possible.³ 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 CRV program and SB 54. By contrast, reading the exclusion appropriately to cover secondary and tertiary packaging harmonizes the two statutes: the CRV program 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.⁴ 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.⁵ 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 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 CRV program 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 Not Implementable

I. Regulations Treat Source Reduction as a De Facto Cap on Economic Growth

The proposed source reduction provisions operate as a de facto hard cap on single-use plastic packaging that is untethered from population growth, increased consumer demand, or sales growth. Each of these factors would reflect a stronger and expanding California economy. But rather than measuring efficiency on a per-unit basis or encouraging innovation that reduces material intensity over time, the Regulations impose static reduction requirements that effectively penalize businesses for selling more products, serving more customers, or expanding

³ 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.

⁴ 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.’”)

⁵ See *People v. Leal* (2004) 33 Cal.4th 999, 1008 (statutes should not be interpreted to yield absurd or internally inconsistent results).

operations in the state. Such a framework creates a perverse incentive to constrain growth, limit product availability, or shift investment outside California, all outcomes that neither advance environmental performance nor reflect the Legislature’s intent to balance ambitious recycling and circular economy goals with economic feasibility and sustainability.

II. The Regulations Must Provide a Clear, Prospective Compliance Year to Avoid APA Defects

Section 18980.9 must be revised to allow producers to utilize calendar year 2027 data as the operative compliance year for purposes of determining compliance with the January 1, 2027 source reduction target. The Administrative Procedure Act requires regulations to provide clear, prospective standards that afford regulated parties fair notice of their obligations. Because the Regulations are not yet finalized in 2026, producers cannot reasonably structure compliance systems, allocate resources, or collect defensible data for a period governed by unsettled and evolving requirements. Conditioning compliance on 2026 data would effectively impose a retroactive obligation, undermining the APA’s clarity and necessity standards under Government Code section 11349.1 and fundamental due process principles.

To be clear, the statute does not specify which data year must be used to measure reduction from the 2023 baseline in determining whether each target has been met. Instead, it authorizes the Department to “adopt regulations to implement this section, including, but not limited to, reporting and collection requirements.” Given this delegated authority, and to ensure that source reduction percentages are complete and accurate when reported in the PRO’s annual filings, the Regulations should identify 2027 as the applicable data year against which the 2023 baseline will be measured.

Using calendar year 2027 data is both legally appropriate and administratively sound. First, if the Regulations become effective in 2026, producers will only then be on notice of the final requirements. By that time, some or all 2026 data may not have been tracked in a manner consistent with the finalized rules, rendering it incomplete or unreliable. Second, the statute itself contemplates full calendar-year measurement. The 2023 baseline is calculated using the full 2023 calendar year, and PRC section 42057 repeatedly references annual calculations without suggesting the use of partial-year or non-calendar-year data.

The Regulations’ treatment of recycling rates confirms this approach. For example, Section 18980.2.3(a)(4), implementing PRC section 42041(e)(2)(H), specifies recycling rates by calendar year and provides that each year’s rate is determined as of January 1 of the following year. Section 18980.3.2 further provides that recycling rates are calculated over the latest twelve-month period for which “sufficient data” exists. The concept of “sufficient data” recognizes that compliance determinations must be based on a complete, reliable twelve-month data set. The same logic must apply to source reduction. The first full calendar year following finalization of the Regulations—2027—will be the earliest year for which sufficient, compliance-ready data can reasonably be expected.

Accordingly, the Regulations should specify that calendar year 2027 data will be measured against the 2023 baseline to determine compliance with the January 1, 2027 target. This approach ensures that data are complete, accurate, and collected under clear, prospective standards.

With respect to the January 1, 2030 and January 1, 2032 targets, the same retroactivity concern does not arise, assuming the Regulations are finalized in early 2026. Producers will have

adequate notice to collect full and accurate data for calendar years 2029 and 2031. The Regulations should therefore clarify that compliance with those targets will be measured using the immediately preceding full calendar year of available data.

New Recycling Technologies Consistent with Statute

The Coalition agrees that 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.”⁶ 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.”⁷ 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).”⁸ 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.⁹

Other aspects of the Regulations also encourage new recycling technologies that minimize the “generation of greenhouse gases, environmental impacts, environmental justice impacts, and

⁶ Section 18980.4.1(d)(1).

⁷ Section 18980.4.1(d)(1)(B).

⁸ 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.”).

⁹ *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.”).

public health impacts.”¹⁰ 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 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.

Need For a Viable Compliance Pathway for Compostables

Compostable packaging and food service ware 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.

The Coalition appreciates the Department’s recognition of these challenges and, in particular, its decision to provide additional time to allow compostable materials to be appropriately evaluated and integrated into the National Organic Program framework. That flexibility is essential to preserving compostable packaging as a viable compliance pathway under SB 54. The Coalition remains committed to working constructively with the Department and other stakeholders to ensure that regulatory requirements are clear, administrable, and grounded in real-world market and infrastructure conditions. The Coalition wants to see a program that works with haulers, composters, producers and farmers. Regulatory certainty is critical for all stakeholders, enabling investment and innovation. We look forward to continued collaboration to ensure that compostable materials can serve as a meaningful tool for achieving SB 54’s environmental objectives without inadvertently causing contamination or loss of certifications.

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

¹⁰ PRC § 42041(aa)(5).

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”].”¹¹ 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. As such, the Proposal’s designation of covered materials containing Proposition 65-listed chemicals as “hazardous material” under SB 54 (at PRC section 42053(e)) has no basis on a textual level.

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 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.”¹² 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.¹³ BPA, for example, has a safe harbor level of 3 micrograms per day via the dermal exposure route from solid materials.¹⁴

Businesses are not bound by these levels and are entitled to prove that higher levels should apply.¹⁵ 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*

¹¹ See § 18980.6.7(i).

¹² Health & Safety Code § 25249.10(c).

¹³ 27 C.C.R. § 25705 (carcinogens); *Id.* § 25805 (reproductive toxins)

¹⁴ *Id.* § 25805(b).

¹⁵ *Id.* §§ 25701, 25801.

cancer or harmful reproductive effects.”¹⁶ The agency also “discourage[s]” businesses “from providing a warning that is not necessary.”¹⁷

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 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 Component

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

¹⁶ 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>

¹⁷ OEHHA, “Businesses and Proposition 65,” available at <https://oehha.ca.gov/proposition-65/businesses-and-proposition-65>

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.

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 practically 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 Accurately Implement SB 54

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

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.¹⁸ This is important to keep costs down across the system and protect the food system.

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.¹⁹

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.²⁰ 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.²¹

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

¹⁸ See Section 18980.2.1(c).

¹⁹ PRC §42355.51(b)(1).

²⁰ PRC §42355.51(b)(1).

²¹ PRC §42355.51(d)(2).

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.

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 urges the Department to reconsider the January 2026 changes to Section 18980.2. As drafted, the revisions would undermine California businesses’ ability to package food and agricultural products safely under well-established federal standards. They impose unrealistic

burdens of proof, conflict with California legal principles on preemption, and grant the Department overbroad discretion beyond its statutory authority. We respectfully request that CalRecycle strike the problematic language (specifically, use of the word “mandatory” and the impossibility criteria) and work with business stakeholders to ensure that producers can continue using packaging that complies with federal law without facing a Hobson’s choice.

More broadly, SB 54’s success depends on a regulatory framework that is legally sound, administrable, and grounded in real-world operational and infrastructure realities. Producers require clear, objective standards that allow them to invest with confidence, innovate responsibly, and meet environmental objectives without jeopardizing food safety, product availability, or affordability. The viability of SB 54’s implementation depends on corrective amendments to the Regulations that reestablish statutory fidelity and provide the regulated community with clarity and predictability required for compliance.

We appreciate the opportunity to submit these comments for the Department’s consideration.

Respectfully submitted,



Adam J Regele

on behalf of the following organizations:

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| Agricultural Council of California | California Tomato Growers Association |
| Almond Alliance | Chemical Industry Council of California |
| American Chemistry Council | Consumer Brands Association |
| APTCO, LLC | Dairy Institute of California |
| California Chamber of Commerce | Grower-Shipper Association of Central
California |
| California Dairies, Inc. | National Confectioners Association |
| California Date Commission | Personal Care Products Council |
| California Fresh Fruit Association | Pet Food Institute |
| California Grocers Association | Plant California Alliance |
| California League of Food Producers | Plastics Industry Association |
| California Manufacturers & Technology
Association | Plumbing Manufacturers International |
| California Restaurant Association | SNAC International |
| California Retailers Association | Western Growers Association |
| California Strawberry Commission | Wine Institute |